



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

ORDER M-971

Appeal M_9700077

City of Etobicoke



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NATURE OF THE APPEAL:

The appellant submitted a request to the City of Etobicoke (the City) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). He requested access to the cellular telephone billing for a named City Councillor from October 1, 1995 to December 1, 1996, respecting each call made to 911 or the Metropolitan Toronto Police.

The City responded to the request by refusing to confirm or deny the existence of responsive records. In this regard, the City relied on section 14(5) of the Act.

The appellant appealed this decision.

Subsequently, the Councillor consented to disclosure, and the City issued a new decision letter providing the requested information to the appellant. Therefore, section 14(5) is no longer at issue in this appeal, nor are there any other outstanding issues about access to the requested information.

However, in his letter of appeal, the appellant also alleges that three named City employees do not have valid delegations to permit them to make decisions under the Act. Although, in my view, I could decline to consider this allegation because the substantive aspect of the matter is now moot, I have decided to take this opportunity to deal with the appellant's concerns in this regard, since this issue may arise again.

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

DISCUSSION:

DELEGATION OF AUTHORITY

In this appeal, the two decisions issued by the City were signed by the same individual. Therefore, this individual's delegation is the only one I am able to consider in this order.

The provisions of the Act relating to designations as "head" and to delegations of authority by a head, are as follows:

3(1) The members of the council of a municipal corporation may by by law designate from among themselves an individual or a committee of the council to act as head of the municipal corporation for the purposes of this Act.

...

(3) If no person is designated as head under this section, the head shall be,
(a) the council, in the case of a municipal corporation; and

- (b) the members elected or appointed to the board, commission or other body in the case of an institution other than a municipal corporation.

49(1) A head may in writing delegate a power or duty granted or vested in the head to an officer or officers of the institution or another institution subject to such limitations, restrictions, conditions and requirements as the head may set out in the delegation.

The City has provided me with by-laws and other documentation, and has referred me to section 73 of the Municipal Act, to support the validity of the delegation of authority to the individual who signed the decision letters which are before me in this appeal.

I find that, under section 49(1), City Council, as "head", is entitled to delegate its powers under the Act. Based on Council's decision (dated January 7, 1991) to adopt the resolutions of the Administration Committee about administration of the Act, By-law 1994-145 and section 73 of the Municipal Act, I also find that the individual who signed the decision letters had lawful authority to do so. Accordingly, this appeal will be dismissed.

However, the analysis required to reach this conclusion was complicated. In my view, a Council resolution or by-law delegating the head's powers under the Act by reference to specific (and current) position titles would make it much easier to determine that the incumbent of such a position had a valid delegation. It would also provide a much simpler answer when a City employee's authority to make decisions under the Act is scrutinized by a member of the public such as the appellant.

ORDER:

This appeal is dismissed.

Original signed by: _____

July 18, 1997

John Higgins
Inquiry Officer