



Information and Privacy  
Commissioner/Ontario

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

# **ORDER M-367**

**Appeal M-9400176**

**Haldimand-Norfolk Police Services Board**



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## **NATURE OF THE APPEAL:**

The Haldimand-Norfolk Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of a separation agreement entered into between the Police and the former Chief of Police.

The Police rely on the following exemption to withhold the agreement in its entirety:

- closed meeting - section 6(1)(b)

A Notice of Inquiry was provided to the parties to the appeal, including the former Chief of Police. Representations were received from all of the parties to the appeal.

## **DISCUSSION:**

### **CLOSED MEETING**

In order to rely on section 6(1)(b), the Police 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-219 and M-241]

Since meetings convened in the absence of the public are such a departure from the norm, there must exist clear and tangible evidence that the meeting or parts of it were actually held in camera (Order M-102).

I must now consider whether each part of the section 6(1)(b) test has been established.

### **Part One**

In their representations, the Police indicate that the separation agreement was discussed at an in camera meeting of the Police held on March 26, 1993. At this meeting, the Police discussed the agreement and resolved that the agreement be approved. I have reviewed the minutes of this meeting and am satisfied that it occurred and that it took place in camera. Accordingly, the first part of the test has been met.

### **Part Two**

The Police rely on section 35(4)(b) of the Police Services Act as the basis for their statutory authority to hold meetings in the absence of the public. This provision permits the exclusion of the public in certain circumstances when intimate financial or personal matters are being disclosed. I find that the Police had the requisite statutory authority to hold this meeting in camera in order to discuss the terms of the separation agreement. In my view, part two of the section 6(1)(b) test has been met.

### **Part Three**

The Police submit that the minutes of the meeting indicate that the record was discussed in camera. They maintain that the separation agreement was discussed at length during the course of this meeting. Therefore, they state that if the agreement is disclosed, "its content would disclose the actual substance of the deliberations that took place at this meeting, and not merely the basis for the discussion."

In Order M-196, Assistant Commissioner Irwin Glasberg considered the meaning of the words "substance" in the context of the interpretation of section 6(1)(b) of the Act. He held as follows:

The Concise Oxford Dictionary, 8th edition, defines "substance" as the "theme or subject" of a thing. Having reviewed the contents of the agreement and the representations provided to me, it is my view that the "theme or subject" of the in camera meeting was whether the terms of the retirement agreement were appropriate and whether they should be endorsed.

In Order M-184, which involved a request for a similar type of retirement agreement as that considered in Order M-196, Assistant Commissioner Glasberg had occasion to interpret the term "deliberations" which is also found in section 6(1)(b) of the Act. He 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. Having carefully reviewed the contents of the Minutes of Settlement, I am satisfied that the disclosure of this document would reveal the actual substance of the discussions conducted by the Board, hence its deliberations, or would permit the drawing of accurate inferences about the substance of those discussions ...

I adopt Assistant Commissioner Glasberg's reasoning on both issues for the purposes of this appeal.

Having reviewed the representations of the parties, the separation agreement itself and the minutes of meeting which have been provided by the Police, I find that in the circumstances of this appeal, the disclosure of the record at issue would reveal the substance of deliberations of the in camera meeting, held in accordance with the Police Services Act. Therefore, in my view the third and final part of the test has been met.

Since all three components of the test have been satisfied, I find that the separation agreement is properly exempt from disclosure under section 6(1)(b) of the Act.

I must now determine 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;

In his representations, the appellant states that the Police have released aspects of this case to the public, namely the fact that he has made a request under the Act. The appellant states that the fact of his request was also discussed at an in camera meeting. He, therefore, maintains that the entire case be considered to be in the public realm. Based on the evidence provided, I am not satisfied that these discussions constituted consideration of the subject-matter of deliberations in a meeting open to the public. Therefore, I am of the view that section 6(2)(b) of the Act does not apply.

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ August 2, 1994

**POSTSCRIPT**

The subject matter of this appeal, the separation agreement entered into between the former Chief of Police and the Police, is similar to those agreements considered by Assistant Commissioner Glasberg in Orders M-173 and M-196.

In Order M-173, Assistant Commissioner Glasberg noted that such agreements warrant a high degree of

public scrutiny for three reasons. First, the agreements involve large sums of public funds. Second, the agreements involve senior municipal employees with a high profile within the community. Third, the current recessionary climate places an unparalleled obligation on officials at all levels of government to ensure that tax dollars are spent wisely. The appellant has, in fact, referred to these aspects of Order M-173 in his representations in this appeal.

In his Postscript to Order M-196, Assistant Commissioner Glasberg emphasized that it would be unfortunate if institutions began to use the closed meeting exemption, section 6(1)(b) of the Act, to routinely shield the financial terms of such agreements from legitimate public scrutiny. He also pointed out that, as section 6(1)(b) is a discretionary exemption, the head of an institution can choose to release some information about such an agreement, notwithstanding that it was discussed in camera.

All of these points are equally applicable to this appeal.

The Police have provided extensive representations on why, in this case, they decided not to disclose any of the information contained in the agreement. I have accepted these submissions in the circumstances of this appeal. However, the Commissioner's office will continue to scrutinize, on a case by case basis, the approach taken and rationale provided by institutions in cases in which they rely on section 6(1)(b) to withhold agreements of this sort.