



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-474**

**Appeal M-9400604**

**Town of Amherstburg Police Services Board**



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## **NATURE OF THE APPEAL:**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act. The Town of Amherstburg Police Service (the Police) received a request for access to minutes of meetings, public and in camera, of the Town of Amherstburg Police Services Board (the Board) for certain months in 1992, 1993 and 1994, where the requester was the subject of any comments, discussions or motions.

The issues surrounding responsive public meeting minutes were resolved in Appeal Number M-9400523. In this order, I will only address the issues surrounding the minutes of the in camera meetings.

The Police advised the appellant that responsive records do not exist for certain months identified in the request, as the appellant was not the subject of any comments, discussions or motions recorded in the minutes. Access was granted to the portions of five sets of minutes of in camera meetings considered responsive to the request by the Police. Partial access was granted to the responsive portions of one set of minutes of a July 20, 1994 in camera meeting.

The Police withdrew their application of section 8(1)(b) of the Act to the records, relying on the following sections to denying access to the portion of the July 20, 1994 minutes:

- closed meeting - section 6(1)(b)
- advice or recommendations - section 7(1)

The appellant believes that more records exist which respond to the request. He also challenges the exemptions applied by the Police.

A Notice of Inquiry was provided to the appellant and the Police. Because the withheld portion of the July 20, 1994 minutes appears to contain the personal information of the appellant, the parties were asked to provide submissions on the possible application of section 38(a) of the Act (discretion to refuse the requester's own personal information). Representations were received from the Police and the appellant.

The Police located an additional set of responsive in camera meeting minutes and have released the responsive portion to the appellant.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

As indicated above, the request was for information where the appellant was the subject of any comments, discussions or motions. 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 undisclosed portion of the July 20, 1994 minutes contains the personal information of the appellant.

### **CLOSED MEETING**

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.

The Police state that a Board meeting took place on July 20, 1994. The initial portion of the meeting was open to the public. A copy of the agenda and the minutes of this public portion were provided to this office by the Police. Item 11 on page four of the minutes indicates that a motion was carried to receive a letter from the appellant and to refer the matter to the in camera portion of the meeting. Item 13 of the minutes states that a motion was carried to move to the in camera portion of the meeting to discuss "Personnel matters, litigation, labour relations, public security concerns and financial matters". The meeting then continued in camera.

The Police rely on section 35(4) of the Police Services Act as the statutory authority which gives 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 find, therefore, that parts one and two of the test for exemption have been met.

I have carefully reviewed the undisclosed portion of the July 20, 1994 minutes. I am satisfied that its disclosure would reveal the actual substance of the discussions of the Board, and would thereby reveal the substance of the deliberations of the meeting. On this basis, I find that the Police have 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 undisclosed portion of the July 20, 1994 minutes is properly exempt from disclosure under section 6(1)(b) of the Act.

Section 6(2)(b) of the Act is a mandatory exception to the exemption found in section 6(1). This section reads:

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 that the deliberations of the meeting had been considered in a meeting open to the public and in support, he provided a copy of Item 11 of the July 20, 1994 public Board minutes, which I have referred to above. He also states:

In addition to this, the majority of the subject matter was received at public town council meetings.

The appellant then briefly refers to correspondence from his wife to the Council.

As stated earlier, the minutes of the public portion of the July 20, 1994 Board meeting state only that a motion was passed to receive and refer the appellant's letter to the in camera portion of the meeting. Since I have not been provided with any evidence to indicate that the **subject matter** of the deliberations was considered in a meeting open to the public, I find that section 6(2)(b) does not apply in the present case.

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 submissions of the Police regarding the exercise of discretion in refusing to disclose the relevant portion 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 relevant portion from disclosure, it is not necessary for me to address whether section 7(1) applies to this record.

## REASONABLENESS OF SEARCH

Where the requester provides sufficient details about the records which he is seeking and the Police indicate that such records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify any records which are responsive to the request. The Act does not require the Police to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Police must provide me with sufficient evidence to show that they have made a **reasonable** effort to identify and locate records responsive to the request.

The Police's representations include affidavits sworn by its Freedom of Information and Privacy Co-ordinator (the Co-ordinator) and the Board Secretary. The affidavits indicate that all Board in camera minutes are kept in a single binder in the Board's file cabinet. In his affidavit, the Co-ordinator states that he conducted two searches, one on August 17, 1994 and one on January 12, 1995, for responsive records.

The appellant refers to a typographical error contained in the decision letter of the Police and the identification in the inquiry stage of this appeal of an additional set of minutes containing responsive information. While the Police consider these events unintentional oversights, the appellant views them as examples of the Police acting in bad faith with respect to his request. The appellant also makes reference to his strained relationship with the Police in support of his view that the search was intentionally incomplete.

In the circumstances of this appeal, I find that the actions taken by the Police to locate responsive records were reasonable.

### ORDER:

I uphold the decision of the Police.

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

\_\_\_\_\_  
February 24, 1995