



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

ORDER M-657

Appeal M_9500432

Metropolitan Licensing Commission



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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 Metropolitan Licencing Commission (the MLC) received a request for access to certain documents prepared by MLC inspectors after visiting various adult entertainment parlours within the Municipality of Metropolitan Toronto. The requester stated that these documents were included on the agenda and discussed at the June 22, 1995 MLC meeting, but not released to the public.

The MLC identified 42 pages of responsive records. These records consist of 28 handwritten and typed notes and memoranda outlining details of visits by various Licencing Enforcement Officers to a number of adult entertainment parlours between May 28 and June 16, 1995 (the notes); a one-page summary memorandum dated May 26, 1995, from a Senior Enforcement Officer to the Manager of Field Operations (the memo); typewritten "codes of conduct" for a number of parlours (the codes); and a five-page letter, dated May 23, 1995, written to the MLC by a Municipality of Metropolitan Toronto Councillor (the letter). The MLC advised the requester that it intended to pursue charges against the parlours under the Municipality of Metropolitan Toronto By-law 20-85 (the By-law) and to use the records as evidence. The MLC denied access to the records, relying on the following exemption contained in the Act:

- law enforcement - section 8(1)(b)

The requester appealed the MLC's decision. During the course of mediation the appellant agreed to remove the names of any dancers and/or employees of adult entertainment parlours from the scope of his request, and the MLC agreed to release the letter and the codes (pages 1-6, 8, 14 and 28) in their entirety.

A Notice of Inquiry was sent to the MLC and the appellant. The MLC submitted representations and the appellant chose to rely on submissions contained in his request and appeal letters.

DISCUSSION:

The sole issue in this appeal is whether the section 8(1)(b) exemption applies to the notes and memo. Section 8(1)(b) reads:

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

interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

Pursuant to the By-law, the MLC appoints persons known as Licencing Enforcement Officers (the Officers) to inspect licenced premises. The notes at issue in this appeal record the observations of Officers made as a result of visits to various adult entertainment parlours. I find that this activity is properly characterized as an investigation for the purpose of section 8(1)(b).

Proceedings may be commenced in the event of an alleged breach of the By-law, either before the MLC or under the Provincial Offences Act. I find that this by-law enforcement process qualifies as a "law enforcement" proceeding within the meaning of section 8(1)(b). This position is consistent with a number of previous orders of the Commissioner's Office concerning by-law enforcement.

The issue on which this appeal turns is whether the investigation which led to the preparation of the notes was undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

The MLC submits that the Officers conducted the investigation in response to complaints and concerns about "lap dancing" at adult entertainment parlours. Further, the MLC states that the Officers created the notes for the purpose of determining whether or not proceedings should be brought under the By-law, and to gather evidence to be used in support of those proceedings.

The appellant disagrees. He argues that the notes were prepared to assist the MLC in arriving at a policy position with respect to "lap dancing", and to make recommendations to the Municipality of Metropolitan Toronto Council for changes to the By-law governing adult entertainment parlours. Thus, he takes the position that the Officers were not engaged in a "law enforcement investigation" when they prepared the notes.

Having carefully reviewed the notes and representations, I find that the investigation which led to the preparation of the notes and memo was not undertaken with a view to a law enforcement proceeding. I also find that the MLC has failed to provide sufficient evidence to establish that a law enforcement proceeding is likely to result from the investigation. In my view, the purpose of the investigation was to gather facts and observations to assist the MLC in developing policy on lap dancing.

The notes were prepared by the Officers during a very short period of time immediately preceding the June 22, 1995 MLC meeting. Of the 28 notes prepared by the various Officers, only four mention licence inspections, and it is clear from the contents of these four notes that licence inspection was incidental to the purpose of the investigation. In one instance the notes specifically indicate that the purpose of the visit is not to check licences, but to speak to the dancers to get their perspective on lap dancing. It is clear from the content of the notes that the purpose of the investigation was to observe lap dancing at various establishments, interview dancers to obtain their views, and to report these facts and observations to MLC management. The memo found on page 7 of the records summarizes activities taking place at parlours which provide lap dancing, and supports my characterization of the purpose of the investigation.

The MLC discussed the issue of lap dancing at its June 22, 1995 meeting, at which time a number of witnesses addressed the meeting and a series of decisions were made involving recommended policy changes to address the regulation of lap dancing. Although the notes at

issue in this appeal were prepared by the same Licencing Enforcement Officers who are responsible for conducting by-law enforcement investigations, in my view, the purpose of the investigation in the circumstances of this appeal was not by-law enforcement.

Therefore, the requirements of section 8(1)(b) of the Act have not been established with respect to the notes and the memo, and these records should be disclosed to the appellant.

ORDER:

1. I order the MLC to disclose to the appellant all the remaining pages of the records, subject to the removal of the names of all dancers and adult entertainment parlour employees contained in the records, within fifteen (15) days after the date of this order.
2. In order to verify compliance with this order, I reserve the right to require the MLC to provide me with a copy of the records disclosed pursuant to Provision 1.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ November 22, 1995