



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

ORDER M-736

Appeal M-9500642

The Board of Education for the City of Windsor



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NATURE OF THE APPEAL:

The Board of Education for the City of Windsor (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) from a newspaper reporter for all information regarding the payment of retirement incentives to four named individuals, who were senior Board officials.

The Board denied access to the information responsive to the request claiming the application of the following exemptions contained in the Act:

- meeting held in the absence of the public - section 6(1)(b)
- invasion of privacy - section 14(1)
- economic or other interests of the Board - section 11(e)

The requester appealed the Board's decision and raised the possible application of the public interest override in section 16 of the Act.

Mediation was not possible and a Notice of Inquiry was provided to the appellant, the Board and the four named individuals whose interests might be affected by the disclosure of the records (the affected persons). Representations were received from the Board and one of the affected persons.

The Notice of Inquiry informed the parties that records which are exempt under section 6 of the Act are not subject to the public interest override found in section 16 of the Act. Accordingly, should the Board be found to have properly applied the section 6(1)(b) exemption, the public interest in disclosure provided by section 16 cannot operate to override the application of the exemption.

RECORDS:

The records at issue consist of the Minutes of five meetings of the Board's Committee of the Whole in which the retirement incentives for the four named individuals were discussed.

Some pages of the minutes contain information which is not related to the appellant's request. The parties agree that this information is not responsive to the request and, therefore, does not fall within the scope of this appeal.

DISCUSSION:

CLOSED MEETING

The Board claims that section 6(1)(b) applies to all of the responsive records.

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 Board must establish that:

1. a meeting of the Board or one of its committees 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.

It is clear from the minutes that the meetings of the Committee of the Whole Board (the Committee) took place. On this basis, the first part of the section 6(1)(b) test has been satisfied.

The minutes also make it clear that these meetings were held in the absence of the public. The Board submits that section 55(5) of the Municipal Act and section 207(2) of the Education Act are the authority to hold the meeting in the absence of the public. Section 207(2) of the Education Act states, in part, that:

A meeting of a committee of a board, including a committee of the whole board, may be closed to the public when the subject_matter under consideration involves,

- ...
- (b) the disclosure of intimate, personal or financial information in respect of a member of the board or committee, an employee ... of the board ...

...

 - (d) decisions in respect of negotiations with employees of the board.

Based on the evidence before me, I am satisfied that the matters discussed during the meetings of November 23, 1994, January 25, April 26, May 10 and May 24, 1995 by the Committee relating to retirement incentives for affected persons fall within the ambit of section 207(2)(b) of the Education Act. Accordingly, I find that the second part of the section 6(1)(b) test has been met.

In Orders M_184 and M_196, former Assistant Commissioner Irwin Glasberg defined the term "substance" as the "theme or subject of a thing" and the word "deliberations" to mean "discussions conducted with a view towards making a decision".

Having reviewed the Board's representations and the records, I find that the "theme or subject" of the Committee's in camera meeting was the consideration of retirement incentives for the four affected persons named in the appellant's request. I also find that the Committee discussed these issues with a view towards deciding how the matter should be resolved. On this basis, I have concluded that the disclosure of the information which is at issue in this appeal would reveal the actual substance of the discussions conducted by the Committee and, hence, its deliberations. The third part of the section 6(1)(b) test has, therefore, also been met. Accordingly, section 6(1)(b) applies.

ORDER:

I uphold the decision of the Board.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ March 20, 1996