



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

# **ORDER M-533**

**Appeal M-9400663**

**Carleton Board of Education**



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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 Carleton Board of Education (the Board) received a request for information concerning the selection of a site for a new elementary school. The Board located a number of records and granted access to most of them. Access to other responsive records was denied under the following exemptions contained in the Act:

- closed meeting - section 6(1)(b)
- advice or recommendations - section 7(1)
- economic or other interests of an institution - sections 11(c), (d) and (e).

The requester appealed the Board's decision to deny access. During the mediation of the appeal, the Board disclosed a number of additional records to the appellant and claimed the application of the solicitor-client exemption in section 12 of the Act to certain of the remaining records. A Notice of Inquiry was provided to the appellant and the Board. Representations were received from the Board only.

The records which remain at issue consist of the minutes of five in camera meetings of the Board sitting as a Committee of the Whole and one in camera session of the Board's Corporate Services Committee. Appended to these minutes are staff reports relating to the selection of a site for the new elementary school which were presented and discussed at the meetings. Also at issue are a legal opinion prepared by the Board's solicitors relating to the site acquisition and two site analysis reports prepared by a consulting firm retained by the Board to assist it in making its decision.

## **DISCUSSION:**

### **CLOSED MEETING**

In order for the Board to apply section 6(1)(b) of the Act, it must establish that:

1. a meeting of the Board or one of its committees took place; **and**
2. a statute authorizes the holding of this meeting in the absence of the public; **and**
3. disclosure of the record at issue would reveal the actual substance of the deliberations of this meeting.

In camera meetings of the Board sitting as a Committee of the Whole took place on July 11, 1994, July 25, 1994, August 29, 1994 September 12, 1994 and November 28, 1994, and the Board's Corporate Services Committee on May 9, 1994. The acquisition of the proposed school site and the legal issues surrounding the acquisition were considered at each of these meetings. I find, therefore, that the first part of the test has been satisfied.

The Board submits that the meetings were held in the absence of the public and that sections 207(2)(c) and

(e) of the Education Act provide the authority to hold meetings behind closed doors. These provisions state that:

A meeting of a committee of a Board, including a committee of the whole Board, may be closed to the public when the subject matter under consideration involves,

- (c) the acquisition or disposal of a school site;
- (e) litigation affecting the Board.

Based on the evidence submitted to me, including the records themselves, I am satisfied that the subject matter under discussion by the Board's committees falls within the ambit of section 207(2)(c) and (e) of the Education Act. Accordingly, I find that the second part of the section 6(1)(b) test has been met.

The third part of the test requires the Board to provide evidence that the disclosure of the records would reveal the actual substance of the deliberations of the meetings. In Orders M-184 and M-196, Assistant Commissioner Irwin Glasberg defined the term "substance" as the "theme or subject" and the word "deliberations" to mean "discussions with a view towards making a decision". I adopt Assistant Commissioner Glasberg's interpretations for the purpose of this appeal.

I have reviewed the Board's representations and the minutes, the staff reports, the legal opinion and the site analysis reports which were presented to the Board's committees at their in camera meetings. I find that the subject matter of each of these records was the acquisition of land for the construction of an elementary school or an examination of the Board's legal position. Further, I find that the disclosure of the information contained in each of the records would reveal the substance of the deliberations of the Board's committees which led to the decision as to the appropriate site for the new school. Accordingly, the third part of the test has also been met and section 6(1)(b) applies to exempt the records at issue in this appeal from disclosure.

As I have found that the records are properly exempt from disclosure under section 6(1)(b) of the Act, it is not necessary for me to consider the application of sections 7(1), 11 and 12 of the Act.

**ORDER:**

I uphold the decision of the Board.

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

\_\_\_\_\_ May 19, 1995