



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-499

Appeal M-9400627

Town of Oakville



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). The Town of Oakville (the Town) received a request for access to all records relating to negotiations between the Town and a named development company (the development company) involving specified lands. The request included staff reports, correspondence, minutes of meetings and legal opinions. Partial access to the records was granted. The requester appealed the Town's decision to deny access to the remaining records.

The records that remain at issue in this appeal consist of:

- a staff report dated December 8, 1988 presented to the Administration and Finance Committee of the Town with an agreement of purchase and sale attached thereto, and
- an agreement dated May 10, 1993 between the Town and the development company.

The Town relies on the following exemptions to deny access to the records:

- closed meeting - section 6(1)(b)
- advice or recommendations - section 7(1)
- economic & other interests - sections 11(c) and (d)
- solicitor-client privilege - section 12

A Notice of Inquiry was sent to the appellant, the Town and the development company. The Notice of Inquiry was also provided to two individuals (the affected persons) who appeared to have an interest in the records. Representations were received from the Town and the affected persons.

DISCUSSION:

CLOSED MEETING

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

In its representations, the Town has provided evidence by way of copies of the agenda and the minutes of two meetings to show that a meeting of the Council and a meeting of the Administration and Finance Committee, a Standing Committee of the Council took place. The agenda lists the subject matter of the records for discussion as confidential matters for the Council members only. In my view, the first part of the

test has been met.

With respect to the second part of the test, the Town must show that the two meetings took place in the absence of the public and that these in-camera meetings were authorized by statute. The minutes of the meetings indicate that the meetings were held in the absence of the public. The Town refers to section 55(1) of the Municipal Act which provides that all meetings shall be open to the public except for meetings of a committee, including a committee of the whole.

The Town submits that its procedural by-laws passed pursuant to section 102 of the Municipal Act also provide authority to hold meetings behind closed doors. Subsection 95(1) of By-law 1986-261, in effect in December 1988 (date of the staff report) provided that:

Any committee meeting or any part thereof may be held in-camera if the committee so decides by a vote of the majority of the members present to consider a personnel matter, a property matter or a matter involving litigation underway or perceived as a possible result.

Subsection 80(2) of By-law 1991-265 in place in 1993 (date of agreement) states, in part, that:

The committee of the Whole meeting or any part thereof may be held in-camera if the committee so decides by a vote of the majority of the Members to consider:

- (a) the security of the property of the municipality,
- (b) personal matters about an identifiable individual including municipal employees,
- (c) any offer to purchase or proposed land transaction, ...
- (d) litigation or potential litigation affecting the municipality ...

Based on the evidence before me, I am satisfied that the matters discussed during the meetings fall within the ambit of the Town's procedural by-laws. 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 Town 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.

Having reviewed the Town's representations and the records, I find that the subjects of discussion at the two meetings held in camera were how the Town should best handle certain property matters including land transactions. I also find that the Council discussed the circumstances of the issues with a view to deciding how to proceed in its property negotiations with the development company. On this basis, I conclude that disclosure of the information in the records would reveal the actual substance of the discussions conducted by the Council and, hence, its deliberations. Therefore, the third part of the test has also been met. Accordingly, section 6(1)(b) applies.

Since 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 to the records.

ORDER:

I uphold the decision of the Town.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ March 27, 1995