



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-1101

Appeal M-9800004

The Corporation of the Village of Grand Bend



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 Corporation of the Village of Grand Bend (the Village) received a request pursuant to the Municipal Freedom of Information and Protection of Privacy Act (the Act) for copies of the following records respecting a specified agreement between the province of Ontario, a named individual and the Village:

1. specific minutes of settlement respecting a specified share purchase transaction, and
2. a complete breakdown of the costs incurred by the Ontario Government, and
3. all minutes, memos and other records, to which the province was a direct or indirect party, related to negotiations and agreements to end specified litigation.

The Village identified 29 pages of responsive records, being a closing agenda, index of documents, share purchase agreement, and minutes of settlement to which it denied access pursuant to section 6(1)(b) (closed meeting) of the Act.

The requester appealed the decision of the Village on the basis that he believes there is a compelling public interest in disclosure of the information. Thus he has raised the application of section 16.

This office provided a Notice of Inquiry to the requester (now the appellant), the Village, the named individual (the primary affected party), and the Province of Ontario and two numbered companies (as represented by counsel). As the records appeared to contain the personal information of the primary affected party, the Appeals Officer raised the possible application of section 14 (invasion of privacy) of the Act. Representations were received from the Village, counsel for the Province of Ontario and counsel for the two numbered companies. The appellant did not submit representations, however, his letter of appeal contains his views regarding the application of the exemptions claimed by the Village and I have considered them in arriving at my conclusions regarding the issues in this appeal.

DISCUSSION:

CLOSED MEETING

In order for the Village to apply section 6(1)(b) of the Act, it 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.

The Village has provided evidence that a meeting of the council and its committee of the whole took place. I am satisfied that such a meeting took place and the first part of the section 6(1)(b) requirement has been met.

The excerpts from the documents provided by the Village make it clear that the meeting was held in the absence of the public.

With respect to the second requirement, the Village submits that the in camera meeting was authorized by sections 55(5)(c) and (e) of the Municipal Act. These sections provide:

A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

- (c) a proposed or pending acquisition of land for municipal or local board purposes;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board.

The Village indicates that the records at issue in this appeal were considered in an in camera meeting held pursuant to section 55(5) of the Municipal Act. The meeting was held to approve the terms of the settlement and any and all terms, conditions and documents prepared in connection with the settlement of a legal action between the primary affected party, the Village and the Province of Ontario relating to the ownership of property in the Village.

The Village indicates further that immediately following the in camera portion of the meeting, it approved a by-law in open session which approved the settlement. The Village attached a copy of the minutes of this meeting to its representations.

Upon review of the representations and other documentation submitted by the parties and the records themselves, I am satisfied that the in camera session of the Committee of the whole was held to consider matters relating to the acquisition of land and the settlement of litigation involving the Village. I have reviewed the contents of the records at issue and find that their disclosure would reveal the actual substance of the deliberations of the in camera meeting of the Committee of the whole. As all three parts of the section 6(1)(b) test have been satisfied, I find that the records are exempt under this section.

PUBLIC INTEREST OVERRIDE

Section 16 of the Act states that:

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.

The appellant is concerned about the secretive manner in which public lands have been purchased with public funds. In this regard, he wonders if the property transaction was deliberately constructed in such a way as to impede the public's ability to learn the details of the settlement.

He states:

There is a compelling public interest in knowing terms of the transaction, including the amount paid, even if the Act does not provide an override for the exemption cited by the village.

The appellant appears to recognize that 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. While I agree with the appellant that decisions regarding the expenditure of public funds should be open to public scrutiny, it is not within my jurisdiction to override the exemption in section 6 on this ground as the Act specifically excludes the applicability of the override to records which are exempt under this section.

Because of the findings I have made, it is not necessary for me to consider the application of section 14(1) to the records.

ORDER:

I uphold the decision of the Village.

Original signed by: _____
 Laurel Cropley
 Adjudicator
 (formerly Inquiry Officer)

_____ May 6, 1998