



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1909

Appeal MA-040076-1

The City of Temiskaming Shores



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NATURE OF THE APPEAL:

The City of Temiskaming Shores (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the names of individuals who applied to become members of municipal volunteer boards and/or committees in response to advertisements in two local newspapers in December 2003. The requester asked for the list of applicants to be broken down to indicate which individuals applied for which board or committee.

The City provided the requester with a list of the names of the successful applicants, but denied access to the names of applicants who were not chosen to sit on committees or boards, pursuant to the exemption in section 6(1)(b) of the *Act* (closed meetings). The requester (now the appellant) appealed the City's decision.

During mediation, the City issued a revised decision letter, adding section 14(1) (invasion of privacy) as an additional exemption claim.

The mediator assigned to the appeal contacted the nine unsuccessful applicants (the affected parties) to ascertain whether they would consent to the City disclosing their names to the appellant. Three affected parties provided written consent, and the City then disclosed the names of these affected parties to the appellant, indicating the board or committee to which they had applied.

Further mediation was not successful and the appeal was transferred to the adjudication stage of the appeals process.

Assistant Commissioner Tom Mitchinson began this inquiry by sending a Notice of Inquiry to the City and the six affected parties who did not consent to the disclosure of their names, setting out the facts and issues and seeking written representations. Only the City and one affected party responded with representations. He then sent the Notice to the appellant, along with a copy of the City's representations. The appellant in turn provided representations. In his representations, the appellant identified the possible application of the public interest override in section 16 of the *Act*. This issue had not been raised before, so Assistant Commissioner Mitchinson sent the appellant's representations to the City and received brief reply representations on the public interest issue. With Assistant Commissioner Mitchinson's retirement, I have now taken over adjudication of this matter.

RECORD:

The record is a 3-page summary of applicants to the City's council committees. The portions remaining at issue are the names of six individuals who applied to sit on certain committees but whose applications were not successful.

DISCUSSION:

CLOSED MEETING

Introduction

The City submits that the names of the applicants are exempt from disclosure under the discretionary exemption in section 6(1)(b), which 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.

For this exemption to apply, the City 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]

Representations

The City submits that the appointment of individuals to various council committees was discussed at an *in camera* meeting of City Counsel held on February 2, 2003:

All deliberations on the appointment of various committees, boards and representatives were discussed In Camera in accordance with Section 239 (2) (b) [of the *Ontario Municipal Act, 2001*]: *A meeting or part of a meeting may be closed to the public if the subject matter being considered is personal matters*

about an identifiable individual, including municipal or local board employees.
[Emphasis in original]

With its representations, the City also provided the following documents as described by the City:

1. A certified true copy of the Minutes from the Special Municipal Council Meeting held on February 2, 2004 (Listing resolutions to go into Closed Session).
2. A list of Closed Session Items that were discussed at the Special Municipal Council Meeting on February 2, 2004.

In response, the appellant submits:

I do not believe that section 6(1)(b) applies to the information that I have requested. It is known that council deliberated the appointment of members to the various volunteer committees and boards. Releasing a list of the names of the applicants and the various committees/boards they applied for cannot possibly reveal anything about the actual discussions that took place.

I am well aware that the individuals have submitted forms / resumes that contain personal information. However, I have not requested the complete records of these individuals. It is my opinion that the City is using a broad interpretation of the *Act* to protect the records in question solely because they were discussed at the closed meeting.

Analysis and findings

Based on my review of the minutes of the Special Municipal Council Meeting held on February 2, 2004 and the representations of the City, I am satisfied that a meeting of Council took place on that date and that portions of that meeting were held *in camera*. I am also satisfied that statutory authority exists in section 239(2)(b) of the *Municipal Act, 2001* for the holding of a meeting of this nature in the absence of the public. As described above, section 239(2)(b) permits meetings to be held *in camera* if the subject matter being considered is “personal matters about an identifiable individual, including municipal or local board employees.” The meeting in question was convened, in part, for the purpose of discussing the matter of the individuals’ applications for volunteer positions with the City. In my view, these clearly are “personal matters” and therefore the meeting fits within the scope of section 239(2)(b) of the *Municipal Act, 2001*. Accordingly, the first two parts of the test under section 6(1)(b) have been met.

In order to meet the third part of the test under section 6(1)(b), the City must show that disclosure of the names of the unsuccessful applicants would reveal the actual substance of the deliberations at the meeting. 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].

In Order MO-1344, Assistant Commissioner Mitchinson addressed the application of section 6(1)(b) as follows:

To satisfy the third requirement of the test, the Board must establish that disclosure of the record would reveal the actual substance of the deliberations on this *in camera* meeting. As I found in Order M-98, the third requirement would not be satisfied if the disclosure would merely reveal the **subject** of the deliberations and not their **substance** (see also Order M-703). “Deliberations” in the context of section 6(1)(b) means discussions which have been conducted with a view to making a decision (Orders M-184, M-196 and M-385).

...

It is clear from the wording of the statute and from previous orders that to qualify for exemption under section 6(1)(b) requires more than simply the authority to hold a meeting in the absence of the public. The *Act* specifically requires that the record at issue must reveal the substance of deliberations which took place at the meeting.

City Council met *in camera* on February 2, 2004 to discuss the appointment of individuals to various municipal boards and committees. I find the disclosure of the names of those individuals who applied to serve on the various boards and committees and were ultimately not offered positions would serve to reveal the substance of the Council’s deliberations on those appointments. Given that the only issue to be discussed at the meeting under this agenda item was which individuals out of the lists of applicants for each council or board position were to be appointed, the disclosure of the names of the applicants would fundamentally reveal the substance of the *in camera* discussion. Disclosure of these names would reveal council’s decision that those individuals were not to be offered board positions. Making that decision was the very purpose of the board’s discussions. As a result, I reject the appellant’s position that release of the names could not possibly reveal anything about the actual discussions that took place.

Accordingly, applying the reasoning expressed in Order MO-1344 to the circumstances of this appeal, I find that disclosure of the names of unsuccessful candidates would reveal the actual substance of the deliberations of the meeting and that the City has therefore established the third part of the test under section 6(1)(b). Accordingly, the information at issue is exempt from disclosure under section 6(1)(b).

Since I have upheld the City’s decision to deny access to the names of those applicants who were not chosen for board positions pursuant to section 6(1)(b), it is unnecessary to consider the application of section 14(1). In addition, since the public interest override set out in section 16 does not apply to records that are otherwise exempt from disclosure under section 6, I do not need to consider its application in this appeal.

ORDER:

I uphold the City's decision to deny access to the names of the unsuccessful applicants contained in the record.

Original signed by: _____
Brian Beamish
Assistant Commissioner

_____ March 3, 2005