



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-420**

## **Appeal M-9300348**

### **The Corporation of the City of York**



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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 Corporation of the City of York (the City) received a request for access to all complaints in respect of non-compliance with its by-laws or ordinances by owners or occupiers of a specified building complex, together with any records of the investigation of such complaints and any remedial steps taken. Partial access to the records was granted to the appellant. In its decision letter, the City cited section 8(1) of the Act to deny access to the remaining records.

The City provided three indices listing the records relating to the request. In these indices the City identified 31 records it considered responsive to the request and a further 24 that it did not consider responsive. In three supplemental indices provided during the course of mediation, the City particularized its exemption claim under section 8(1) of the Act by specifying that it is relying on the following exemptions to deny access to the records:

- law enforcement - sections 8(1)(a), (b) and (d)

The City also raised sections 7(1) (advice to government), 8(2)(a) (law enforcement report) and 10(1)(a) (third party information) of the Act as additional exemptions in relation to certain records. The records and the specific exemptions claimed by the City to deny access are described in Appendix "A" to this order.

The appellant indicates that he is not seeking access to the personal information of other individuals. Portions of a number of records at issue in this appeal contain the personal information of other individuals. Those portions of the records are not at issue in this appeal and will be ordered **not** to be disclosed to the appellant.

A Notice of Inquiry was provided to the City and the appellant. Notice was also provided to both the original owner and the current owner of the named building complex (the affected persons). Representations were received from the City only.

## **PRELIMINARY MATTERS:**

### **THE RAISING OF ADDITIONAL DISCRETIONARY EXEMPTIONS LATE IN THE APPEALS PROCESS**

As is the usual practice upon receipt of the appeal, this office provided the City with a Confirmation of Appeal notice. The Confirmation of Appeal indicated that, based on a policy adopted by this office, the City had 35 days from the date of the notice to raise any additional discretionary exemptions not claimed in the decision letter. No additional exemptions were raised during this period.

Following expiry of this period, the City forwarded revised indices of the records relating to the appeal. It was at this time that the City raised, for the first time, the application of the discretionary exemptions provided by sections 7(1) and 8(2)(a) of the Act.

Previous orders have determined that the Commissioner has the power to control the process by which the inquiry is undertaken (Orders P-345 and P-537). This includes the authority to set time limits for the receipt of representations and a limit on the time during which an institution can raise new discretionary exemptions not originally raised in its decision letter.

In Order P-658, Inquiry Officer Anita Fineberg set out the reasons why the prompt identification of discretionary exemptions is necessary to maintain the integrity of the appeals process. Inquiry Officer Fineberg concluded that in cases where a discretionary exemption(s) is claimed late in the appeals process, a decision maker has the authority to decline to consider the discretionary exemption(s). In the circumstances of that case, the institution gave no explanation nor did it advance any "extenuating circumstances" which may have justified the four month delay in raising the additional discretionary exemptions. I agree with the reasoning and determination of Inquiry Officer Fineberg and adopt it for the purposes of this appeal.

The City states that the delay in claiming the additional discretionary exemptions arose as a result of confusion between the subject appeal and another request filed by the same appellant. The additional discretionary exemptions, however, were not raised until over three months after the date by which the City indicates the confusion between the two requests was resolved. In view of the lengthy delay between the resolution of the confusion and the claiming of the additional discretionary exemptions, it is my view that a departure from the policy established by this office is not justified in the circumstances of this appeal. On that basis, I will not consider the application of sections 7(1) and 8(2)(a).

## **RESPONSIVENESS OF RECORDS**

In the Notice of Inquiry, the City was asked to explain the basis upon which it determined that the records identified in its indices as "Not Requested" did not fall within the scope of the appellant's request.

The City explained that it had listed the entire contents of its files in its indices, regardless of whether particular records related specifically to the request. The City, however, provided no explanation or evidence on a record-by-record basis as to its determination that the 24 records noted as "Not Requested" were not, in fact, responsive to the appellant's request.

I have carefully reviewed the records identified in Appendix "A" as "Not Requested" and have determined that Records 1.3, 2.5, 2.10, 3.4, 3.5, 3.9 and 3.12 are, in fact, responsive to the appellant's request. Accordingly, I will order the City to issue a decision with respect to those records pursuant to sections 19 and 21 of the Act.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

The City submits, by way of its revised indices, that Records 3.18, 3.19 and 3.22 fall within the mandatory exemption provided by section 10(1)(a) of the Act. These records consist of drawings and technical specifications relating to the building complex.

For a record to qualify for exemption under section 10(1)(a), the City and/or the affected party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a) of section 10(1) will occur.

The City does not address the application of section 10(1)(a) in its written representations, and neither of the affected parties have submitted representations. Having reviewed the records, I am satisfied that the records contain technical information. Further, it appears that the information in the records may have been supplied to the City by the affected parties. However, there is nothing on the face of the records themselves which would designate them as confidential, and I have been provided with no evidence which would enable me to link disclosure of the records with either of the harms described in section 10(1)(a). Therefore, I find that section 10(1)(a) does not apply to exempt Records 3.18, 3.19 and 3.22 from disclosure.

## **LAW ENFORCEMENT**

In its indices, the City indicates that it is relying on sections 8(1)(a), (b) and/or (d) of the Act to deny access to the records. These sections state:

A head may refuse to disclose a record if the disclosure of the record could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

The purpose of sections 8(1)(a) and (b) of the Act is to provide the City with the discretion to preclude access to records in circumstances where disclosure would interfere with an **ongoing** law enforcement matter or investigation.

The City has not provided any evidence as to the status of any investigation or law enforcement proceeding in relation to the building complex. Nor has the City indicated how disclosure of the records would interfere with a law enforcement matter. As such, I find that the records do not qualify for exemption under sections 8(1)(a) and (b) of the Act.

With respect to the records for which the exemption provided by section 8(1)(d) of the Act has been claimed, the City has made no representations as to the circumstances under which the information contained in the records was received. Accordingly, the City has failed to establish that any confidentiality existed in relation to the identity of any source or of the information provided and, therefore, these records do not qualify for exemption under section 8(1)(d).

In conclusion, I have found that the exemptions provided by sections 8(1)(a), (b) and (d) and 10(1)(a) of the Act do not apply to exempt the records from disclosure.

### **ORDER:**

1. I order the City to issue a decision with respect to Records 1.3, 2.5, 2.10, 3.4, 3.5, 3.9 and 3.12 pursuant to sections 19 and 21 of the Act within 30 days of the date of this order.
2. I order the City to disclose Records 1.4, 2.2, 2.3, 2.9, 2.11, 2.15, 2.16, 2.17, 2.19, 2.20, 3.1, 3.2, 3.6, 3.13, 3.14, 3.15, 3.18, 3.19 and 3.22 to the appellant in their entirety.
3. I order the City to disclose to the appellant those portions of Records 1.6 and 2.1 which are **not** highlighted in yellow on the copy of these records which is being sent to the City's Freedom of Information and Privacy Co-ordinator with a copy of this order.
4. I order the City to disclose the records and parts of records ordered disclosed in Provisions 2 and 3 to the appellant within thirty-five (35) days after the date of this order and not earlier than the thirtieth (30th) day after the date of this order.
5. In order to verify compliance with this order, I reserve the right to require the City to provide me with a copy of the decision which is issued pursuant to Provision 1 and/or a copy of the records which are disclosed to the appellant pursuant to Provisions 2 and 3.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ November 9, 1994

## APPENDIX "A"

### INDEX OF RECORDS AT ISSUE

RECORD NUMBER	DESCRIPTION	EXEMPTIONS(S) CLAIMED	DECISION ON RECORD
1.1	Warning notice of by-law infraction	Disclosed	
1.2	Warning notice of by-law infraction	Disclosed	
1.3	Request for search and search results	Not requested	Responsive
1.4	Description of defects	8(1)(a) and (b), 8(2)(a)	Disclose
1.5	Fax transmission	Not requested	Not responsive
1.6	By-law investigation form	8(1)(a), (b) and (d), 8(2)(a)	Sever and disclose
1.7	Fax transmission and notice letter	Not requested	Not responsive
1.8	Notice letter	Not requested	Not responsive
2.1	By-law investigation form and complaint form	7(1), 8(1)(a), (b) and (d), 8(2)(a)	Sever and disclose
2.2	By-law investigation form	7(1), 8(1)(a), (b) and (d), 8(2)(a)	Disclose
2.3	Description of defects	8(1)(a), (b) and (d), 8(2)(a)	Disclose
2.4	Notice letter	Not requested	Not responsive
2.5	Request for searches and search results	Not requested	Responsive
2.6	Registered notice letter	Disclosed	
2.7	Memorandum to Planning Department re: Committee of Adjustment applications	Disclosed	
2.8	Registered notice letter	Disclosed	
2.9	By-law investigation form and complaint form	8(1)(a), (b) and (d), 8(2)(a)	Disclose
2.10	Request for search and results of search	Not requested	Responsive
2.11	Description of defects	8(1)(a) and (b), 8(2)(a)	Disclose
2.12	Warning notice of by-law infraction	Disclosed	
2.13	Warning notice of by-law infraction	Disclosed	
2.14	Warning notice of by-law infraction	Disclosed	
2.15	By-law investigation form and complaint form	7(1), 8(1)(a), (b) and	Disclose

RECORD NUMBER	DESCRIPTION	EXEMPTIONS(S) CLAIMED	DECISION ON RECORD
		(d), 8(2)(a)	
2.16	Handwritten notes	7(1), 8(1)(a), (b) and (d), 8(2)(a)	Disclose
2.17	Handwritten notes	8(1)(a), (b) and (d), 8(2)(a)	Disclose
2.18	Plans	Not requested	Not responsive
2.19	By-law investigation form and complaint form	7(1), 8(1)(a), (b) and (d), 8(2)(a)	Disclose
2.20	By-law investigation form and complaint form	7(1), 8(1)(a), (b) and (d), 8(2)(a)	Disclose
2.21	Minutes of Committee of Adjustment meeting, April 21, 1987	Not requested	Not responsive
2.22	Memorandum re: rezoning	Not requested	Not responsive
2.23	Memorandum re: rezoning	Not requested	Not responsive
2.24	Memorandum re: rezoning	Not requested	Not responsive
2.25	Site plans	Not requested	Not responsive
3.1	By-law investigation form and complaint form	7(1), 8(1)(a), (b) and (d), 8(2)(a)	Disclose
3.2	Handwritten notes	8(1)(a), (b) and (d), 8(2)(a)	Disclose
3.3	Extracts from minutes of Committee of Adjustment meeting, January 10, 1989	Not requested	Not responsive
3.4	Page of lease	Not requested	Responsive
3.5	Handwritten notes and telephone message	Not requested	Responsive
3.6	Warning notice of by-law infraction	8(1)(a) and (b), 8(2)(a)	Disclose
3.7	Warning notice of by-law infraction	Disclosed	
3.8	Warning notice of by-law infraction	Disclosed	
3.9	Letter and portion of Land Use Committee Report 10	Not requested	Responsive
3.10	Extracts from Land Use Committee minutes, November 8, 1989	Not requested	Not responsive
3.11	Land Use Committee Report 14, extracts from minutes of Council, December 18, 1989	Not requested	Not responsive



RECORD NUMBER	DESCRIPTION	EXEMPTION(S) CLAIMED	DECISION ON RECORD
3.12	Memorandum to City Solicitor from Director, Development Control	Not requested	Responsive
3.13	Fax transmission and letter to By-law Enforcement and Property Standards Officer from Metropolitan Legal Department	8(1)(a) and (b)	Disclose
3.14	Handwritten notes	8(1)(a) and (b)	Disclose
3.15	Plan of proposed concrete curbs	8(1)(a) and (b), 8(2)(a)	Disclose
3.16	Memorandum to Committee of Adjustment re: August 31, 1993 meeting	Not requested	Not responsive
3.17	Extracts from Committee of Adjustment minutes, April 21, 1987 and December 8, 1987	Not requested	Not responsive
3.18	Drawings of parking lot and plan of proposed concrete curbs and notes	8(1)(a) and (b), 8(2)(a), 10(1)(a)	Disclose
3.19	Site plan with revisions	8(1)(a) and (b), 8(2)(a), 10(1)(a)	Disclose
3.20	Committee of Adjustment minutes, April 14, 1992	Not requested	Not responsive
3.21	Committee of Adjustment minutes, May 5, 1992	Not requested	Not responsive
3.22	Site plan with revisions	8(1)(a) and (b), 8(2)(a), 10(1)(a)	Disclose