



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

ORDER MO-1359

Appeal MA-000012-1

City of Ottawa



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NATURE OF THE APPEAL:

The appellant wrote to the City of Ottawa (the City) seeking access under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to records relating to the “City of Ottawa Heritage Day Event 1999”.

The City responded to the request by granting access to some records, but denied access to a two-page City internal e-mail memorandum dated February 26, 1999, based on the exemption at section 7(1) (advice or recommendations) of the *Act*. The record contains a message from one City employee to another, posing certain questions about the event, together with the second employee’s response later the same day.

The appellant then appealed the City’s decision to this office.

I sent a Notice of Inquiry setting out the issues in the appeal initially to the City, which sent representations in response. In the circumstances, I found it unnecessary to seek representations from the appellant.

DISCUSSION:

Introduction

The “advice or recommendations” exemption is contained in section 7(1) of the *Act*, which reads:

A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

In Order 94, former Commissioner Sidney B. Linden commented on the purpose and scope of this exemption. He stated that it “... purports to protect the free-flow of advice and recommendations within the deliberative process of government decision-making and policy-making”. Put another way, the purpose of the exemption is to ensure that:

. . . persons employed in the public service are able to advise and make recommendations freely and frankly, and to preserve the head’s ability to take actions and make decisions without unfair pressure [Orders 24, P-1363 and P-1690].

A number of previous orders have established that advice or recommendations for the purpose of section 7(1) must contain more than mere information. To qualify as “advice” or “recommendations”, the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process [Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)*, Toronto Doc. 721/92 (Ont. Div. Ct.); Order P-883, upheld on judicial review in *Ontario (Minister of Consumer and Commercial Relations) v. Ontario (Information and Privacy Commissioner)* (December 21, 1995), Toronto Doc. 220/95 (Ont. Div. Ct.), leave to appeal refused [1996] O.J. No. 1838 (C.A.)].

Information that would permit the drawing of accurate inferences as to the nature of the actual advice or recommendation given also qualifies for exemption under section 7(1) of the *Act* [Orders 94, P-233, M-847, P-1709].

This approach has been applied in several subsequent orders of this office (Orders P-1147 and P-1299).

The section 7(1) exemption is subject to a list of mandatory exceptions set out in section 7(2). If any of these apply, the information in question cannot be withheld under section 7(1). The only exception which may be relevant in these circumstances is paragraph (a) of section 7(2), which reads:

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

factual material

Representations

In its representations, the City identifies specific passages of the record, some of which it says constitutes “advice”, and some of which it says constitutes “recommendations” under section 7(1) of the *Act*. The City also identifies other passages which it says constitutes “recommended courses of action”. In addition, the City argues that disclosure of the advice or recommendations could reasonably be expected to inhibit the free flow of advice or recommendations within the City.

Findings

The information in this record consists of factual statements given in response to specific questions about the planning of the event. On this basis the information in the record is more properly described as “factual material” and is therefore not exempt under section 7(1) of the *Act*. Even if some of the information in the record does not qualify as factual material, I am not satisfied based on my review of the record and the City’s representations that any of the record contains or would reveal any advice or recommendations. Therefore, the record does not qualify for exemption under section 7(1) of the *Act*.

ORDER:

1. I do not uphold the City’s decision to withhold the record under section 7(1) of the *Act*.
2. I order the City to send a copy of the record to the appellant by **November 30, 2000**.
3. In order to verify compliance with this order, I reserve the right to require the City to provide

me with a copy of the material disclosed to the appellant pursuant to Provision 2.

Original Signed By: _____ October 31, 2000
David Goodis
Senior Adjudicator