



Information and Privacy
Commissioner/Ontario

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

ORDER M-611

Appeal M_9500239

City of North York



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NATURE OF THE APPEAL:

The City of North York (the City) received a request for access under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to a specific investigation report prepared by named auditors. The investigation related to concerns that improper access to confidential city files may have been provided to a law firm and/or related companies. The requester is a former employee of the City.

The City denied access to the investigation report on the basis of the following exemptions:

- closed meeting - section 6(1)(b)
- advice or recommendations - section 7(1)
- law enforcement - sections 8(1)(a), (b), (c), (g) and sections 8(2)(a) and (c)
- right to a fair trial - section 8(1)(f)
- security - section 8(1)(i)
- economic and other interests - section 11(c)
- solicitor-client privilege - section 12
- invasion of privacy - section 14(1)

The requester appealed the denial of access to the Commissioner's office.

A Notice of Inquiry was provided to the appellant and the City. Representations were received from both parties.

DISCUSSION:

CLOSED MEETING

The City claims that section 6(1)(b) applies to the investigation report in its entirety.

Section 6(1)(b) states:

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 City 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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Based on the evidence before me, I am satisfied that a meeting of the Council took place on February 1, 1995 and that the public was excluded from this meeting.

The City submits that the Municipal Act authorizes the holding of the meeting in the absence of the public. Section 55(5) of the Municipal Act, R.S.O. 1990 c. M.45, as amended, 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.

For in-camera meetings held after January 1, 1995, the City is required to show that this was authorized by a resolution of the Council. The City has provided evidence that a resolution to close the meeting to the public was passed by Council for the purpose of discussing a personnel matter. The second part of the test has been met.

The third part of the test requires the City to show that the disclosure of the investigation report would reveal the actual substance of the deliberations of the meetings. In reviewing the City's representations and the information in the record, I find that the Council's discussion at the in-

camera meeting centred on the issues relating to personnel and the improper access to confidential files, identified in the investigation report, with a view to deciding how to proceed to ensure that similar incidents do not recur. On this basis, I find that disclosure of the investigation report would reveal the actual substance of the discussions conducted by the Council and hence, its deliberations. Therefore, the third part of the test has been met and section 6(1)(b) applies.

The appellant points out that the City's decision to retain outside consultants to investigate the possible leak of confidential documents was covered by the local media. The appellant submits that because this information is in the public arena, the exception in section 6(2)(b) applies and the investigation report should not be afforded the protection of section 6(1)(b). A copy of the newspaper article is included with the appellant's representations. In my view, the fact that this information was reported by the press has no bearing on the information contained in the investigation report. I find that there is no evidence that the subject matter of the deliberations was considered at a council meeting open to the public. In my view, the exception in section 6(2)(b) does not apply in the circumstances of this appeal.

I have found that section 6(1)(b) of the Act applies to exempt the investigation report from disclosure. Therefore, I do not need to consider the application of the other exemptions claimed by the City.

ORDER:

I uphold the decision of the City.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ October 13, 1995