



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-495

Appeal M-9400724

The Corporation of the Township of Collingwood



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). A member of the media made a request to the Corporation of the Township of Collingwood (the Township) for access to details of the Township's liability insurance coverage. The Township denied access to the information under the following exemptions:

- economic and other interests - sections 11(c) and (d)

The requester appealed the Township's decision to deny access. Within 35 days of the date the appeal was filed, the Township notified the appellant that it was also relying on the following exemptions to deny access:

- advice or recommendations - section 7
- right to fair trial - section 8(1)(f)

A Notice of Inquiry was sent to the appellant and the Township. Representations were received from the appellant only.

DISCUSSION:

ADVICE OR RECOMMENDATIONS

Section 7(1) of the Act states:

A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

It has been established in a number of previous orders that advice and recommendations for the purpose of section 7(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.

In Order 94, former Commissioner Sidney B. Linden commented on the scope of the exemption in section 13(1) of the provincial Freedom of Information and Protection of Privacy Act, which is the equivalent of section 7(1) of the Act. He stated that "[t]his exemption purports to protect the free flow of advice and recommendations within the deliberative process of government decision-making or policy-making."

The Township has not submitted representations in support their application of this exemption. The Township's decision letter states that disclosure of the record could "reveal further advice as given by the solicitors and/or other third parties". I have not been provided with any information which would link the record with the deliberative process of government decision-making or policy-making and, in my view, the record does not contain information which would qualify as either advice or recommendations. Accordingly, I find the exemption does not apply.

RIGHT TO FAIR TRIAL

Section 8(1)(f) states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to deprive a person of the right to a fair trial or impartial adjudication.

In order for the exemption set out in section 8(1)(f) to apply, the Act requires the existence of a reasonable expectation of probable harm. The mere possibility of harm is not sufficient. At a minimum, the Township must establish a clear and direct linkage between the disclosure of the specific information and the harm which is alleged.

With respect to section 8(1)(f), the Township's decision letter states "disclosure could reasonably be expected to interfere with the legal investigation/procedure which is in progress, which may deprive our municipality [of the right] to a fair or impartial adjudication in the matter." The Township does not, however, explain precisely how this prejudice will occur.

Based on the evidence before me and my independent review of the records, I am not satisfied that the Township has established a clear and direct linkage between the disclosure of the records and any prejudice to a person's right to a fair trial. Accordingly, I find that the requirements of the exemption in section 8(1)(f) have not been met.

ECONOMIC AND OTHER INTERESTS

Sections 11(c) and (d) state:

A head may refuse to disclose a record that contains,

- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;

As with section 8(1)(f), in order for the exemptions set out in sections 11(c) and (d) to apply, the Act requires the existence of a reasonable expectation of probable harm. Again, as the mere possibility of harm is not sufficient, the Township must establish a clear and direct linkage between the disclosure of the specific information and the harm which is alleged.

The Township states in its decision letter that:

It is the position of the Municipality that disclosure of insurance limits and things of this nature pursuant to your request can serve no meaningful purpose and could reasonably be expected to contribute to the prejudice of this Municipality's economic interests or be injurious to same.

Based on the evidence before me and my independent review of the records, I am not satisfied that the Township has established a clear and direct linkage between the disclosure of the records and any prejudice or injury as described in sections 11(c) and (d). Accordingly, I find that the requirements of the exemptions have not been met.

ORDER:

1. I order the Township to disclose the record to the appellant within twenty (20) days of the date of this order.
2. In order to verify compliance with the provisions of this order, I reserve the right to require the Township to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

March 22, 1995