



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-355

Appeal M-9300508

The Corporation of the Town of Marathon



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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 appellant has requested copies of records from the Marathon Police Service (the Police). The information requested relates to the appellant and includes information within his personnel file, information contained in the notebooks of the Chief and Deputy Chief of Police, and correspondence to the Marathon Police Services Board (the Board). As a result of mediation, the only record which remains at issue is a six-page letter, dated August 10, 1993, written by the Deputy Chief of Police to the Board, which contains information relating to the appellant.

During the inquiry stage of this appeal, the Police were dissolved and authority for policing was taken over by the Ontario Provincial Police. The Corporation of the Town of Marathon (the Town) has indicated that it has assumed all administrative matters concerning the Police, including the appellant's access request. The request was reviewed by the Town and a second decision letter, in which partial access was granted to the record at issue, was provided to the appellant.

The Town relies on the following exemptions to withhold the parts of the letter which were not disclosed:

- Closed meeting - sections 6(1)(b) and 38(a)
- Advice or Recommendations - sections 7(1) and 38(a)
- Evaluative or opinion material - section 38(c)

A notice of inquiry was initially provided to the Police and the appellant. Representations were received from both parties. As the Town had issued a decision letter with respect to this matter, representations were also received from it. Although he was asked, the appellant did not submit additional representations.

DISCUSSION:

PERSONAL INFORMATION

As I indicated above, the record is a letter written by the Deputy Chief of Police about the appellant. Personal information is defined in section 2(1) of the Act, in part, as "recorded information about an identifiable individual", and includes the views or opinions of another individual about the individual. In my view, the record contains the personal information of the appellant only.

CLOSED MEETING

Section 6(1)(b) of the Act reads as follows:

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.

To qualify for exemption under section 6(1)(b), the Town 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.

In its representations, the Town states that an in camera meeting of the Board took place on August 13, 1993 to discuss the six-page letter at issue. Included with the representations was a letter from the Board's Secretary certifying that this meeting took place and that it was in camera.

The Town relies on Section 35(4) of the Police Services Act as the statutory authority giving the Board the discretion to exclude members of the public from the meeting. In particular, section 35(4)(b) provides that:

The board may exclude the public from all or part of a meeting or hearing if it is of the opinion that,

intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.

Since meetings in the absence of the public are a departure from the norm, there must be clear and tangible evidence that the meeting or parts of it were actually held in camera. Based on the evidence provided to me, I find that the Board had the requisite authority under the Police Services Act to hold an in camera meeting and that the meeting did take place in camera. I therefore find that parts one and two of the test for exemption have been met.

In addressing the third part of the test (that disclosure of the record at issue would reveal the actual substance of deliberations of this meeting), I adopt the definition of "deliberations" as established in Order M-184. In that order, Assistant Commissioner Irwin Glasberg stated:

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.

The Town indicates in its representations that the entire meeting centred around the record at issue for the purpose of deciding, based on the record at issue, whether or not the appellant should be hired. In this respect, the Board met with the author of the record with a view towards making a decision on this issue.

Having carefully reviewed the contents of the Deputy Chief's letter, I am satisfied that the disclosure of this document would reveal the actual substance of the discussions conducted by the Board, and in this respect, would reveal the substance of the deliberations of the meeting. On this basis, I find that the institution has established that the third part of the section 6(1)(b) test applies in this case.

Since all three components of the test have been satisfied, I find that the parts of the record which have been withheld are properly exempt from disclosure under section 6(1)(b) of the Act.

I must now consider whether the mandatory exception contained in section 6(2)(b) of the Act applies to the facts of this case. This section reads as follows:

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 appellant states in his representations that:

On August 10, 1993 a motion #57/93 was put forward to hire me as a fourth class constable and that "this contract will be entered into provided there are no substantiated objections by the Administration of the Marathon Police Service".

With respect to the application of section 6(2)(b) the appellant states that the deliberations of the meeting had been considered in a meeting open to the public. Specifically he states:

This is evident by motion #57/93. I believe that the six page letter I am attempting to obtain relates to the objections set out in motion #57/93, a meeting which was open to the public.

The Town includes, with its representations, a copy of the Minutes of the Special Meeting of the Board held on August 10, 1993, which was open to the public, in which general discussions were held regarding the hiring of additional personnel. Although the appellant's name was mentioned, there was no relationship to discussions about him at this meeting and the subject matter of the deliberations at the in camera meeting. Therefore, I find that section 6(2)(b) does not apply.

I have found that the record contains the personal information of the appellant. Section 36(1) of the Act gives individuals access to their personal information in the custody or under the control of an institution subject to certain exceptions. One exception is found in section 38(a) of the Act, 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]

I have reviewed the Town's submissions on the exercise of its discretion in refusing to disclose the remaining portions of the record to the appellant. I find nothing improper and would not alter this on appeal.

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 the other issues raised in this appeal.

ORDER:

I uphold the decision of the Town.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ July 20, 1994