



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

ORDER M-985

Appeal M_9700137

Municipality of Metropolitan Toronto



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NATURE OF THE APPEAL:

The appellant submitted a request to the Municipality of Metropolitan Toronto (the Municipality) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to:

- (1) a computer spreadsheet model developed to distribute fixed and variable system costs and revenues across the various beverage container materials in the Blue Box system and the waste stream;
- (2) a cost allocation model for the Blue Box system.

The Municipality responded by denying access to the models referred to in item (1) under the exemption in section 11(e) of the Act (economic and other interests). The appellant appealed.

This office sent a Notice of Inquiry to the appellant and the Municipality. Both parties submitted representations.

The record at issue consists of spreadsheet analyses, which include comparative projections of costs and revenues associated with different approaches to beverage container recycling and waste. The sole issue in this appeal is whether this record is exempt under section 11(e) of the Act.

DISCUSSION:

Section 11(e) of the Act states:

A head may refuse to disclose a record that contains,

positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution.

For a record to qualify for exemption under section 11(e), each part of the following test must be established:

1. the record must contain positions, plans, procedures, criteria or instructions; **and**
2. the positions, plans, procedures, criteria or instructions must be intended to be applied to negotiations; **and**
3. the negotiations must be carried on currently, or will be carried on in the future; **and**

4. the negotiations must be conducted by or on behalf of an institution.

(Order M-92)

In its representations, the Municipality indicates that previous negotiations between the packaging industry and the Association of Municipalities of Ontario broke down. However, new negotiations are ongoing with the Recycling Council of Ontario, which has sponsored a committee composed of municipal and industry representatives, in an attempt to re-establish a common goal for sharing municipal recycling costs with the packaging industry.

The Municipality also submits that these negotiations "... between industry participants and municipalities, including [the Municipality] will result in proposals in relation to the funding of recycling programs as represented by a cost allocation system 'per' materials."

The Municipality also explains that the records allocate costs to the types of materials processed, and predict the cost impact when the quantity of materials is altered or materials are added to or removed from the system.

I will now discuss the four specific requirements of this exemption.

Under requirement 1, the Municipality quotes the Concise Oxford Dictionary and submits that "criteria" are "a principle or standard that a thing is judged by". It further submits that the spreadsheet cost allocation model contains the criteria which the Municipality will apply to proposals to be made by the committee of municipal and industry representatives. I agree with this definition and I find that the first requirement is met in the circumstances of this appeal.

Under requirement 2, I am satisfied that the criteria will apply to negotiations which will occur in the context of the committee's work and any later responses to its proposals, and this requirement is met.

I am also satisfied that these negotiations are occurring, or will occur in the future, meeting requirement 3.

Finally, I accept the Municipality's submission that it is, itself, involved in negotiations to formulate a standardized funding proposal for recyclable materials, and this meets requirement 4.

The appellant denies that the Municipality is involved in negotiations. In this regard, I prefer the evidence of the Municipality, which I have relied on in making the findings I have just outlined in relation to the four requirements of this exemption. In my view, the Municipality is in the best position to know whether or not it is involved in the negotiations referred to above.

Since all four requirements under section 11(e) are met, I find that the record is exempt under that section.

The appellant's other arguments focus on the public's right to know the basis for the Municipality's conclusions about recycling costs, which conclusions are, according to the

appellant, in the public domain by virtue of a report to the Municipality's Environment and Public Space Committee. In my view, these arguments are not germane to the question of whether a case has been made out under section 11(e), nor are they sufficient to trigger the application of the "public interest override" in section 16 of the Act.

ORDER:

I uphold the decision of the Municipality.

Original signed by: _____
John Higgins
Inquiry Officer

_____ August 14, 1997