



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

## **ORDER M-735**

**Appeal M\_9500524**

**Rosemont District Fire Department Joint Board of Management  
for the Townships of Adjala-Tosorontio, Mono and Mulmur**



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## NATURE OF THE APPEAL:

The Rosemont District Fire Department Joint Board of Management for the Townships of Adjala-Tosorontio, Mono and Mulmur (the Fire Board) received two multi-part requests pursuant to the Municipal Freedom of Information and Protection of Privacy Act (the Act).

The Fire Board provided the requester with some records which responded to parts of both requests and asked him to clarify Part 3 of Request I and Parts (g) and (h) of Request II pursuant to section 17(2) of the Act. The Fire Board also informed the requester that records responsive to Parts 4 and 5 of Request I do not exist. The Fire Board denied access to two letters which it found to be responsive to Parts 1 and 2 of Request I, claiming the application of the following exemption contained in the Act:

- closed meeting - section 6(1)(b)

The requester appealed the Fire Board's decision to deny access to the two letters, argued that additional records responsive to his request should exist and that the requests do not require further clarification.

Due to the complex nature of the requests involved in the appeal, the Appeals Officer wrote to each party to confirm exactly what remained unresolved and to inform the parties that the application of the personal information exemptions (sections 14 and 38(a) and (b)) would also be an issue in the appeal.

The parties agreed that the following issues remain outstanding:

### **Request I - Parts 1 and 2**

These parts of Request I relate to two identified pieces of correspondence to the Fire Board.

- meeting held in absence of the public - section 6(1)(b)
- invasion of privacy - sections 14 and 38(b)
- discretion to deny access to requester's own information - section 38(a)

### **Request I - Part 3**

This part of Request I deals with accounting records relating to certain accusations against the appellant.

- clarity of the request

### **Request II - Parts (g) and (h)**

Part (g) of Request II relates to records that "deal with any relationship with (a named company)". Part (h) requests "any documents that mention the name of (the appellant) in any form whatsoever).

- clarity of the request

### **Request I - Parts 4 and 5**

These parts of Request I deal with any tender documents and invoices which were exchanged between the Fire Board and the successful tenderer for the supply of communications equipment to the Fire Board.

- reasonable search

As no further mediation was possible, a Notice of Inquiry was provided to the appellant, the Fire Board and two individuals whose interests might be affected by disclosure of the records (the affected persons). Representations were received from the Fire Board and one of the affected persons.

### **RECORDS:**

The records remaining at issue which are responsive to Parts 1 and 2 of Request I consist of the resignation letter of a named individual and a letter to the Fire Board signed by another named individual.

### **DISCUSSION:**

#### **PERSONAL INFORMATION/DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION**

Section 2(1) of the Act defines "personal information", in part, to mean recorded information relating to an identifiable individual. I have reviewed the letters at issue to determine whether they contain personal information and, if so, to whom the personal information relates.

I find that the letter of resignation contains the personal information of the individual who is tendering her resignation as well as that of the appellant. I find that the other letter contains only the personal information of the appellant.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(a) of the Act, the Fire Board has the discretion to deny access to an individual's own personal information in instances where the exemptions in sections 6, 7, 8, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

#### **CLOSED MEETING**

The Fire Board claims that section 6(1)(b) applies to both letters.

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 Fire Board 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 Fire Board submits that the letter of resignation was submitted at a meeting of the Fire Board. However, the minutes of the meeting do not indicate that the meeting was held in the absence of the public. Therefore, as the Fire Board has failed to establish part two of the test, the letter of resignation does not qualify for exemption under section 6(1)(b).

With regard to the other letter, I am satisfied that the letter refers to an agenda item for a meeting of the Fire Board on March 1, 1995 and that the public was excluded from this meeting.

The Fire Board submits that section 55(5) of 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, in part:

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

- (b) personal matters about an identifiable individual, including municipal or local board employees;

I am satisfied that the Fire Board was authorized to hold the meeting in the absence of the public. For in camera meetings held after January 1, 1995, the Fire Board is required to show that the in camera meeting was authorized by a resolution of the Council. The Fire Board has provided evidence that a resolution to close the March 1, 1995 meeting to the public was passed by the Fire Board for the purpose of discussing a personnel matter.

The third part of the test requires the Fire Board to show that the disclosure of the letter would reveal the actual substance of the deliberations of the meetings. I have reviewed the Fire Board's representations, the information in the record and the minutes of the meeting and find that the

disclosure of the letter would not reveal the actual substance of the discussions conducted by the Council and hence, its deliberations. Therefore, the third part of the test has not been met and the second letter does not qualify for exemption under section 6(1)(b).

To summarize, I find that neither of the letters which are at issue qualify for exemption under section 6(1)(b) and, therefore, these records are not exempt under section 38(a) .

I have determined that the second letter at issue contains the personal information of the appellant only and that it is not exempt under section 6(1)(b). As this was the only exemption applied to this record by the Fire Board, I order that it be disclosed to the appellant.

### **INVASION OF PRIVACY**

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Fire Board has the discretion to deny the appellant access to that information.

The individual who submitted the letter of resignation has consented to the disclosure of the letter. It does not, therefore, qualify for exemption under section 38(b) and I order that it be disclosed to the appellant.

### **REASONABLENESS OF SEARCH**

The appellant has raised the issue of reasonable search with respect to Parts 4 and 5 of Request I which involved a request for a copy of a tender let in 1991 by the Fire Board for communication equipment, along with all invoices and receipts from the successful tenderer to the Fire Board.

Where a requester provides sufficient details about the records which he or she is seeking and the Fire Board indicates that such a record does not exist, it is my responsibility to ensure that the Fire Board has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Fire Board to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Fire Board must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

The Fire Board has provided details of the search undertaken for records which are responsive to these portions of the appellant's request. In addition, the Fire Board has adopted as part of its representations an affidavit signed by the Fire Board's Secretary-Treasurer in which she describes the nature and extent of the search undertaken for the records.

The appellant has not provided any representations with respect to the reasonableness of the search undertaken by the Fire Board in response to his requests.

I have considered the representations of the Fire Board and I find that its search for responsive records was reasonable in the circumstances of this appeal.

## CLARITY OF REQUEST

The Fire Board requested clarification from the appellant regarding Part 3 of Request I and Parts (g) and (h) of Request II. Part 3 of Request I was for any accounting records which relate to any accusation against the appellant. Parts (g) and (h) of Request II were for any other documents that deal with any relationship between the Fire Board and the successful tenderer for communications equipment and any documents that mention the appellant's name in any way.

Sections 36 and 37 of the Act are relevant to those parts of the request that involved the personal information of the requester.

Both requesters and institutions have certain obligations with respect to access requests under the Act.

In Order 33, former Commissioner Sidney B. Linden held that, in interpreting sections 47 and 48 of the Freedom of Information and Protection of Privacy Act, which correspond to sections 36 and 37 of the Municipal Freedom of Information and Protection of Privacy Act:

Sections 47 and 48 of the Act place the responsibility for ascertaining the nature or whereabouts of a record of personal information on **both the requester** and the institution. [Emphasis added]

It is clear from sections 47 and 48 of the Act that **there is some obligation placed on the requester to provide as much direction to an institution as possible to where the records he or she is requesting may be found** and/or to describe the records sought. [Emphasis added]

Section 17 is relevant to a request for general information.

In Order 81, Commissioner Linden made the following comments interpreting section 24 of the Freedom of Information and Protection of Privacy Act, which corresponds to section 17 of the Municipal Freedom of Information and Protection of Privacy Act:

Both requesters and institutions have certain obligations with respect to access requests under the Act. These obligations are set out in section 24 with respect to general access requests ...

An institution that receives a broadly worded request has three choices in making its response. It can choose to respond literally to the request, which may involve an institution-wide search for the records requested; it can request further information from the requester in order to narrow its area of search; or it can narrow the search unilaterally. If the third option is chosen, the institution must outline the limits of the search to the appellant.

The Fire Board explains why it was unable to proceed with the requests which may involve the personal information of the appellant without further clarification from him. The appellant did not respond to the Fire Board's request for clarification and I have not received any representations from him on this issue. In my view, in seeking clarification from the appellant,

the Fire Board has met its obligation under the Act. The appellant, by refusing to provide any clarification, bears the responsibility for the Fire Board's inability to proceed any further with these three parts of his request.

**ORDER:**

1. I order the Fire Board to disclose to the appellant the two letters responsive to Parts 1 and 2 of Request 1 by sending him a copy by **April 10, 1996**.
2. The Fire Board's search for records was reasonable and this part of the appeal is dismissed.
3. The Fire Board has met its obligations under sections 17(2), 36 and 37 of the Act and this part of the appeal is dismissed.
4. In order to verify compliance with this order, I reserve the right to require the Fire Board to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_

Donald Hale  
Inquiry Officer

\_\_\_\_\_ March 20, 1996