



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-219

Appeal M-9200451

Regional Municipality of Haldimand-Norfolk



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ORDER

BACKGROUND:

The Regional Municipality of Haldimand-Norfolk (the Municipality) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a report prepared by the Director of Economic Development. The report, identified as the E.D. Report 6/90, relates to a claim for compensation by various parties, including the requester, arising out of efforts by the Municipality to expropriate their property for a proposed industrial development.

The Municipality granted partial access to the record. Three pages of the record, plus an attachment, were exempted under sections 6(1), 7(1), 12 and 14 of the Act. The requester appealed the Municipality's decision.

During the course of mediation, issues related to the Municipality's use of section 14 of the Act were resolved, and this section is no longer at issue in this appeal. Additionally, only pages 2, 3 and 4 of the record, with the exception of the names of certain individuals, remain at issue.

Further mediation was not successful and notice that an inquiry was being conducted to review the Municipality's decision was sent to the appellant and to the Municipality. Representations were received from both parties.

ISSUES:

The issues arising in this appeal are:

- A. Whether the record contains "personal information" of the appellant as defined in section 2(1) of the Act.
- B. Whether the record qualifies for exemption under section 6(1)(b) of the Act.
- C. Whether the record qualifies for exemption under section 7(1) of the Act.
- D. Whether the record qualifies for exemption under section 12 of the Act.
- E. If the answer to Issue A and Issues B, C, and/or D is yes, whether the discretionary exemption provided by section 38(a) of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the record contains "personal information" of the appellant as defined in section 2(1) of the Act.

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual,

I have reviewed the pages remaining at issue. In my view, the record contains recorded information about the appellant which falls within the definition of personal information contained in section 2(1) of the Act.

ISSUE B: Whether the record qualifies for exemption under section 6(1)(b) of the Act.

The Municipality submits that section 6(1)(b) of the Act applies to the record. This provision reads:

A head may refuse to disclose a record,

that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

In order to rely on section 6(1)(b), the Municipality must establish that:

1. A meeting of a council, board, commission or other body or a committee of one of them took place; **and**
2. A statute authorizes the holding of such a meeting in the absence of the public; **and**
3. The disclosure of the record at issue would reveal the actual substance of the deliberations of this meeting.

[Orders M-64, M-98 and M-102]

The Municipality submits that the record was considered by the Municipality's Planning and Economic Development Committee, a standing committee appointed by Regional Council, on March 7, 1990, in an in camera session. The Municipality provided a copy of the minutes of the meeting which indicate that the matter was discussed in camera. In my view, part one of the test has been satisfied.

The Municipality relies upon section 55 of the Municipal Act, and Procedural By-law 79--86, section 28.6, as the basis for its statutory authority to hold meetings in camera under certain circumstances. Section 55(1) of the Municipal Act reads:

The meetings, except meetings of a committee including a committee of the whole, of every council and of every local board as defined by the Municipal Affairs Act, except police services boards and school boards, shall be open to the public, and no person shall be excluded therefrom except for improper conduct.

Procedural By-law 79--86, section 28.6 reads, in part:

That all Council, Committee of the Whole Meetings, shall be open to the press and public except where the topic of discussion falls within the following list of items and in which case both the press and public shall be required to leave.

...

- (b) Discussion of a matter which is or could become the subject of litigation.

...

- (d) Discussions on the purchase of property when it is deemed a premature disclosure of the nature and the price would not be in the public interest.

...

- (f) Discussion of items related to the industrial and economic development of the region which are preliminary or exploratory in nature and which could be prejudiced or otherwise adversely affected by publicity.

Based on the evidence provided to me, I find that the Municipality had the requisite authority under section 55.1 of the Municipal Act and under Procedural By-law 79--86, section 28.6, to hold a meeting in camera, as the record involved discussions in respect of a matter which could become the subject of litigation. In my view, part two of the test has also been met.

In Order M-184, Assistant Commissioner Irwin Glasberg provided some criteria for the evaluation of part three of the test:

In order for me to address the third part of the test (the disclosure of the record at issue would reveal the actual substance of deliberations of this meeting), I will need to define the

term "deliberations". In my view, deliberations, in the context of section 6(1)(b), refer to discussions which were conducted with a view towards making a decision.

Having carefully reviewed the contents of the record, I am satisfied that the disclosure of pages 2, 3 and 4 would reveal the actual substance of the deliberations conducted by the Regional Council. On this basis, I find that the Municipality has established the third part of the section 6(1)(b) test.

Since all three components of the test have been satisfied, I find that the record qualifies for exemption under section 6(1)(b) of the Act.

Since I have found that section 6(1)(b) of the Act applies to exempt the record from disclosure, it is not necessary for me to address Issues C and D.

ISSUE E: If the answer to Issue A and Issues B, C, and/or D is yes, whether the discretionary exemption provided by section 38(a) of the Act applies.

Because the records which I have found to qualify for exemption pursuant to section 6(1)(b) of the Act contain the personal information of the appellant, I must now consider the application of section 38(a), which states:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, 8, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information; [emphasis added]

This section is a discretionary exemption which gives the Municipality the discretion to deny access to an individual's own personal information in instances where one of the enumerated exemptions apply. The Municipality has provided representations regarding its exercise of discretion to deny access to the records. Having reviewed these representations, I find nothing to indicate that the exercise of discretion was improper and I would not alter it on appeal.

ORDER:

I uphold the Municipality's decision.

Original signed by:
Holly Big Canoe
Inquiry Officer

November 19, 1993