



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

INTERIM ORDER M-806

Appeal M_9500660

City of Orillia



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This is the second Interim Order to be issued on the above-noted appeal. This appeal was brought under the Municipal Freedom of Information and Protection of Privacy Act (the Act) concerning a decision of the City of Orillia (the City).

BACKGROUND:

In Interim Order M-775, I disposed of a preliminary matter raised by the City concerning my jurisdiction to review its decision in the circumstances of this appeal. I determined that I did have jurisdiction to proceed and I ordered the City to provide copies of all records responsive to the request. In the event records responsive to the request might not exist, I ordered the City to provide an affidavit which addressed this issue.

I have received further correspondence from the City and I am satisfied that the City has complied with the order provisions of Interim Order M-775.

The decision in this Interim Order will dispose of some of the substantive issues raised by the City in its decision letter to the appellant. The remaining issues will be addressed in a Final Order to follow.

NATURE OF THE APPEAL:

As I indicated in Interim Order M-775, the City received a request for the following information:

1. the terms of the agreement between the City and the former fire chief (the fire chief) under which the fire chief agreed to leave the City's fire department;
2. the sum of money and other benefits awarded to the fire chief as a result of this agreement;
3. the cost of legal fees charged to the City to arrive at an agreement with the fire chief and the cost of the fire chief's legal fees if these fees were assumed by the City as part of the agreement; and
4. the letter of complaint which may have led to the fire chief's departure.

In responding to this request, the City denied access to records responsive to points one, two and the second part of point three. The City indicated that it was relying on the exemptions in sections 6(1)(b) (closed meeting), 11(c) (economic and other interests) and 14(1) (invasion of privacy) to deny access to this information. The City provided the appellant with information regarding the cost of its legal fees related to the agreement. With respect to the fourth point, the City refused to confirm or deny the existence of such a record pursuant to section 8(3) of the Act.

The appellant wrote to this office and indicated that it was appealing all aspects of the City's decision, with the exception of the first part of point three. In its letter of appeal, the appellant also alluded to the possible application of section 16 of the Act, the so-called "public interest override".

A Notice of Inquiry was sent to the City, the appellant and the fire chief. Representations were received from all three parties.

In its representations, the City did not refer to section 8(3) which permits an institution to refuse to confirm or deny the existence of a record to which section 8 (primarily law enforcement records) applies. Rather, it made submissions on the application of section 14(5), which provides that an institution may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy. As this raised a new issue, a supplemental Notice of Inquiry was sent to the parties. Further representations were received from the City and the fire chief.

In this Interim Order, I will dispose of the issues arising with respect to the first three points of the appellant's request. The last point of the request, which concerns the letter of complaint which may have led to the fire chief's departure, will be dealt with in another order.

THE RECORDS:

The information requested in points one, two and the second part of point three are contained in a six-page handwritten agreement between the fire chief and the City, signed by the fire chief and the Chief Administrative Officer for the City, and a two-page typed version of the same agreement, which has not been signed. As the information in the two versions of the agreement is identical, I will refer to them collectively as "the agreement".

DISCUSSION:

CLOSED MEETING

The City claims that section 6(1)(b) applies to the agreement in its entirety.

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 City 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.

[Order M-64]

On January 16, 1996, I issued Order M-690 which dealt with an appeal of the City's decision in response to the following request:

the total cost to Orillia taxpayers for the "mutually satisfactory agreement with respect to [the Fire Chief's] departure from the fire department".

The records in that appeal were identical to the records in the current appeal. The City also claimed that section 6(1)(b) applied in that appeal. In Order M-690, I found, based on the representations provided by the City, that the City had met the requirements to satisfy the exemption in section 6(1)(b). The City has provided similar representations in the current appeal, and indicates further that it relies on the decision in Order M-690.

The appellant does not believe that disclosure of the records would reveal the actual substance of the deliberations of the meeting, and stresses that it is not asking for the minutes of the meeting as this information would reveal the substance of deliberations. Rather, the appellant states that it is asking for items which may have been brought up at the meeting and/or created as a result of the meeting. The appellant submits further that this information merely reflects the conclusions of the meeting, and in this regard states:

Any one who has attended any kind of meeting can attest that the official conclusion of the meeting does not carry with it the substance of the deliberations behind it.

The City submits that disclosure of the agreement would reveal the actual substance of the deliberations which took place at the in-camera meetings and not merely the basis of discussion. In this regard, the City states that the agreement provides both the subject and substance of the deliberations.

In considering the arguments presented by the appellant, I am not persuaded that I should alter the findings I made in Order M-690. Accordingly, I find that the records at issue in this appeal are properly exempt under section 6(1)(b) of the Act.

Having made this decision, I will now consider whether the mandatory exception contained in section 6(2)(b) applies to the facts of this case. This section reads as follows:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,

in the case of a record under clause (1) (b), the subject matter of the deliberations has been considered in a meeting open to the public;

In its representations, the appellant acknowledges that at least one meeting on the subject was held by the Committee of the Whole Council, but argues that other meetings between City officials and the fire chief **may** also have been held, and that these meetings may not have been in camera.

In my view, the appellant has provided no evidence to support this assertion, and it is, therefore, not sufficient to attract the exception in section 6(2)(b). Accordingly, I find that section 6(2)(b) does not apply.

PUBLIC INTEREST IN DISCLOSURE

Section 16 of the Act provides:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

In its letter of appeal and representations, the appellant has outlined a number of reasons why it believes there is a compelling public interest in disclosure of the records at issue in this appeal. However, section 6 is not subject to the public interest override provided by section 16 of the Act and a record which is exempt from disclosure under section 6 is not subject to the override provided by section 16 of the Act.

I note that the appellant appeared to recognize that section 16 cannot be used to override the application of section 6. It has, rather, directed its arguments at the use of section 16 to override the application of sections 11 and 14 (which were also claimed by the City) to the records. Had I made a finding under either of these other two sections, I would have given serious consideration to the appellant's arguments in the circumstances of this appeal.

Since I have found that section 6(1)(b) of the Act applies to exempt the agreement from disclosure, I do not need to consider the application of the other exemptions claimed by the City.

ORDER:

I uphold the decision of the City with respect to points one, two and three of the request.

Original signed by: _____ July 10, 1996

Laurel Cropley
Inquiry Officer