



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-385**

**Appeal M-9400018**

**City of Mississauga**



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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 City of Mississauga (the City) received a request under the Act for access to a copy of a Corporate Report dated September 1, 1993 referenced in item PDC-216-93 of the Minutes of the City's Planning and Development Committee meeting held on October 18, 1993. The report dealt with a request by a homeowners association to have certain expenses, incurred during the course of its' opposition to a land severance application brought by the appellant, paid by the City.

The City granted access to the September 1, 1993 Corporate Report in its entirety with the exception of a five-page Appendix and a one-page attachment. The Appendix consists of a second Corporate Report dated April 26, 1993 addressed to the Chairman and Members of Planning and Development Committee. The Appendix also includes a one-page list of expenses incurred by the homeowners association for which it seeks to be reimbursed by the City. On this page, only the "Total Expenses" figure is at issue.

The City relies on the following exemptions to withhold the six pages remaining at issue:

- closed meeting - section 6(1)(b)
- third party information - section 10(1)

A Notice of Inquiry was provided to the appellant, represented by his solicitor, the City and the homeowners association. Representations were received from the solicitor and the City only.

## **DISCUSSION:**

### **CLOSED MEETING**

The City relies upon the closed meeting exemption set out in section 6(1)(b) of the Act to deny access to the records.

In order to qualify for exemption under section 6(1)(b), the City 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.

[Order M-64]

The first and second parts of the test for exemption under section 6(1)(b) require that the City establish that a meeting was held **and** that it was held in camera.

In its representations, the City states that the April 26, 1993 Appendix was discussed at two in camera meetings of the City's Planning and Development Committee. It was first considered as a stand alone report on May 3, 1993, and was again discussed on October 18, 1993, as an Appendix to the September 1, 1993 Corporate Report.

In its representations, the City has provided evidence that the meetings did, in fact, take place. I find, therefore, that the first part of the test has been satisfied.

The City relies upon the provisions of section 55 of the Municipal Act as the statutory provision which authorizes the holding of Policy and Planning Committee meetings in the absence of the public.

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.

I find the two subject meetings of the City's Policy and Planning Committee to be meetings of a committee of Council within the meaning of section 55(1) of the Municipal Act and they could, therefore, be properly held in camera. Accordingly, I find that the second part of the section 6(1)(b) test has been met.

In Order M-98, former Assistant Commissioner Tom Mitchinson, in discussing the application of section 6(1)(b) of the Act, made the distinction between a record being the **subject** of deliberations and a record containing information which would reveal the **substance** of those deliberations. In that order, he held that a record would not satisfy the third part of the test if it contained information which was merely the **subject** of deliberations. To satisfy the third aspect of the test, therefore, the record must also contain information which would reveal the **substance** of those deliberations.

I have reviewed the April 26, 1993 Appendix which forms the record in this appeal and have considered the representations received from the appellant and the City. I am satisfied that the record contains information which would reveal the substance of the deliberations at the two in camera meetings. The record, therefore, satisfies the third part of the section 6(1)(b) test.

Having determined that the record meets all three parts of the test under section 6(1)(b) of the Act, I must now decide whether the information contained in the record 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;

In her representations, the appellant's solicitor states that the subject-matter was considered in an open meeting. She provides no further information or representations on this issue, however.

The City states that:

As a consequence of the second in camera meeting of the City's Planning and Development Committee, certain resolutions were passed in an open meeting of Council. However, these resolutions were passed without discussion.

In Order M-241, I held that a Council's **adoption** of a report, without discussion in a public meeting, cannot be characterized as the **consideration** of the subject-matter of the in camera deliberations as contemplated by section 6(2)(b) of the Act.

I adopt my earlier reasoning for the purposes of this appeal. Based on the information provided by the parties, it is my view that the subject-matter of the deliberations has not been considered in a meeting open to the public. I find, therefore, that the exception provided by section 6(2)(b) of the Act does not apply to the record in this 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 application of section 10 of the Act to the record.

**ORDER:**

I uphold the decision of the City.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ September 8, 1994