



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

ORDER MO-1230

Appeal MA-990047-1

Strathroy Public Utilities Commission



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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellant submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Strathroy Public Utilities Commission (the P.U.C.) for the following:

1. All recorded minutes of the P.U.C. meetings from August, 1996 until the present day that dealt with the hydro concern on the appellant's property (minutes of both executive and regular meetings). Also, the Agendas that accompany those meetings. The appellant subsequently clarified that he is also seeking the notes of "in camera" sessions where his problem is discussed.
2. All dated work orders, records of work performed, and the names of personnel that performed the work for the P.U.C. from June to November, 1997 which substantiates the appellant's claims to repair the hydro problem on his property. The appellant subsequently clarified that he is also seeking work orders that describe remedial measures taken by the P.U.C. to deal with his problem.

The P.U.C. granted access to records responsive to part two of the request. Access was denied to the records responsive to part one of the request pursuant to section 6(1)(b) (closed meeting) of the Act. The P.U.C. indicated to the appellant that all of the records responsive to part one were discussed in a meeting closed to the public under the authority of section 55 of the Municipal Act as they pertained to potential legal matters.

The appellant appealed the P.U.C.'s decision to deny access to the records responsive to part one of the request. In addition, the appellant claims that there should be more records responsive to part two of the request. In making this claim, the appellant has raised the reasonableness of the P.U.C.'s search for responsive records as an issue in this appeal.

During mediation, the appellant clarified that he is only seeking information in the records which pertain to him and his property. Therefore, any other information in these records pertaining to other matters is not at issue. Also, the P.U.C. agreed to release the Agendas for all regular P.U.C. meetings to the appellant. The P.U.C. indicated that there are no Agendas for the "in-camera" sessions. The appellant does not take issue with this.

I sent a Notice of Inquiry to the P.U.C. and the appellant. In reviewing the records at issue I noted that they relate to the appellant, as well as to his property. Therefore, the Notice also raised the possible application of section 38(a) of the Act (discretion to refuse requester's own information). Representations were received from both parties.

RECORDS:

The records at issue consist of the portions of the Minutes of the "in-camera" sessions of the P.U.C.'s meetings which discuss the appellant's property (53 pages).

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual. The records pertain to concerns raised by the appellant about the level of “tingle voltage” entering his property from the P.U.C. system. Although much of the information in the records pertains to the property, I find that it is included in the records in the context of the appellant’s concerns and complaints regarding the voltage levels entering his property. In this regard, I find that the records contain the appellant’s personal information.

DISCRETION TO REFUSE REQUESTER’S OWN INFORMATION/CLOSED MEETING

Under section 38(a) of the Act, the P.U.C. has the discretion to deny access to an individual's own personal information in instances where certain exemptions, including section 6(1)(b), would apply to the disclosure of that personal information.

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

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.

Section 6(2)(b) of the Act states:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,

in the case of a record under clause (1)(b), the subject-matter of the deliberations has been considered in a meeting open to the public;

In order to rely on section 6(1)(b), the P.U.C. must establish that:

1. A meeting of a council, **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 P.U.C. states that it held all of its meetings regarding the appellant's concerns *in camera* because it considered this matter to have potential legal implications right from the beginning. The P.U.C. notes that the appellant engaged the services of a lawyer in June 1997 to deal with this matter and indicates that all correspondence and communications pertaining to his concerns have been exchanged with his lawyer since that time.

The P.U.C. has provided evidence that a number of meetings of the Commission were held between April 23, 1997 and January 29, 1999 and that the public was excluded from these meetings. The P.U.C. cites section 55(5)(e) of the Municipal Act, R.S.O. 1990, c. M.45, as amended, as the authority for holding the *in camera* meetings. This section provides:

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

litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board.

The P.U.C. submits that disclosure of the records at issue would reveal the substance of deliberations of the *in camera* meetings of the Commission because the records are the minutes of those deliberations.

The appellant does not dispute that *in camera* meetings of the Commission took place. In fact, the request specifically asks for, in part, the minutes or notes from the *in camera* sessions. In his representations, the appellant indicates that this matter pertains to his property and his safety and he therefore believes that he should have access to all information relating to his concerns.

Based on the evidence before me, including the records themselves, I am satisfied that meetings of the Commission took place *in camera* and that section 55(5)(e) of the Municipal Act authorizes the holding of such meetings *in camera* as they pertained to litigation or potential litigation matters affecting the Commission. Therefore, I find that the first two parts of the test have been met.

“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. I find that the records contain the very information which was discussed during the Commission's deliberations with respect to the matters raised by the appellant and that their disclosure would reveal the substance of deliberations of the Commission during these meetings. Therefore, I find that all three parts of the section 6(1)(b) test have been met.

I have considered the Commission's exercise of discretion not to disclose this information to the appellant and I see no reason to interfere with it. Moreover, I am satisfied that the Commission has consistently dealt with the appellant's concerns as a potential legal matter and that it has not considered this matter in a meeting open to the public. Therefore, I am satisfied that the exception in section 6(2)(b) does not apply.

As a result, I find that the records qualify for exemption under section 6(1)(b), and section 38(a) applies.

REASONABLENESS OF SEARCH

As I indicated above, the appellant believes there should be more records responsive to part two of his request.

In cases where a requester provides sufficient details about the records which he or she is seeking and the P.U.C. indicates that records do not exist, it is my responsibility to insure that the P.U.C. has made a reasonable search to identify any records that are responsive to the request. The Act does not require the P.U.C. to prove with absolute certainty that records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the P.U.C. must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate responsive records.

A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request.

The appellant was asked to include in his representations any details he is aware of concerning records which have not been located, or any other information to indicate that the search carried out by the P.U.C. was not reasonable. His representations do not address this issue.

The P.U.C. states that during the processing of the appellant's request, it advised him that it would be required to notify three third parties before some information could be disclosed to him. The P.U.C. indicates that the appellant responded that he did not require this information but that he was only interested in obtaining information on work performed by the P.U.C. for the time period that he requested.

The P.U.C. indicates that it searched all of its payroll records and general files for information pertaining to this matter. The P.U.C. notes that during the time frame requested by the appellant, its staff assisted two private companies, on an as required basis, to perform testing on the existence/cause of the problems claimed by the appellant. The P.U.C. states that the appellant was provided with the copies of the "Instruction Orders" which pertain to the employees' assignments in this regard. The P.U.C. indicates that the only records it has in its files are those which were provided to the appellant, those for which section 6(1)(b) was claimed, those pertaining to reports prepared by the two companies that conducted the tests, and correspondence from Ontario Hydro. The P.U.C. states that the appellant was very clear about the information that he did not want, which includes that pertaining to the two companies and Ontario Hydro.

Based on the P.U.C.'s representations, I am satisfied that its search for responsive records was reasonable in the circumstances of this appeal.

ORDER:

1. I uphold the P.U.C.'s decision to withhold the records responsive to part one of the appellant's request.
2. The P.U.C.'s search for records responsive to part two of the request was reasonable and this part of the appeal is dismissed.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ August 19, 1999