



Information and Privacy
Commissioner/Ontario

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

ORDER M-594

Appeal M_9500202

Municipality of the Township of Tiny



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NATURE OF THE APPEAL:

The Municipality of the Township of Tiny (the Township) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a memo dated February 20, 1995 regarding "issues needing action". The memo was written by the Deputy Mayor to the Administrator/Clerk. The Township granted partial access to the record and denied access to all or part of each of the 10 items discussed in the memo under one of the following exemptions:

- closed meeting - section 6(1)(b)
- advice or recommendations - section 7
- law enforcement - section 8(1)(a)

The requester appealed the Township's decision to deny access to parts of the memo. A Notice of Inquiry was sent to the Township and the appellant. The Notice of Inquiry also included reference to the mandatory exemption for personal information (section 14) and section 16 of the Act (the public interest in disclosure). Representations were received from both parties.

DISCUSSION:

CLOSED MEETING

The Township claims that section 6(1)(b) applies to parts of Items 1, 3 and 4, and all of Items 6 and 7 of the memo. Although its representations appear to suggest that section 6(1)(b) also applies to Item 5, this exemption claim was not made in its decision letter or within 35 days of the date of confirmation of the appeal, and it is not open to the Township to claim it at this point in the appeal. Accordingly, I will not consider the application of section 6(1)(b) to Item 5 of the memo.

Section 6(1)(b) reads:

A head may refuse to disclose a record,

that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

To qualify for exemption under section 6(1)(b), the Township 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.

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The second part of the test, that a statute authorizes the holding of a meeting in the absence of the public, may be determined by reference to section 55(5) of the Municipal Act, R.S.O. 1990 c. M.45, as amended. This section reads:

A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

- (a) the security of the property of the municipality or local board;
- (b) personal matters about an identifiable individual, including municipal or local board employees;
- (c) a proposed or pending acquisition of land for municipal or local board purposes;
- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- (f) the receiving of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (g) a matter in respect of which a council, board, committee or other body has authorized a meeting to be closed under another Act.

Based on the evidence presented by the Township, I am satisfied that there was statutory authorization for holding meetings related to Items 1, 3, 6 and 7 in camera. Item 4 does not, in my view, involve consideration of any of the types of subject matter listed above, and I find that the Township has failed to establish that there was statutory authorization to exclude the public from this part of the meeting. Accordingly, I find that the second part of the section 6(1)(b) test has been met only with respect to Items 1, 3, 6 and 7, and that section 6(1)(b) does not apply to Item 4.

Having reviewed the record, I am satisfied that the disclosure of Items 1, 3, 6 and 7 would reveal the actual substance of the discussions conducted by the Board, hence its deliberations, or would

permit the drawing of accurate inferences about the substance of those discussions. Accordingly, I find that section 6(1)(b) applies to these Items.

ADVICE OR RECOMMENDATIONS:

The Township submits that section 7 applies to Items 8, 9 and 10 of the memo. Section 7(1) of the Act states:

A head may refuse to disclose a record where 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 record must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process. The "deliberative process" is that of government decision-making or policy-making.

Items 8, 9 and 10 deal with issues which are essentially administrative or human resource matters. While issues are identified as requiring further action, I am not satisfied that these parts of the record indicate any particular suggested course of action. In addition, I am not convinced that the issues identified relate to any deliberative or policy-making process intended to be protected under section 7(1). In my view, applying section 7(1) to these parts of the record would extend the exemption beyond its purpose and intent. Accordingly, I find that section 7 does not apply to Items 8, 9 and 10 of the record.

LAW ENFORCEMENT

In its decision letter, the Township indicated that it had applied section 8(1)(a) of the Act to both Items 2 and 5 of the memo. In its representations, however, the Township submits that section 8(1)(a) applies only to Item 2 of the memo. Section 8(1)(a) of the Act states:

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

interfere with a law enforcement matter.

The Township submits that the matter discussed in Item 2 satisfies the definition of "law enforcement" found in section 2(1) of the Act, and that disclosure of Item 2 would interfere with ongoing law enforcement investigations. Due to the lack of detail in the Town's representations, I can only assume from my review of the record that it is referring to investigations or inspections conducted by the provincial Ministry of Consumer and Commercial Relations under the Gaming Control Act, 1992. Other than asserting that the exemption applies, the Township has provided no evidence that the matter is ongoing and has not indicated how disclosure of this part of the memo would interfere with the matter. Accordingly, in my view, the Township has not discharged the burden of proof with respect to this exemption and I find that section 8(1)(a) does not apply to Item 2 of the memo.

Although it is not necessary for me to determine whether section 8(1)(a) applies to Item 5 as the Township has abandoned this exemption claim in its representations, I would have found that the exemption did not apply to Item 5 for the same reasons as I found it not to apply to Item 2.

INVASION OF PRIVACY

I have found that Items 2, 4, 5, 8, 9 and 10 are not covered by the exemptions claimed by the Township. Personal information is defined in section 2(1) of the Act, in part, as recorded information about an identifiable individual. I have reviewed these parts of the record, and I am satisfied that only Item 5 contains recorded information about an identifiable individual. Accordingly, section 14 has no application to Items 2, 4, 8, 9 and 10. With respect to Item 5, which relates to a complaint made by an individual about a residence, I find that only the name associated with the residence and the name of the complainant are exempt under section 14.

PUBLIC INTEREST IN DISCLOSURE

There are two requirements contained in section 16 which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

One of the principle purposes of the Act is to open a window into government. The Act is intended to enable an informed public to better participate in the decision-making process of government and ensure the accountability of those who govern. Accordingly, in my view, there is a basic public interest in knowing more about the operations of government.

"Compelling" is defined as "rousing strong interest or attention" (Oxford). In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

Once a compelling public interest is established, it must be balanced against the purpose of the exemption which has been found to apply. In my view, this balancing involves weighing the relationship of the record to the Act's central purpose of shedding light on the operations of government. Section 16 recognizes that each of the exemptions listed therein, while serving to protect valid interests, must yield on occasion to the public interest in access to government information. Important considerations in this balance are the principle of severability and the extent to which withholding the information is consistent with the purpose of the exemption.

The appellant, a member of the media, submits that the Council conducts as much of its business as possible in camera, and that she has been forced to turn to the Act to get information where she never has before. She indicates that the rate of turnover among the Township's employees is extreme, and leaves the taxpayers with concerns about continuity of service. She claims that her sources indicate that stress at the office has caused or contributed to at least one employee taking a medical leave. She submits that residents of the Township have a right to know that their

township is being responsibly run by their elected representatives, and that the municipal employees are not intimidated by Council.

While I agree with the appellant that the Township must be accountable to the public, I am not satisfied that disclosure of the information I have found to be exempt from disclosure in the record at issue here will contribute in any meaningful way to the public's understanding of the activities of government. Accordingly, I find that there is no compelling public interest in disclosure, and section 16 does not apply.

ORDER:

1. I uphold the Township's decision not to disclose Items 1, 3, 6 and 7 and parts of Item 5 (the name associated with the residence and the name of the complainant should **not** be disclosed) of the memo.
2. I order the Township to disclose the remaining parts of the memo to the appellant within 20 (twenty) days of the date of this order.
3. 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 2.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

September 15, 1995