



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1463-I

Appeal MA-010096-1

The City of Burlington



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NATURE OF THE APPEAL:

The City of Burlington (the City) received a request from a member of the media pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for "a copy of the contract and/or agreement between the city and the [named] family and/or [named organization] and/or any member of the [named] family or business over the [named] donation to the McNichol project and the subsequent renaming of the park and mansion to [named] Lakeside Park and Mansion. I would also like copies of all correspondence between city staff or councillors and any member of the [named] organization with respect to the McNichol project."

The City provided notice to an organization whose interest may be affected by the request (affected party). The affected party consented to the partial and full disclosure of certain records. The City provided full and partial access to some of the records, citing sections 10, 11 and 14 of the *Act* to deny access to the severed information or those records denied in full.

The requester, now the appellant, appealed the City's decision to deny access.

During mediation, the City reviewed its decision and issued a second decision letter in which they released more records and revised the exemptions claimed for the balance of the records severed and withheld in full. Parts of six records which had been severed under an exemption in the initial decision letter were now identified as non-responsive. An amendment to the second decision was later issued clarifying one of the severances.

The appellant removed the non-responsive material in records 16 and 17 from the scope of the appeal.

I sent a Notice to the City and the affected party seeking representations. Both of these parties provided representations in response. After some discussion with this Office, the City has agreed to share the non-confidential portions of its representations with the appellant.

ISSUE:

The affected party has asked me to withhold all of his representations from the appellant. The purpose of this interim order is to rule on the affected party's confidentiality request.

DISCUSSION:

Sharing of representations procedure

The Notice of Inquiry cover letter to the affected party states:

The representations you provide to this office may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in the attached document entitled *Inquiry Procedure at the Adjudication Stage*. Please refer to this document when preparing your representations.

The Inquiry Procedure document states:

Adjudicator initiates inquiry

The Adjudicator will initiate an inquiry by sending a Notice of Inquiry to the party bearing the initial onus, as determined by the Adjudicator. The Notice of Inquiry sets out the issues in the appeal and seeks representations on these issues.

First party submits representations

The first party then has **three weeks** to submit representations. In its representations, the first party must indicate clearly, and in detail:

1. Which information in the representations, if any, the party wishes the Adjudicator to withhold from the second party; and
2. Its reasons for this request (see confidentiality criteria below).

The document later sets out the criteria for withholding representations, as follows:

The Adjudicator may withhold information contained in a party's representations where:

- (a) disclosure of the information would reveal the substance of record claimed to be exempt or excluded;
- (b) the information would be exempt if contained in a record subject to the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*; or
- (c) the information should not be disclosed to the other party for another reason.

For the purposes of paragraph (c) above, the Adjudicator will apply the following test:

- (i) the party communicated the information to the IPC in confidence that it would not be disclosed to the other party; and
- (ii) confidentiality must be essential to the full and satisfactory maintenance of the relation between the IPC and the party; and
- (iii) the relation must be one which in the opinion of the community ought to be diligently fostered; and

- (iv) the injury to the relation that would result from the disclosure of the information would be greater than the benefit thereby gained for the correct disposal of the litigation.

The affected person's confidentiality request

The affected party did not initially indicate whether its representations could be shared with the appellant or not. Upon being contacted by this office, the affected party stated that it objects to the disclosure of its representations in their entirety. The affected party did not, however, refer to any of the confidentiality criteria mentioned above. Instead, the affected party took the position that it did not want to provide the appellant with any information regarding the information at issue.

Findings

The affected party's representations consist of a brief description of the records and some discussion of the exemptions claimed. All of the information in the representations is of a generalized nature and none of this material appears on its face to fit any of the confidentiality criteria. Further, the affected party has not provided any submissions on why any of its representations might be considered confidential. In the circumstances, I find that the confidentiality criteria do not apply to any of the affected party's representations.

PROCEDURE:

Since I have found that the confidentiality criteria do not apply to any of the affected party's representations, I intend to provide the appellant with a copy of the affected party's representations, together with a Notice of Inquiry, no earlier than **September 10, 2001**.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

August 27, 2001 _____