



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

ORDER M-844

Appeal M_9600180

City of Guelph



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Guelph Mercury (the Mercury) made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the City of Guelph (the City). The request was for a copy of a report respecting fire department operations in the City, particularly response times and fire hall locations, which was completed by the Ontario Fire Marshal's office.

The City identified an 11 page record (one cover page and 10 numbered pages) as responsive to the Mercury's request, and granted access to the cover page and pages 1 and 2. Partial access was granted to pages 3-7, and pages 8-10 were withheld in their entirety. Access was denied to parts of pages 3-7 and all of pages 8-10 under the following exemption:

- relations with other governments - section 9(1)(b)

The Mercury appealed the City's decision, and a Notice of Inquiry was sent to the Mercury and the City. Both parties submitted representations.

DISCUSSION:

The City submits that the record is a draft prepared by an official of the Office of the Ontario Fire Marshal, which contains personal opinions regarding staffing issues submitted in confidence to the City.

The Mercury submits that the withheld text provides interpretation or simple regurgitation of information supplied by the City and therefore was not "received in confidence" from the Ontario government.

Section 9(1)(b) reads:

A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

the Government of Ontario or the government of a province or territory in Canada;

Section 9(2) reads:

A head shall disclose a record to which subsection (1) applies if the government, agency or organization from which the information was received consents to the disclosure.

Section 1 of the Act clarifies that the Act is to be interpreted with the following principles in mind:

The purposes of this Act are,

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
 - (i) information should be available to the public,
 - (ii) necessary exemptions from the right of access should be limited and specific, ...

The Williams Commission had made a recommendation concerning a provision of this nature in the provincial Freedom of Information and Protection of Privacy Act (the provincial Act), at page 307 of Volume 2 of Public Government for Private People, in the following words:

We recommend that the freedom of information law contain a provision exempting documents whose disclosure would divulge any information or matter communicated in confidence by or on behalf of the government of another jurisdiction to the government of the province of Ontario or a person receiving a communication on behalf of the government of Ontario.

The general thrust seems to have been that the proposed provision would ensure that the government of Ontario and its agencies would obtain access to records, which other governments may be unwilling to provide without having this protection from disclosure. This view is reinforced by some comments that were made in the Legislature, when the bill was being discussed during the March 23, 1987 morning session. At that time, the Attorney General, Mr. Scott stated, in regard to section 15 of the provincial Act (the equivalent of section 9 in the Act) generally, that:

This exemption is designed to protect intergovernmental relations between the provinces or with the feds or with international organizations. In substance, when those agencies of other governments provide information to us in confidence, we will be able to say, "We are empowered to take it in confidence," and not have to say, "No, we cannot take it in confidence," and thereby run the risk that we will not get it.

Mr. Borovoy, when making a submission to the Legislature on behalf of the Canadian Civil Liberties Union, on that same day, appears to have taken the same view, when he stated:

I go from that to section 15, the confidence exemption, where the head of an institution is given the power to withhold from public scrutiny material the government might have received in confidence from another government. Understandably, when the government gives its word, there is a real problem about forcing disclosure, because the government's credibility could be damaged if other governments dealing with ours could not trust it.

In my view, these statements confirm that the purpose of an exemption of this nature is to ensure that governments under the jurisdiction of the Act will continue to obtain access to records which other governments could otherwise be unwilling to supply without having this protection from disclosure. Clearly, it is the supplier of information's requirement of confidentiality that is the focus here, not a need of the recipient. It is only satisfaction of the former need, which would have a bearing on the ability of the institution to obtain information from other governments. This view is further reinforced by the wording of section 9(2), which invalidates the exemption claim where the supplier of the information consents to its disclosure. The exception also effectively confirms that the exemption is designed to protect the interests of the supplier.

In the circumstances of this appeal, I am satisfied that the Office of the Fire Marshal would not decline to provide such information, if it were known that it could be disclosed under municipal freedom of information legislation. In fact, the Office of the Fire Marshal is required to provide such information to members of municipal councils and municipal officers under section 3(b) of the Fire Marshals Act. It seems that in this case the "in confidence" part of the section is being stretched to refer to the confidentiality in which the City intended to keep that record, rather than the confidence expected by the Office of the Fire Marshall.

Accordingly, after a review of the records in issue in this case, I conclude that they do not contain information received in confidence from the Government of Ontario within the meaning of section 9(1)(b).

ORDER:

1. I order the City to disclose the record to the appellant by sending him a copy **October 23, 1996**.
2. In order to verify compliance with the provisions of this 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: _____
Holly Big Canoe
Inquiry Officer

October 3, 1996