



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-1145**

**Appeal M-9800112**

**City of Toronto**



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## **NATURE OF THE APPEAL:**

The appellant made a request to the City of Toronto (the City) under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of the agreement between the former City of North York and a named company relating to the processing of container and fibre materials under the blue box program. The City located two agreements in response to the request and denied the appellant access to them pursuant to sections 6(1)(b) (closed meeting) and 10(1)(a) (third party information) of the Act.

The appellant appealed the denial of access. During the course of mediation of this appeal, the City withdrew its reliance upon section 10 of the Act.

This office provided a Notice of Inquiry to the appellant and the City. Representations were received from both parties.

## **RECORDS:**

The City identified two agreements as responsive to the appellant's request. The first agreement (Record 1) is between the former City of North York and the company named in the appellant's request. This agreement is 41 pages in length with 4 schedules appended, comprising 47 pages in total. The second agreement (Record 2) is between the former City of North York, the named company and two other companies. That agreement is 36 pages in length with 2 schedules appended, comprising 41 pages.

In its representations, the City states that Record 1 is no longer at issue in this appeal as it has determined that the provisions contained in this agreement were discussed at an open meeting of Council. The City indicates that, as the terms of the agreement are public knowledge, it is now prepared to disclose this record to the appellant. It is not apparent that the City has done so. Accordingly, I will order it to disclose this record to the appellant.

## **DISCUSSION:**

### **CLOSED MEETING**

Section 6(1)(b) of the Act states that:

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.

In order to rely on 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. A statute authorizes the holding of such a meeting in the absence of the public; **and**
3. The disclosure of the record at issue would reveal the actual substance of the deliberations of this meeting.

[Orders M-64, M-98, M-102 and M-219]

Each part of the section 6(1)(b) test must be established.

The City has provided evidence that a meeting of the Management Committee of the former City of North York was held on January 24, 1996 and that the public was excluded from this meeting. The City submits that section 55(5)(a) of the Municipal Act, R.S.O. 1990, c. M.45, as amended, authorizes a committee meeting to be held in the absence of the public where the subject matter being considered is the security of the property of the municipality or local board. The City submits further that the record contains financial information pertaining to the former City of North York and thus falls within the matters identified in section 55(5)(a).

The appellant does not dispute that an *in camera* meeting of the Management Committee took place. Based on the evidence before me, I am satisfied that the first two parts of the test have been met.

With respect to the third part of the test, the appellant argues that disclosure of the agreement will not reveal the substance of discussions held by the Management Committee.

The City addresses this point head on. It indicates that the record at issue is the product of negotiations, protracted deliberations and discussions which took place over a period of time and which were then discussed at the *in camera* meeting. In this regard, the City claims that the substance of the deliberations of the meeting focussed specifically on the terms of the agreement. Therefore, the City submits that disclosure of the record would reveal the nature and substance of the deliberations of the closed meeting.

“Substance” has been defined in previous orders as “the “theme or subject” of a thing” (Order M-196). “Deliberations” has been interpreted as meaning “...discussions which were conducted with a view towards making a decision” (Order M-184). I adopt these interpretations for the purposes of this appeal.

Based on the evidence submitted by the City, I am satisfied that disclosure of Record 2 would reveal the substance of the deliberations of the meeting of the Management Committee, a committee of the whole, which was held in the absence of the public. Accordingly, I find that as all three parts of the test have been met, section 6(1)(b) applies.

The City indicates that at no time has the subject matter of the deliberations been considered in a meeting open to the public. I am satisfied that the exception in section 6(2) does not apply.

## **PUBLIC INTEREST IN DISCLOSURE**

The appellant submits that where the expenditure of public funds is in issue and an agreement has been awarded pursuant to a competitive process, it would be contrary to the principles of open government and the public interest to permit a municipality to conceal the terms of the agreement. Section 16 of the Act provides 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.

Although I recognize the validity of the appellant's position in this regard, section 6 is not subject to the "public interest override" provided by section 16 of the Act. Accordingly, it is not open to me to consider whether section 16 applies in the circumstances of this appeal.

**ORDER:**

1. I order the City to disclose Record 1 to the appellant by providing him with a copy no later than **September 17, 1998**.
2. I uphold the City's decision to withhold Record 2.
3. 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 record disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_ August 27, 1998