



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

ORDER M-742

Appeal M_9500707

Municipality of Metropolitan Toronto



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NATURE OF THE APPEAL:

The appellant is a former employee of the Municipality of Metropolitan Toronto (the Municipality). He submitted a request to the Municipality under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for several categories of information relating to himself.

In response to the request, the Municipality granted full access to some records, but denied access to parts of other responsive records. The appellant filed an appeal of the decision to deny access.

During mediation, the appellant agreed to limit his appeal to the undisclosed part of page 60 (an interdepartmental memorandum). The Municipality's decision to deny access to the undisclosed portion of this record is based on the exemption in section 38(a) of the Act (discretion to refuse requester's own information) in conjunction with section 7(1) of the Act (advice or recommendations).

This office sent a Notice of Inquiry to the appellant and the Municipality. Only the Municipality provided representations.

DISCUSSION:

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/ADVICE OR RECOMMENDATIONS

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the record and I find that it contains the appellant's personal information.

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 institution has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. This section states:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, 8, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information. [emphasis added]

I will, therefore, consider whether the undisclosed portions of the record qualify for exemption under section 7(1), as a preliminary step in determining whether this information is exempt under section 38(a).

Section 7(1) states:

A head may refuse to disclose a record if 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 records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.

I am satisfied that the undisclosed parts of this record consist of advice, since they set out a suggested course of action to be accepted or rejected by the individual to whom the record is addressed, during the deliberative process. Therefore, the undisclosed information meets the requirements for exemption under section 7(1). Section 7(2) sets out exceptions to this exemption, but the severed passages are not subject to any of the listed exceptions.

Therefore, the undisclosed information in the record at issue qualifies for exemption under section 7(1), and as a result, it is exempt under section 38(a).

ORDER:

I uphold the Municipality's decision to deny access to the undisclosed portions of page 60.

Original signed by: _____

John Higgins
Inquiry Officer

March 22, 1996