



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

ORDER MO-1248

Appeal MA-990143-1

Town of Lindsay



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

NATURE OF THE APPEAL:

The appellant is a member of the media. He made a request to the Town of Lindsay (the Town) under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records related to the details of the severance package given to a retired Town employee. In particular, the appellant seeks access to:

- the exact amount of severance pay given to the employee;
- the number of days the Town is to pay the employee after his retirement officially begins on May 1 and the reason(s) the Town would continue to pay him after he retires;
- the reason(s) the Town granted the employee an early retirement five years before he would otherwise be eligible for it; and
- the number of years of employment the employee's previous contract with the Town had secured him and the reason(s) the Town decreed that his employment would be secured for a set period of time.

The Town located responsive records and denied access to them in full on the basis of sections 6(1)(b) (closed meeting) and 14(1) (invasion of privacy).

The appellant appealed the denial of access and raised the possible application of the so-called "public interest override" in section 16 of the Act.

I sent a Notice of Inquiry to the appellant, the Town and the employee. Representations were received from all three parties.

RECORDS:

The records at issue consist of:

- the Agreement between the Town and the employee, dated March 15, 1999;
- an interoffice memorandum from the Director of Corporate Services to a Town employee;
- a letter from a lawyer to the Director of Corporate Services dated March 8, 1999 with attachments; and
- an Agreement between the Town and the employee, dated May 23, 1995.

DISCUSSION:

CLOSED MEETING

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.

In order to rely on section 6(1)(b), the Town must establish that:

1. A meeting of a council 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 Town states that two meetings were held on May 8, 1995 and March 11, 1999 to consider the employee's employment situation. The Town points out that meetings closed to the public are a departure from the norm, however, in the circumstances of this matter, these two meetings were held in the absence of the public pursuant to sections 55(5)(b) and (d) of the Municipal Act. These sections state:

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

- b) personal matters about an identifiable individual, including municipal or local board employees;
- ...
- d) labour relations or employee negotiations;

The Town Clerk certified that both meetings were held and that they were closed to the public.

I am satisfied that two meetings of council took place and that they were closed to the public.

Two of the records contain discussions about the termination of the employee's employment with the Town and the two Agreements contain the terms under which this individual's employment was initially altered and subsequently terminated. I am satisfied that the subject matter of these two meetings dealt with personal matters concerning an identifiable individual and employee negotiations. Therefore, I find that the Town was authorized to hold these two meetings in the absence of the public pursuant to sections 55(5)(b) and (d) of the Municipal Act.

Accordingly, I find that the first two parts of the test have been met.

The only remaining issue is whether disclosure of these records would reveal the substance of the deliberations of these meetings.

The appellant submits that section 6(1)(b) does not apply in the circumstances of this appeal because disclosure of the requested information would not reveal deliberations of any meeting that may have helped the Town make its severance decision.

The Town states that the purpose of these meetings was to consider and discuss the appropriateness of entering into the subject agreements with the employee. The Town states further that in deliberating on this matter the records at issue were considered and discussed with a view towards making a decision with respect to the employee's termination.

In Order M-184, former Assistant Commissioner Irwin Glasberg made the following comments on the term "deliberations:

In my view, deliberations, in the context of section 6(1)(b), refer to discussions which were conducted with a view towards making a decision. Having carefully reviewed the contents of the Minutes of Settlement, I am satisfied that the disclosure of this document would reveal the actual substance of the discussions conducted by the Board, hence its deliberations, or would permit the drawing of accurate inferences about the substance of those discussions. On this basis, I find that the institution has established that the third part of the section 6(1)(b) test applies in this case.

The former Assistant Commissioner expanded on his analysis of the interpretation of section 6(1)(b) in Order M-196 as follows:

The Concise Oxford Dictionary, 8th edition, defines "substance" as the "theme or subject" of a thing. Having reviewed the contents of the agreement and the representations provided to me, it is my view that the "theme or subject" of the in-camera meeting was whether the terms of the retirement agreement were appropriate and whether they should be endorsed.

I adopt former Assistant Commissioner Glasberg's reasoning for the purpose of this appeal. Similar to the former Assistant Commissioner's findings in Order M-196, I am satisfied that the "theme or subject" of the in camera meetings in the current appeal was whether it was appropriate for the Town to enter into the Agreements with the employee and that these discussions were held with a view to making a decision in respect of this matter. Further, I find that in the circumstances of this appeal, the disclosure of the records at issue would reveal the actual substance of deliberations of the two in camera meetings, held in accordance with the Municipal Act as they describe the circumstances which led to the decision to enter into the Agreements in the first place and the details of the Agreements. I find, therefore, that the third and final part of the section 6(1)(b) test has been met.

As I have found that the records qualify for exemption under section 6(1)(b), it is not necessary for me to discuss the applicability of section 14 to these documents.

COMPELLING PUBLIC INTEREST:

As I indicated above, the appellant has raised the possible application of the so-called public interest override in section 16 of the Act. This section states:

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 states:

[S]ection 16 says an exemption from disclosure of a record under section 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. This is the heart of the matter and there can be no doubt there is a compelling public interest in disclosing the information. Taxpayers want and need details when the Town signs a deal like the one which granted (the employee) his severance. After all, their tax dollars ultimately pay for severance packages.

Refusing to disclose the requested information is clearly unacceptable in a society which demands accountability from all levels of government.

In addressing the public interest issue generally, the Town states:

No other information has been released to the public, nor is such release of information necessary to serve or protect the public's interest in the subject matter of the request. To the contrary, the release of such information could subject the tax payers of the [Town] to unnecessary litigation costs and damages, and further, would adversely affect the Town's ability to negotiate personnel matters in the future.

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 government institutions must be accountable to the public they serve and 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.

ORDER:

I uphold the Town's decision.

Original signed by: _____

Laurel Cropley
Adjudicator

_____ November 4, 1999