ORDER MO-1960

Appeal MA-040261-1

Corporation of the City of Brantford

NATURE OF THE APPEAL:

The Corporation of the City of Brantford (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from the requester's solicitor for:

> A consultant report prepared relating to "body rub parlours" in the City of Brantford in 2003. I believe the Report was prepared by the "Butler Consulting Group" and is alluded to in the attached June 30, 2003 letter from [the Assistant City Solicitor]. We hereby request a copy of any and all information in the possession, power and control of the City of Brantford regarding the above.

In its decision, the City interpreted the request as a request only for the specific consultant's report referred to in the June 30, 2004 letter. The City identified that report as a document entitled "Confidential Draft – City of Brantford Adult Entertainment and Body-Rub Parlour Options – Summary", dated November 7, 2002.

The City refused access to that report. The City stated that it was a draft report, which was received *in camera* and was not disclosed to the public. The City relied on the exemptions in section 6(1)(b) (closed meeting) and section 12 (solicitor-client privilege) as the basis for refusing access to this record.

The requester (now the appellant) appealed this decision.

During the mediation stage of this appeal, the Mediator appointed by this office to assist in resolving the issues contacted the City to discuss its decision letter and the record determined to be responsive to the request. She pointed out that the appellant had requested access to *all* information in the City's custody or under its control relating to body rub parlours and adult entertainment establishments, and that in his letter of appeal, counsel for the appellant clarified that he is especially seeking background information relating to the interim control by-law regulating the location of such facilities. The Mediator asked the City to conduct a further search for responsive records.

The City conducted a further search for records responsive to this request and located 121 additional records. It issued a revised decision granting access to some records in full and to parts of other records. Access was denied to the remainder of the information pursuant to sections 6(1)(a) (draft by-laws); 6(1)(b) (closed meetings); 7(1) (advice and recommendations); 10(1)(a) and (c) (third party information); 11(1)(g) (proposed plans, policies and projects); and 12 (solicitor-client privilege) of the *Act*. The City provided to the appellant and to this office an index of the records, describing the contents of each record and listing the exemptions relied on for each record that was withheld.

During mediation, the appellant advised the Mediator that he was satisfied with the degree of disclosure provided to him respecting the background to the interim control by-law. As a result, the appellant decided not to pursue the appeal to obtain access to the undisclosed records or parts of records except the confidential draft report dated November 7, 2002, referred to above, and to a document entitled "Draft - City of Brantford Adult Entertainment and Body-Rub Parlour

Study" dated January, 2003, prepared jointly by The Butler Group Consultants Inc. and Keir Corp.

The City relied on the exemptions in sections 6(1)(b) and 12 of the *Act* in support of its decision to refuse access to the November 7, 2002 record and relied on sections 6(1)(b), 7(1) and 11(g) of the *Act* to deny access to the January 2003 record.

As mediation did not resolve all the issues, this appeal entered the adjudication stage. I initially sent a Notice of Inquiry setting out the facts and issues in this appeal to the City, and invited it to provide representations. I received representations and shared the non-confidential portion of those representations with the appellant's solicitor, together with a Notice of Inquiry and an invitation to provide representations.

The solicitor for the appellant provided representations. In those representations, he stated that the appellant no longer seeks a copy of the "Confidential Draft – City of Brantford Adult Entertainment and Body-Rub Parlour Options" dated November 7, 2002. The City refers to this as the "summary report". I will do so as well.

RECORDS/EXEMPTIONS:

As the appellant no longer seeks access to the summary report, the only record still at issue in this appeal is the "Draft - City of Brantford Adult Entertainment and Body-Rub Parlour Study", dated January, 2003. The appellant refers to this record as the "Butler Report", and I will also adopt this terminology for convenience. The City relies on the exemptions in sections 6(1)(b), 7(1), and 11(g) as the bases for denying disclosure of the Butler Report. The application of section 12 of the Act is no longer in issue in this appeal as this exemption was claimed only for the summary report.

DISCUSSION:

In 2002 and 2003 the City of Brantford was in the process of identifying options to regulate live adult entertainment parlours and body-rub parlours on a temporary basis "until such time as the new *Municipal Act* came into effect". As part of this process, the City commissioned a consultant to prepare a report. The consultant produced the summary report, which set out a number of options for regulating these facilities on a temporary basis. The summary report was called a draft, and according to the City, the report was never finalized. According to the City, the summary report was communicated to the City Council and City staff in an *in camera* session of the Council on November 18, 2002. (This is mistakenly referred to as November 13, 2002 in the third paragraph of the City's representations, but is correctly cited later in the representations).

The Butler Report, dated January 2003, was also marked "draft". It contained, among other information, various options and recommendations for regulating adult entertainment parlours and body rub parlours. According to the City, this report was communicated to City staff, but not to the City Council.

At the time the City made its decision not to disclose the Butler Report, the City was scheduled to undertake its five year Official Plan review in 2005, starting with a public meeting scheduled for April 18, 2005 pursuant to section 26(1) of the *Planning Act*. Section 26(1) requires every municipality with an official plan to hold a special meeting of council open to the public at least once every five years to consider whether the official plan should be revised. The issue of adult entertainment and body rub parlours was to be considered as a land use planning issue at this public meeting. The City stated in its representations on this appeal that "the requested study and the proposed policy and regulation framework will be background documentation when this issue is dealt with as part of the five year review".

CLOSED MEETING

Does the discretionary exemption at section 6(1)(b) apply to the record?

The City claims that the exemption in section 6(1)(b) applies to the Butler Report. Section 6(1)(b) reads:

> 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.

General Principles

For this exemption to apply, the institution must establish that:

1. a council, board, commission or other body, or a committee of one of them, held a meeting

2. a statute authorizes the holding of the meeting in the absence of the public, and

3. disclosure of the record would reveal the actual substance of the deliberations of the meeting

[Orders M-64, M-102, MO-1248]

Under part 3 of the test:

- "deliberations" refer to discussions conducted with a view towards making a decision [Order M-184]

- "substance" generally means more than just the subject of the meeting [Orders M-703, MO-1344]

Section 6(1)(b) is not intended to protect records merely because they refer to matters discussed at a closed meeting. For example, it has been found not to apply to the names of individuals attending meetings, and the dates, times and locations of meetings [Order MO-1344].

Analysis and findings

The City's submissions, together with a copy of the minutes of the meeting satisfy me that the City Council, sitting as a committee of the whole, held a meeting on November 18, 2002 in the absence of the public, and that this was authorized by section 239(2) of the *Municipal Act, 2001*. Therefore, the first two parts of the test for exemption under section 6(1)(b) are met.

The City claims that disclosure of the Butler Report, which is dated January 2003, will reveal the substance of deliberations at the November 18, 2002 meeting. However, this report was prepared more than a year after that meeting and therefore was not tabled or discussed at the meeting. Nor does the report contain any reference to deliberations that occurred at that meeting. Moreover, in its representations, the City states that the Butler Report has never been considered by the Council in any open or *in camera* session.

Therefore, the only way disclosure of the contents of the Butler Report can reveal the substance of the deliberations of the November 18, 2002 meeting would be if the contents of the summary report had been discussed at that meeting and these contents are reproduced in the Butler Report.

The City does not allege in its representations that the contents of the Butler Report reflect the contents of the summary report; however, it is clear from reading the two reports that parts of them are identical, or close to identical.

The City provided no affidavits or statements from individuals who were in attendance at the meeting as to what deliberations took place and how those discussions relate to the contents of the Butler Report. Therefore, the only evidence I have of what deliberations took place at the November 18, 2002 meeting is the minutes of the meeting, the representations of the City, and the reports tabled at the meeting that were attached to the copy of the meeting minutes provided to me by the City.

Although the meeting minutes state that a copy of a report is attached to the original minutes, they do not identify this report. However, the copy of the minutes of the November 18, 2002 meeting provided to this office had attached to it a memorandum marked "Confidential Legal

Opinion" from the City Solicitor and a copy of the summary report. I am satisfied from this that the summary report was discussed at the November 18, 2002 meeting.

Although the memorandum from the City Solicitor states that the consultants who prepared the summary report were to make a presentation to the council, it does not indicate that this was to take place at the November 18, 2002 meeting and there is no indication in the minutes of that meeting, or the City's representations, that this presentation occurred at that meeting.

The fact that the summary report was discussed at the meeting and that parts of that report are reproduced in the Butler Report provides a basis for considering whether disclosure of those portions of the Butler Report would disclose the substance of deliberations at the meeting, despite the fact that the Butler Report itself did not exist at the time of the meeting and does not state what took place at the meeting. Therefore, I will consider what light the minutes of the meeting and the representations of the City shed on this.

The minutes of the meeting state that the purpose of holding the meeting in the absence of the public was "to discuss the receiving of advice that is subject to solicitor-client privilege". This does not assist me in determining whether the information in the summary report that is also in the Butler Report would reveal the substance of the deliberations.

The minutes describe the deliberations at that meeting as follows:

> Committee members were provided with information on the interim process with respect to zoning and licensing of body rub parlours in the City. A copy of the report is attached to the original minutes.

This appears to be a reference to discussion at the meeting of certain portions of the summary report that are reproduced in the Butler Report.

The minutes also say:

> Committee members were in concurrence that staff should carry forward with the initiatives that they are currently investigating to ensure that body rub parlours are restricted in this community.

and,

> Staff were provided with direction of strengthening the licensing and regulation of strip clubs in the municipality and requested to report back to Committee.

The City's representations contain the following information about the deliberations at the November 18, 2002 meeting:

- The meeting was held "to hear the recommendation and advice of the Solicitor of the City of Brantford and outside counsel";

- "It was the purpose of the 'in camera' meeting to determine how the City would handle and proceed with the issue of body-rub parlours reviewing both past and proposed recommendations to set a legal course of action."

The minutes and representations also characterize the subject of the meeting as the committee members receiving information on the interim process with respect to zoning and licensing of body rub parlours and determining how the City would handle and proceed with the issue of body-rub parlours reviewing both past and proposed recommendations. There is no indication that the committee members received information about these matters in relation to strip clubs, an issue dealt with in the two reports.

In the Butler Report, there is information regarding concerns about certain existing businesses and options for regulating those businesses and future ones that had also been in the summary report that was before the committee on November 18, 2002. It is apparent from the memorandum from the City Solicitor that this information was the basis for much of the deliberation at that meeting. This is information that can reasonably be characterized as "information on the interim process with respect to zoning and licensing of body rub parlours" and it is information that would likely have been used by the committee "to determine how the City would handle and proceed with the issue of body rub parlours reviewing both past and proposed recommendations".

It is a reasonable inference from a reading of the Butler Report, the summary report, the meeting minutes and the City's representations, that the initiatives the City was investigating at that time included options set out in the summary report and subsequently reproduced in the Butler Report.

Therefore, although I have not been given direct evidence from those in attendance as to the deliberations at the meeting, it appears to me, on a balance of probabilities, based on the evidence that I do have, that certain information in the Butler Report that was also in the summary report would, if disclosed, reveal the substance of the deliberations at the November 18, 2002 meeting. The parts of the record that fall into this category are page 2 of the table of contents, pages 2 to 4 of the text and the unpaginated land use and zoning maps interspersed with and following these pages, and all the information under the heading 10.0 Options, beginning on page 34 and continuing to page 41. I find this information meets part 3 of the test as well as parts 1 and 2, and therefore is exempt from disclosure under section 6(1)(b) of the *Act*, unless it falls within the exception in section 6(2), as the appellant claims

I find that the remaining information in the Butler Report is not exempt under this subsection as it does not meet part 3 of the test.

Section 6(2): exceptions to the exemption

General principles

Section 6(2) of the *Act* sets out exceptions to section 6(1)(b). The appellant alleges that the exception in section 6(2)(b) applies. Section 6(2)(b) states:

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

The appellant states that the Butler Report falls within this exception because:

> [T]he 'subject matter of the deliberation" has been considered in a meeting open to the public.
>
> In the facts of this case, the resolution(s) of council and the interim control by-laws themselves specifically direct the creation of a "review or study", so therefore, such "deliberations" are clearly within the scope of review by the public. These resolutions and by-laws were passed at public meetings, and the "review or study" commissioned by the City in the form of the Butler Report was not a "private report", for use only by staff, or a council committee. Neither the resolutions of council or the by-laws indicate that the report is/was to be "Draft" or "confidential". Again, it was "required" to be produced by statute, resolution.
>
> Accordingly, production of the Butler Report to the Requester/public only follows naturally. Otherwise the public interest would not be served and there would be no way for the public (or anyone else) to scrutinize the municipality's *bona fides* in terms of fulfilling the requirements of section 38(1) of the *Planning Act*.

In its representations, the City states:

> With reference to sections 6(2) and 6(2)(b), the draft report of January, 2003 was not presented to City Council. As a result, the report was not considered by City Council either in an "open" or an "in-camera" session. The recommendations of the report never proceeded beyond a staff level review. In addition, the Body Rub

> Parlour reports were never discussed in an open meeting nor released to the public.

Analysis and findings

Section 38(1) of the *Planning Act* provides:

> 38(1) Where the council of a local municipality has, by by-law or resolution, directed that a review or study be undertaken in respect of land use planning policies in the municipality or in any defined area or areas thereof, the council of the municipality may pass a by-law (hereinafter referred to as an interim control by-law) to be in effect for a period of time specified in the by-law, which period shall not exceed one year from the date of the passing thereof, prohibiting the use of land, building or structures within the municipality or within the defined area or areas thereof for, or except for, such purposes as are set out in the by-law.

In this case, the City passed an interim control by-law on May 6, 2002 and extended it for one year by a further interim control by-law on April 22, 2003. It appears that the study that later resulted in the Butler Report was undertaken, as the appellant claims, as a component of the study which is a statutory prerequisite to these interim control by-laws. The interim control by-laws prohibited the establishment of body-rub parlours while the study that resulted in the Butler Report was being undertaken.

However, the fact that such a study is required before an interim control by-law is passed does not mean that the subject-matter of the deliberations at the November 18, 2002 meeting where the summary report was discussed was subsequently discussed at a meeting open to the public.

I am not satisfied that the exception in section 6(2)(b) applies to the portions of the record that I have found to be otherwise exempt from disclosure under section 6(1)(b). Therefore, I find that those portions are exempt from disclosure.

ADVICE TO GOVERNMENT

Does the discretionary exemption at section 7 apply to the records?

The City claims that the exemption at section 7(1) applies to the Butler Report dated January 2003. As I have found that portions of that record are exempt under section 6(1)(b), it is only necessary to consider whether the remaining portions are exempt under section 7(1).

General principles

Section 7(1) states:

> 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.

The purpose of section 7 is to ensure that persons employed in the public service are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making. The exemption also seeks to preserve the decision maker or policy maker's ability to take actions and make decisions without unfair pressure [Orders 24, P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.)].

"Advice" and "recommendations" have a similar meaning. In order to qualify as "advice or recommendations", the information in the record must suggest a course of action that will ultimately be accepted or rejected by the person being advised [Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), leave to appeal granted (Court of Appeal Doc. M30913 and M30914, June 30, 2004)].

Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations; or

- the information, if disclosed, would permit one to accurately infer the advice or recommendations given .

[Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)* [cited above].

Examples of the types of information that have been found not to qualify as advice or recommendations include: factual or background information; analytical information; evaluative information; notifications or cautions; views; draft documents; and a supervisor's direction to staff on how to conduct an investigation [Orders P-434, PO-1993, PO-2115, P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.), PO-2028, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [cited above].

Analysis and findings

The Butler Report is clearly a report prepared by a consultant retained by the City, and is therefore potentially subject to the section 7(1) exemption. The parts of the report that I have not found exempt under section 6(1)(b) include the purpose of the report and background; a description of the characteristics and impacts of "adult businesses" and the experience of various jurisdictions in dealing with them; a description of the existing public policy context and regulations, a description of "windshield surveys" and other surveys of these businesses; a description of the regulations in place to deal with these businesses in other municipalities; a discussion of planning matters to consider in the location and regulation of these businesses; the results of a "stakeholder" consultation carried out by the consultants; and a "summary of the Brantford situation"; and the section entitled "Recommendations".

The City's representations appear to be directed to two parts of the report, the portion entitled "Options" and the portion entitled "Recommendations". As I have already found the options to be exempt under section 6(1)(b), it is not necessary to discuss whether they qualify as advice or recommendations. Therefore, I will discuss the information that appears in the report under the heading "Recommendations" and any other information in the report that is not under the headings "Options" or "Recommendations", but constitutes options or recommendations because it suggests a course of action.

The appellant's representations do not deny that the report contains advice and recommendations, but rather address policy reasons why this information should, in the appellant's view, be made available to the public. In particular, the appellant argues that the report was prepared in the course of a public land use planning process and was used to support the use of an interim by-law, which has been described by the courts as an extraordinary measure requiring scrupulous safeguards against abuse, and therefore, government accountability requires that the process be transparent. This is relevant to the issue, discussed below, of whether the City exercised its discretion properly rather than whether the information constitutes advice or recommendations.

Based on my review of the Butler Report and representations, I find that the information I have not found exempt under section 6(1)(b) consists of a combination of facts, analysis and opinions and is not advice or recommendations, except for the following: the last sentence on page 27, everything under the heading "8.0 Planning Considerations" beginning on page 30 and ending on page 33 ; the last sentence of paragraph 3 on page 34, and everything on page 42 I find to be advice or recommendations because it suggests a course of action. This information is exempt from disclosure under section 17(1), unless it falls within an exception under section 17(2).

The appellant has not sought to bring the information within any of the exceptions in section 17(2). I agree with the City that none of these exceptions apply. Accordingly, the information described in the previous paragraph is exempt from disclosure under section 17(1). I shall now consider whether section 11(g) applies to any of the remaining information that has not been found exempt under section 6(1)(b) or 17(1).

ECONOMIC AND OTHER INTERESTS

Does the discretionary exemption at section 11(g) apply to the records?

The City claims that the exemption at section 11(g) applies to the Butler Report. As I have found much of the Butler Report exempt under sections 6(1)(b) and 17(1), I need only consider whether the remaining portions of the record fall within this exemption.

General principles

Section 11(g) states:

> A head may refuse to disclose a record that contains,
>
> (g) information including the proposed plans, policies or projects of an institution if the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;

The purpose of section 11 is to protect certain economic interests of institutions. The report titled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) explains the rationale for including a "valuable government information" exemption in the *Act*:

> In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute . . . Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

For section 11(g) to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

In order for section 11(g) to apply, the institution must show that:

1. the record contains information including proposed plans, policies or projects of an institution; and

2. disclosure of the record could reasonably be expected to result in:

    (i) premature disclosure of a pending policy decision, or

    (ii) undue financial benefit or loss to a person.

    [Order PO-1709, upheld on judicial review in *Ontario (Minister of Health and Long-Term Care) v. Goodis*, [2000] O.J. No. 4944 (Div. Ct.)]

For this section to apply, there must exist a policy decision that the institution has already made [Order P-726].

Analysis and findings

The City alleges that disclosure of the requested document would give the appellant knowledge of the pending policy and regulatory framework that can be used to establish body rub parlours and adult entertainment businesses in locations, or to operate sites that would contravene the pending framework, or to assist others to do this.

However, the City acknowledges that this report "never proceeded beyond a staff level review", that the policy decisions regarding how to address these facilities had not yet been made at the time it made its access decision and its subsequent representations, and that the requested study would be "background documentation when this issue is dealt with".

In my view, the background information, options, and recommendations for consideration of staff in the Butler Report cannot reasonably be described as "proposed plans, policies or projects". Nor is there a policy decision that the institution has already made, as the City acknowledges.

I specifically find that there is no detailed and convincing evidence that disclosure of the particular information that I have not found to be exempt under sections 6(1)(b) or 17(1) could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person. Regardless of whether disclosure of other information in the Butler Report could result in harm, I find that disclosure of the particular information that remains at issue could not reasonably be expected to result in any of the potential harms described by the City.

I find, therefore, that the information remaining at issue is not exempt under section 11(g).

EXERCISE OF DISCRETION

Did the institution exercise its discretion under sections 6, 7, and 11? If so, should this office uphold the exercise of discretion?

The section 6, 7, and 11 exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example:

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

In its representations, the City states:

> The factors considered in exercising [the City's] discretion were the "in-camera" meeting of November 18, 2003, the legal opinions and draft bylaw and draft summary report of November 2002 that was part of the City Solicitor's advice and recommendation to the City Council and City Staff. This meeting and the minutes and documentation were never presented to Council in open session for public awareness or involvement. In addition, the full draft report of January 2003 was never presented to City Council nor the public for participation or open discussion on the issue.
>
> It is not uncommon that the information in an "in-camera" meeting not necessarily move into the public domain. Similarly, draft reports received by the City from a hired consultant may not necessarily go forward to Council or to the public.

It is also clear from other portions of the City's representations that the City took into account the potential for certain harms should the exempt portions of the record be disclosed.

As indicated earlier, throughout his representations, the appellant frequently did not specifically address the criteria for exemption under the sections relied on by the City. Rather, the appellant

argued that the use of an interim control by-law is an extraordinary measure requiring scrupulous safeguards against abuse. Because of the extraordinary nature of this remedy, the *Planning Act* makes a study such as the one resulting in the Butler Report a prerequisite to the use of this power. The appellant argues that the fact that such a report is mandatory, and that the land use planning process is a public one implies that as a matter of public policy the report should be made public. Otherwise, the reasons for the use of an interim control by-law are not transparent and the City is not accountable for its actions.

The appellant submits that "the City's justification for refusing to disclose the report is overly technical, and avoids the reality that the report was commissioned as part of a 'statutory prerequisite'." He notes that the appellant is not seeking internal notes, confidential reports or copies of legal advice. Nor is he involved with litigation against the City. "The [appellant] is merely seeking a copy of what the City is required to obtain in accordance with statute".

These are arguments that apply more to the issue of whether the City exercised its discretion appropriately than to whether the information falls within the exemptions claimed.

While the *Planning Act* does make such a study mandatory, it does not require the City to disclose it. If the study falls within an exemption which the City can claim under the *Act*, the City has discretion to refuse to disclose it. While I appreciate the policy issues raised by the appellant, as long as the City exercises its discretion within the parameters described above, this office may not intervene. I do not find any impropriety in the City's exercise of discretion.

ORDER:

1. I order the City to disclose to the appellant the information that I have found not to be exempt. For greater certainty, I order the City to disclose the information that I have highlighted on a copy of the record provided to the City with this order by sending the appellant a copy by **October 5, 2005**.

2. I uphold the decision of the City not to disclose the information in the record that I have found to be exempt.

3. To verify compliance with this order, I reserve the right to require the City to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1.

September 7, 2005

John Swaigen
Adjudicator