



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

ORDER M-733

Appeal M_9500460

City of Ottawa



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NATURE OF THE APPEAL:

The City of Ottawa (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to copies of the Deputy Returning Officer (DRO) Statements for certain identified polls in the 1994 municipal elections.

The City denied access, claiming that the records fall within the scope of section 53(2) of the Act. This section provides, in part:

The following confidentiality provisions prevail over this Act:

1. Section 105 of the Municipal Elections Act.

The requester (now the appellant) appealed the City's decision. In his letter of appeal, the appellant pointed out that copies of DRO Statements were disclosed to him by three other municipalities.

Mediation was not successful, and this office sent a Notice of Inquiry to the appellant and the City. Representations were received from both parties.

DISCUSSION:

The sole issue in this appeal is whether the DRO Statements fall within the scope of section 105 of the Municipal Elections Act (the MEA). Because section 105 is a confidentiality provision which prevails over the Act, records which satisfy the requirements of section 105 are not accessible under the Act.

Section 105 of the MEA reads:

No person shall be allowed to inspect the contents of a ballot box in the custody of the clerk except under the order of a judge.

Under section 83(1) of the MEA, the DRO is required to prepare a Statement in duplicate which summarizes how the ballots assigned to the poll were administered on election day. The duplicate copy of this Statement is attached to the polling list, and the original copy is forwarded to the municipal clerk. Section 84 requires the DRO to seal each ballot box, and identifies the contents of the box. One item specifically omitted from the ballot box under section 84(1) is the original copy of the DRO Statement.

After receiving all ballot boxes, the municipal clerk tabulates the election results under section 85(1) without opening the ballot boxes, using the various original copies of the DRO Statements as the source of information for each poll. The results are then announced by the clerk pursuant to section 85(2) of the MEA.

Under section 86(1), the clerk is responsible for the safekeeping of the ballot boxes and other documents identified in section 84, which includes the original copies of DRO Statements. This section reads as follows:

Except as provided in this section, the clerk, upon the receipt of a ballot box, and the documents referred to in section 84, shall take every precaution for their safekeeping, and for preventing any other person from having access to them, and shall immediately on receipt of the ballot box seal it with the clerk's own seal in such a way that it cannot be opened without his or her seal being broken, and that any other seals affixed to it are not effaced or covered.

The City submits that, because section 105 prevents anyone from inspecting the contents of a ballot box without an order of a judge, and the ballot box contains the duplicate DRO Statement, then by necessary implication this same protection must be extended to the original copy of the DRO Statement. In the City's view, any other interpretation would imply that an individual could indirectly obtain a copy of a document under the Act which would otherwise require an order of a judge.

The appellant submits that the intent of section 105 of the MEA is to protect the ballot boxes themselves. Because section 84(1) of the MEA specifically exempts the original DRO Statement from the list of documents the DRO is required to place in the ballot box, the appellant feels this is evidence that the original Statement was not intended to be covered by section 105. The appellant maintains that the information contained on the DRO Statement is the same type of information which is released by the City to announce the official election results. It contains no personal information, and the appellant maintains that it is not possible to compromise the confidentiality of any voter by providing access to these Statements.

Having reviewed the representations of both parties, in my view, the original copy of the DRO Statement does not fall within the scope of section 105 of the MEA. The various provisions of the MEA governing the administration of elections draw clear distinctions between the original and the duplicate copy of the DRO Statement. Section 105 speaks only to the contents of the ballot boxes themselves, while section 86(1) places an obligation on the municipal clerk to ensure the safekeeping of both the ballot boxes and other election documents within his or her statutory care.

In my view, a plain reading of section 105 of the MEA, especially when compared with section 86(1), suggests that it is only the actual contents of the ballot box, and not the original DRO Statement (which is maintained outside the ballot box), which cannot be inspected except by order of a judge, and falls within the scope of this confidentiality provision. It is only section 105 of the MEA which acts as an overriding confidentiality provision, not section 86(1). In my view, the records at issue in this appeal do not fall within the scope of section 105, and the "preventing access" provision of section 86(1) cannot be read so as to extend confidentiality protection to records which do not actually form part of the contents of the ballot box.

Therefore, I find that the original copies of the DRO Statements do not fall within the scope of section 53(2) of the Act. Because no exemptions have been claimed by the City with respect to

these records and no mandatory exemptions apply, they should be disclosed to the appellant in their entirety.

ORDER:

1. I order the City to disclose copies of the original DRO Statements for each of the polls identified by the appellant in his original request letter, by **April 8, 1996**.
2. In order to verify compliance with the provisions of order, I reserve the right to require the City to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ March 19, 1996