



Information and Privacy
Commissioner/Ontario

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

ORDER M-353

Appeal M-9300213

City of Toronto



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellants, represented by a solicitor, have requested copies of records from the City of Toronto (the City) "directly relevant" to them and their property at a named municipal address.

The records at issue in this appeal may be generally described as minutes, memoranda, file notes and correspondence detailing the manner in which the City addressed concerns raised by several individuals and a Ratepayers Association (the Association) about the property.

In its representations, the City indicates that Records 3, 8, 9, 10, 11, 12 and iii-51(a) can be disclosed to the appellants. The remaining records are more particularly described in Appendix "A". The City relies on the following exemptions in denying access to these records:

- closed meeting - section 6(1)(b)
- law enforcement - section 8(1)(d)
- solicitor-client privilege - section 12
- invasion of privacy - sections 14(1) and 38(b)
- discretion to refuse requester's own information - section 38(a)

Because of the manner in which I have dealt with the matter of solicitor-client privilege, it is not necessary for me to consider the law enforcement exemption.

A Notice of Inquiry was provided to the parties to this appeal, including the former owner of the property and five individuals who were members of the Association and whose names appear in the records. Representations were received from the former owner, the City and the appellants. Counsel representing the five individuals, the Association itself and the other individual members of the Association also submitted representations.

DISCUSSION:

CLOSED MEETING

In order to qualify for exemption under section 6(1)(b) of the Act, the institution 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. that a statute authorizes the holding of this meeting in the absence of the public; **and**
3. that disclosure of the record at issue would reveal the actual substance of the deliberations of this meeting.

The City submits that disclosure of Records 2, 4, 5, 6 and the cover page of Record ii-9 would reveal the substance of the deliberations of the meeting of the Executive Committee in Conference (the Committee), held on November 9, 1992. The meeting was held in the absence of the public pursuant to section 55(1) of the Municipal Act. I am satisfied that in fact the meeting took place and was held in camera as described by the City. Therefore, the first two parts of the test have been met.

As far as the third part of the test is concerned, there is a distinction between a record being the **subject** of deliberations and a record containing information which would reveal the **substance** of the deliberations. A record does not satisfy the third part of the test if it contains information which is merely the **subject** of the deliberations (Order M-98). Moreover, deliberations are discussions which are conducted with a view towards making a decision (Order M-184).

Applying these considerations to the records, I find that disclosure of Records 4 and 6 in their entirety and the last full paragraph of Record 2 would reveal the actual substance of the deliberations which took place at the Committee meeting. Accordingly, all three elements of the closed meeting exemption have been established with respect to these records.

In my view, those portions of Records 2 and ii-9 which merely list the documents which the Committee had before it indicate records that were the **subject** of the deliberations only. The same analysis applies to Record 5, a map.

In addition, disclosure of the parts of Records 2 and ii-9 which describe what the Committee "requested" as a result of its discussions at the closed meeting, would not reveal the actual substance of these discussions. Rather, they represent the decision that was made as a result of the discussions. Furthermore, Record ii-9 indicates that the Committee "requests" were reported to the public session of the Executive Committee. Thus, the closed meeting exemption does not apply to Record 5, the cover page of Record ii-9 and all of Record 2 except for the last full paragraph.

Having found that Records 4 and 6 and the last full paragraph of Record 2 satisfy all three parts of the test under section 6(1)(b) of the Act, I must now determine whether the information qualifies under one or more of the exceptions to the exemption described in section 6(2)(b) of the Act. Section 6(2)(b) states:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,

in the case of a record under clause (1)(b), the subject-matter of the deliberations has been considered in a meeting open to the public;

The City states that the subject matter discussed at the in camera meeting has not subsequently been discussed at a public meeting.

As I have indicated, the "requests" made by the Executive Committee in Conference at its in camera meeting were reported to the public session of the Executive Committee. These "requests" are essentially the results of or the decision which flowed from the deliberations at the in camera meeting.

However, I do not believe that the mere **disclosure** or **reporting** of a decision made at an in camera meeting, necessarily means that all issues discussed at such a meeting fall within the "subject-matter of the deliberations" to trigger the operation of the section 6(2)(b) exception with respect to the material which satisfies the closed meeting exemption. A distinction should be made between the **product**, or the results of the deliberations (the "requests" mentioned above), and the **subject matter** (Order M-208). In my view, section 6(2)(b) does not apply in the present case.

SOLICITOR-CLIENT PRIVILEGE

Section 12 of the Act consists of two branches, which provide an institution with the discretion to refuse to disclose:

1. a record that is subject to the common law solicitor-client privilege (Branch 1);
and
2. a record which was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

The City submits that Records 14, 15, ii-12, iii-19 and iii-20 were created especially for the lawyer's brief for contemplated litigation and therefore satisfy Branch 1. It maintains that Records 14, 15 and ii-12 also satisfy Branch 2.

As a result of the concerns expressed by several individuals, including the Association, about the appellants' property, the City decided to have the City solicitor investigate the matter and prepare a report. The City solicitor was to advise the City as to its options with respect to the situation regarding the appellants' property. Records 14, 15, and ii-12 were created during the course of this investigation.

I am satisfied that Records 14, 15 and ii-12 were created by or for counsel employed by the institution, namely the City solicitor, for use in giving legal advice to the City. Therefore Branch 2 of section 12 applies to them.

The City indicates that Records iii-19 and iii-20 were prepared by or for the staff of the Planning and Development Department in anticipation of the City's litigation at the Ontario Municipal Board hearing regarding the land use of the appellants' property. I accept the City's submissions that these records were created for the City solicitor's brief for contemplated litigation. I find that Branch 1 of section 12 applies to these two records.

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

Having carefully reviewed those records necessary for the resolution of the remaining issues, I have made the following findings with respect to which records contain personal information and to whom it relates:

- (1) Records 7 and 13 contain only the personal information of the individual who has consented to the disclosure of this information. Therefore the only exemption claimed by the City to deny access to these two records, section 14(1), cannot apply. Accordingly, these two records should be disclosed in their entirety to the appellants.
- (2) I find that a portion of Record 14, and Records ii-12, ii-14 and iii-9 contain the personal information of the appellants. Records ii-14 and iii-9 also contain the personal information of the individual who has consented to the disclosure of this information.
- (3) Those portions of Record 2, and the covering memorandum and attached letter to Record ii-9 which contain information about individuals acting on behalf of, or as representatives of, the Association do not constitute the personal information of these individuals (Orders M-118 and P-300).
- (4) The names and home addresses of the individual Association members as found on the last page of Record ii-14 constitute the personal information of these individuals.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 of the Act provides a number of exceptions to this general right of access.

Under section 38(a) of the Act, the City has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. One of these exemptions is that of solicitor-client privilege (section 12).

I have found that section 12 applies to two of the records containing the personal information of the appellants - Records 14 and ii-12. Therefore, the exemption provided by section 38(a) applies to them.

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the City determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the City has the discretion to deny the requester access to that information.

The City claims that this section applies to the two records remaining at issue - Records ii-14 and iii-9. Record iii-9 contains only the personal information of the appellants and the individual who has consented to disclosure. Therefore, disclosure of Record iii-9 would not constitute an unjustified invasion of this individual's personal privacy.

The appellants have indicated in their submissions that, where possible, personal information should be severed from any record in order that the balance may be disclosed. Accordingly, the names and addresses

of the individual Association members who signed Record ii-14 should be removed prior to this record being disclosed to the appellants.

ORDER:

1. I uphold the decision of the City to deny access to Records 4, 6, 14, 15, ii-12, iii-19, and iii-20 in their entirety, the highlighted portion of Record 2 and the names and addresses of the individual Association members who signed Record ii-14. I have provided a highlighted copy of Record 2 to the Freedom of Information and Privacy Co-ordinator of the City with a copy of this order.
2. I order the City to disclose Records 3, 5, 7, 8, 9, 10, 11, 12, 13, ii-9 (both the covering memorandum and attached letter), iii-9 and iii-51(a) in their entirety, the non-highlighted portion of Record 2 and the body of Record ii-14 to the appellants within thirty-five (35) days after the date of this order but not earlier than the thirtieth (30th) day after the date of this order.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the City to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Fineberg
Inquiry Officer

July 15, 1994 _____ Anita

APPENDIX "A"

INDEX OF RECORDS AT ISSUE				
RECORD NUMBER(S)	DESCRIPTION OF RECORD WITHHELD IN WHOLE OR IN PART	DUPLICATE(S)	EXEMPTIONS CLAIMED	DECISION ON RECORD
Part 2 of the Request				
2	Minutes of Executive Committee Meeting dated November 2, 1992 (1 page)		6(1)(b)	Disclose in part
4	Report dated November 9, 1992 from Commissioner of Planning and Development to Executive Committee re subject property (3 pages)	Part of ii-9	6(1)(b)	Decision upheld

INDEX OF RECORDS AT ISSUE				
RECORD NUMBER(S)	DESCRIPTION OF RECORD WITHHELD IN WHOLE OR IN PART	DUPLICATE(S)	EXEMPTIONS CLAIMED	DECISION ON RECORD
5	Location map (1 page)		6(1)(b)	Disclose
6	Letter dated November 3, 1992 from Director of Inspections to City Councillor (4 pages)		6(1)(b), 14(1)	Decision upheld
7	Building inspector's file notes of inspections of subject property from June 19, 1990 to October 15, 1992 (4 pages)		14(1)	Disclose in full
13	Memorandum dated May 24, 1990 from Manager of Department of Buildings and Inspections		14(1)	Disclose in full
Parts 4, 6, 7 and 8 of the Request				
14	Solicitor's notes of meeting of December 2, 1992 with four named individuals (12 pages)		8(1)(d), 12, 14(1), 38(a) and (b)	Decision upheld
Part 5 of the Request				
15	Solicitor's notes of telephone conversation with named individual (6 pages)		8(1)(d), 12, 14(1), 38(a) and (b)	Decision upheld
Part 10 of the Request - Committee of Adjustment File (Item ii)				
ii-9	Memorandum dated November 12, 1992 from Executive Committee to all Council members (1 page)		6(1)(b)	Disclose in full
	Letter dated November 6, 1992 from Association to City (2 pages)			Disclose in full
ii-12	Memorandum to file dated November 8, 1992 (1 page)		12, 14(1), 38(a) and (b)	Decision upheld
ii-14	Letter dated October 28, 1992 from Association to Mayor of the City of Toronto		14(1), 38(b)	Disclose in part

INDEX OF RECORDS AT ISSUE				
RECORD NUMBER(S)	DESCRIPTION OF RECORD WITHHELD IN WHOLE OR IN PART	DUPLICATE(S)	EXEMPTIONS CLAIMED	DECISION ON RECORD
Part 10 of the Request - Planning Study File (Item iii)				
iii-9	Facsimile transmission letter dated October 26, 1992 from Association to the Mayor of the City of Toronto (6 pages)		14(1), 38(b)	Disclose in full
iii-19	Minutes of Study Meeting dated February 3, 1993 (7 pages)		12	Decision upheld
iii-20	Letter dated March 1, 1993 from Manager, West Section Community and Neighbourhood Division to Association Representative (1 page)		8(1)(d), 12, 14(1)	Decision upheld