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

ORDER MO-2089

Appeal MA-040354-1

Kingston & Frontenac Housing Corporation

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NATURE OF THE APPEAL:

Under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), the Kingston and Frontenac Housing Corporation (the Corporation) received a two-part request from a lawyer at a community legal clinic (the legal clinic). The request sought access to the following:

1. All information, in any form whatsoever, including papers, letters, memoranda, telephone messages, investigation notes, post-it notes and computer entries, relating to the Corporation's block of faxes from the legal clinic.

2. All information from the Corporation's Board meeting on Thursday, August 26, 2004 including its closed meeting deliberations, audio recordings, all minutes and draft minutes and any handwritten notes made by Directors, staff and the recording secretary.

The legal clinic asked that all information in electronic form that is disclosed be placed on computer diskette.

By way of background, it is apparent from a copy of the public minutes that the Corporation provided to this office, the Corporation's Board apparently considered an issue regarding its refusal to accept faxes from the legal clinic at the meeting on August 26, 2004. In the materials, the parties refer to this as a "fax block".

In its initial response to the request, the Corporation provided the legal clinic with an initial fee estimate of $200.00. The Corporation requested, and received, a deposit of one-half of the fee ($100.00). The Corporation then prepared its response to the access request.

After identifying records responsive to the request, the Corporation forwarded a decision letter dated October 19, 2004 to the requester. The letter set out that the Corporation had conducted an 11 hour search and copied 80 pages of responsive records. The fee for the search, preparation and photocopying of the responsive records, was $346.00. After deducting the deposit, the Corporation required payment of a balance of $246.00.

The decision letter also addressed the particulars of the request. The Corporation indicated that records of telephone messages, investigation notes and post-it notes relating to the first part of the request did not exist. Furthermore, the letter advised the legal clinic that records of audio recordings, deliberations, handwritten notes and notes made by the Corporation's Directors relating to the meeting held in the absence of the public, also did not exist. The Corporation granted partial access to 80 pages of responsive records it located. Relying on the following exemptions in the *Act*, the Corporation withheld access to any records that related to the meeting held in the absence of the public on August 26, 2004:

- 6(1)(b) (closed meeting)
- 7(1) (advice or recommendations)
- 9(1)(b) (relations with government)
- 10(1)(c) (third party information)

- 11(a) and (c) (economic and other interests)
- 12 (solicitor-client privilege)
- 14(1) (personal privacy)
- 15(a) (information publicly available)

The legal clinic (now the appellant) appealed the amount of the fee and the Corporation's decision denying access to the responsive records relating to the August 26, 2004 closed meeting.

After this appeal was commenced, but before the matter entered the mediation stream, the Corporation sent to this office a letter dated December 6, 2004, which explained why the various exemptions had been claimed. The letter also provided a more detailed explanation of the manner in which the fee was calculated.

Prior to mediation the Corporation had provided this office with copies of the records which it was prepared to disclose. However, the Corporation never provided this office with a copy of any record, or portions thereof, that it sought to withhold. Even after a request from the mediator, nothing was provided.

Mediation did not resolve the issues in the appeal and the matter was referred to the adjudication stage.

Upon being assigned the file, because the Corporation had still not provided a copy of any record, or portion thereof, that it sought to withhold, I issued an Order for Production. I sent the Order for Production to the Corporation along with a Notice of Inquiry. In response, the Corporation provided representations along with a copy of the minutes of the closed meeting held on August 26, 2004. The Corporation identified this record as being the only record responsive to the request that it sought to withhold, in its entirety.

In its representations, the Corporation asked that two appendices to its representations not be shared with the appellant due to its confidentiality concerns.

I then sent the Notice of Inquiry and the Corporation's non-confidential representations to the appellant. The appellant provided representations in response to the Notice. As the appellant's representations raised issues to which I determined the Corporation should be given an opportunity to reply, I sent those representations to the Corporation. The Corporation filed representations by way of reply.

RECORD

The record remaining at issue in this appeal consists of the portion of the minutes of a meeting of the Corporation's Board of Directors, held in the absence of the public on August 26, 2004, that relate to a refusal to accept faxes from the legal clinic. This is found on page 3 of the minutes of the closed meeting.

SCOPE OF THE REQUEST

As demonstrated by its decision letter dated October 19, 2004, and the wide range of exemptions claimed, the Corporation treated the second part of the request as seeking all responsive records, in their entirety, relating in any way to the closed meeting on August 26, 2004. The appellant confirmed in its representations, however, that it is only interested in information contained in the minutes of the closed meeting regarding the Corporation's refusal to accept the appellant's faxes.

The Corporation objected to any narrowing of the scope of the appeal and re-iterated that its decision to deny access was based on its interpretation of the appellant's request.

In my view, it was quite proper for the Corporation to respond in the way they did in light of the appellant's broadly worded initial request. That said, it was also quite proper for the appellant to narrow the scope of the inquiry by reducing the scope of the information sought. Given the fact that the Corporation was given an opportunity to reply to the appellant's representations, I find that there is no basis for the Corporation's objection to the appellant's decision to narrow the scope of the request. Accordingly, I find that the appellant has properly narrowed the scope of the second part of its request to include only information in the minutes of the closed meeting regarding the refusal to accept its faxes.

EXEMPTIONS RELIED UPON TO DENY ACCESS

Section 7

Section 7(1) states:

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

In the section 7(1) exemption "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.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563].

Advice or recommendations may be revealed in two ways

- the information itself consists of advice or recommendations
- 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)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563]

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
- a supervisor's direction to staff on how to conduct an investigation

[Order P-434; Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2004] O.J. No. 224 (Div. Ct.), aff'd [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563; Order PO-2115; Order 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.); Order PO-2028, 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.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564]

The Corporation submits that the discretionary exemption found at section 7(1) of the *Act* applies to the portions of the record responsive to the narrowed scope of the request. I have reviewed the portions of the minutes of the closed meeting relating to the Corporation's refusal to accept the appellant's faxes. In my view it does not contain any "advice or recommendations" within the meaning of section 7(1). I therefore find that the Corporation has failed to establish the application of the section 7(1) exemption.

Sections 9(1)(b), 11(a) and (c) and 12

The Corporation's representations do not address how the discretionary exemptions found at sections 9(1)(b), 11(a) and (c), and 12 of the *Act* might apply to the portions of the record responsive to the narrowed scope of the request, nor is this apparent from the relevant portion of the record itself or any other material before me. I therefore find that the Corporation has failed to establish the application of the discretionary exemptions at sections 9(1)(b), 11(a) and (c), and 12 of the *Act*.

Sections 10(1)(c) and 14(1)

The Corporation's representations also do not address how the mandatory exemptions found at sections 10(1)(c) and 14(1) might apply to the portions of the record responsive to the narrowed scope of the request. Having reviewed the record, I find that relevant portion of the minutes of the closed meeting does not contain the type of information that would engage the application of either of these exemptions.

FEES

General principles

Section 45(1) of the *Act* provides that:

> A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,
>
> (a) the costs of every hour of manual search required to locate a record;
>
> (b) the costs of preparing the record for disclosure;
>
> (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
>
> (d) shipping costs; and
>
> (e) any other costs incurred in responding to a request for access to a record.

More specific provisions regarding fees are found in section 6 of Regulation 823 (as amended by O. Reg 22/96). This provision states:

> The following are the fees that shall be charged for the purposes of subsection 45(1) of the *Act* for access to a record:
>
> 1. For photocopies and computer printouts, 20 cents per page.
>
> 2. For floppy disks, $10 for each disk.
>
> 3. For manually searching a record, $7.50 for each 15 minutes spent by any person.
>
> 4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each 15 minutes spent by any person.

5. For developing a computer program or other method of producing a record from a machine readable record, $15 for each 15 minutes spent by any person.

6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

Where the fee exceeds $25.00, the institution must provide the requester with a fee estimate. Where the fee is $100.00 or more, the institution may require the requester to pay a deposit equal to 50% of the fee estimate before the institution takes any further steps to process the appeal. A fee estimate of $100 or more must be based on either:

- The actual work done by the institution to respond to the request, or
- a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records.

[Order P-81]

This office may review an institution's fee to determine whether it complies with the fee provisions of the *Act* and Regulation 823. In determining whether to uphold a fee, my responsibility under section 45(5) is to ensure that the estimated amount is reasonable. The burden of establishing the reasonableness of the fee rests with the Corporation. To discharge this burden, the Corporation must provide me with detailed information as to how the fee has been calculated in accordance with the provisions of the *Act*, and produce sufficient evidence to support its claim.

As set out above, in its decision letter the Corporation states that 11 hours were spent on the search and preparation of the responsive records for a fee of $330.00. Taken with the cost of copying 80 pages, the total fee equals $346.00.

In the letter dated December 6, 2004, the Corporation explains that it had to conduct a search of a great number of "tenant/applicant files" for information regarding the refusal to accept faxes from the appellant. It explains that the 11 hours of search and preparation time, included 4.25 hours taken by the General Manager, and 6.75 hours taken by her executive assistant.

The letter also included a typewritten memorandum detailing the time that the executive assistant searched for the records, along with corresponding handwritten notations. The memorandum indicates that time was spent on the following actions:

- locating the public board meeting minutes and the minutes of the meeting held in the absence of the public,

- reviewing the notes and noting an omission from the closed meeting minutes,
- reviewing an "old file" and an "issue file" on the legal clinic, and
- reviewing letters and past minutes.

The typed memorandum also indicates that the executive assistant spent an hour photocopying the responsive records she located.

To support the time spent by the general manager there is a handwritten notation on the top right corner of a copy of the decision letter dated October 19, 2004, indicating that 2.25 hours were spent for "search" and 2 hours for "prep".

The appellant set out only one challenge to the fee, arguing that since it never received the December 6, 2004 letter, the Corporation's fee claim should be denied. The Corporation submits in response that its decision letter dated October 19, 2004, clearly outlined the fees and the basis upon which they were determined. The Corporation submits that because the appellant received the earlier decision letter, there are no grounds to challenge the fee.

Analysis and finding

I acknowledge that the Corporation is entitled to charge $7.50 for each 15 minutes (or $30 per hour) of search and/or preparation time (including severances), and, generally this office has accepted that it takes two minutes to sever a page that requires multiple severances [see Orders MO-1169, PO-1721, PO-1834, PO-1990].

I have carefully considered the Corporation's explanation of its fee claim and find it lacking in many respects. The typed memorandum filed in support of the executive assistant's time indicates 1.5 hours for her review of the notes of the closed meeting and "noting an omission". Noting an omission in the notes is outside the scope of what can be charged for under the *Act*'s fee provisions. In addition, an institution is not permitted to charge for time spent reviewing records to decide whether or not an exemption applies [see Order MO-1990]. Absent a more fulsome explanation of the nature of the executive assistant's "review", I will therefore disallow the fee for this 1.5 hours.

Although it is also generally characterised by the Corporation as included in "search" and "preparation" time, there is also no explanation of the nature of the executive assistant's "reviewing" the "old file" and an "issue file" on the legal clinic as well as the "letters and past minutes". The typed memorandum indicates this took 2.5 hours of her time. Based on the materials before me, and absent a more fulsome explanation of the nature of her "reviewing" these items, I am not satisfied that this time falls within the scope of the *Act*'s fee provisions. As a result, I will disallow this 2.5 hours in total.

In addition, while the Corporation is entitled to charge 20 cents per page for photocopying, under the *Act*'s fee provisions, it is not permitted to also charge for the photocopying time. The executive assistant indicates that she spent 1 hour photocopying. The charge for this time is also disallowed in total.

It is also not clear to me what "prep" time was spent by the general manager, when there appear to be no severances to the records the Corporation located. This charge for 2 hours of time is also disallowed.

I will, however, allow the 2.25 hours of search time claimed by the general manager and the 1.75 hours spent by the executive assistant in locating the minutes of the closed and public meetings. I will also allow the Corporation's claim for the cost of photocopying in the sum of $16.00.

In the result, I order the Corporation's fee claim to be reduced to $136.00, including the cost of photocopying. In accordance with the findings made above, the Corporation is therefore entitled to charge a fee, inclusive of photocopying, in the sum of $136.00. After deducting the deposit of $100.00, the sum of $36.00 therefore remains outstanding.

CLOSED MEETING

General Principles

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.

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].

For this exemption to apply, the Corporation 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]

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(2) of the *Act* sets out exceptions to section 6(1)(b). Section 6(2)(b) states:

> Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,
>
> > 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 Representations of the parties

The Corporation indicates that copies of the minutes of public meetings are publicly available and are sent to a number of agencies, including the legal clinic.

The Corporation submits that section 239(2) of the *Municipal Act*, *2001* is the statutory authority for its holding the August 26, 2004 meeting in the absence of the public. The Corporation further submits that a review of the minutes of that closed meeting demonstrate that substantive discussions were conducted with a view to making a decision. The Corporation submits that disclosure of the relevant portion of those minutes would reveal the substance of the deliberations of that meeting relating to a particular issue. The Corporation submits that, except for a further review of a procedural matter relating to adding an item to the public meeting agenda, the subject matter of the deliberations was not considered in a meeting open to the public.

The Corporation explains that the first item of business on the minutes of the public meeting that day was a review of the procedure for adding a matter to the agenda for the public meeting. My review of the public minutes indicates that this arose out of an attempt by an employee of the legal clinic to address the issue of the Corporation's refusal to accept its faxes. The Corporation further submits that its determination at the closed meeting regarding its refusal to accept faxes from the legal clinic can be found in a Board resolution dated September 19, 2004. The day after the closed meeting, a copy of the resolution, in its entirety, was sent to the appellant.

In response to the Corporation's representations, the appellant simply states that it is not in possession of a copy of the public minutes that were distributed. Nor does the appellant acknowledge receipt of a copy of them.

Analysis

The Three Part Test in Section 6(1)(b) of the *Act*

The Corporation's submissions, together with my review of a copy of the minutes of the closed meeting, satisfy me that the Corporation held a meeting on August 26, 2004, 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. I now turn to the third requirement under this section, *i.e.*, whether disclosure of the record would reveal the actual substance of the deliberations of the meeting.

In Order MO-1344, former Assistant Commissioner Tom Mitchinson addressed the application of Part 3 of the test in section 6(1)(b) to the minutes of a closed meeting held by a school board. He began his analysis by commenting generally that:

> 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 of 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).

After quoting extensively from the decision of David Loukidelis, Information and Privacy Commissioner for British Columbia in Order 00-14, which dealt with an access request for the entire minutes of a closed meeting held by a local Police Board, Assistant Commissioner Mitchinson continued his analysis as follows:

> The record at issue in this appeal identifies the date of the special Board meeting, the trustees who attended and those who sent regrets, and the three subjects dealt with at the meeting. The first and third subjects are the standard agenda approval and adjournment items normally associated with meetings of this nature, whether held *in camera* or otherwise. The remaining subject concerns with the recommendation received from the Board's Negotiations Advisory Committee.
>
> Applying the reasoning outlined by Commissioner Loukidelis, I find that disclosure of the top portion of the record containing the date and those attending and not attending the meeting, as well as the headings listing the three subjects discussed at the meeting, would not disclose the substance of the deliberations of the Board at this meeting, and do not qualify for exemption under section 6(1)(b). The other information contained under the first and third subject headings falls outside the scope of the appellant's request.

> The information remaining under the second subject heading is: (1) the mover and seconder of a motion; (2) the content of a motion dealing with the recommendation of the Negotiations Advisory Committee; and (3) the outcome of the motion. The minutes do not reflect any discussions related to the recommendation, nor are the voting records of individual Trustees identified. I find that disclosing the information falling under categories (2) and (3) would not reveal the substance of any deliberations taking place in that context, and this information does not qualify for exemption under section 6(1)(b). I should also note that the content of the recommendation and the outcome of the motion dealing with it have been made public by the Board and are known to both the appellant and others.
>
> Disclosure of the names of the movers and seconders of motions were found by Commissioner Loukidelis to reveal the substance of deliberations of the *in camera* meetings at issue in his appeal. Similarly, I find that the disclosure of the identity of the Trustees who moved and seconded the motion concerning the recommendation of the Negotiations Advisory Committee would reveal the position these individuals took on the recommendation, and this is sufficient to bring their identities within the scope of section 6(1)(b). I recognize that there are instances where movers and seconders vote in opposition to a motion, but this is clearly not the norm. In my view, absent evidence to the contrary, it is reasonable to conclude that the individuals moving and seconding a motion are active supporters of the content of the motion itself, and that disclosure of their identities would disclose the fact that their active support was a part of the deliberations which took place at the meeting.

I agree with and adopt the approach of former Assistant Commissioner Mitchinson.

In my view, disclosing the first full paragraph of the relevant portion of the minutes of the closed meeting, which describes only the subject matter of the meeting, would not disclose the substance of deliberations at that meeting. Similarly, I find that disclosing the content of the motion and the outcome of the motion would also not reveal the substance of the deliberations. I also note that in a letter that the Corporation sent to the appellant a day after the meeting, it disclosed the content of the motion and its outcome. Finally, the last paragraph of the relevant portion of the record reflects a recitation of events that occurred at the public meeting which led to a decision at the public meeting not to add an item to the public meeting agenda. Any discussion in that paragraph was not aimed at reaching a decision, and therefore does not qualify as "deliberations" under the second element of part 3 of the section 6(1)(b) test, set out above. Accordingly, in my view, disclosing this information would not, therefore, reveal the substance of any deliberations at the closed meeting.

As a result, this information does not qualify for exemption under section 6(1)(b).

I find that the following portions of the relevant excerpt from the minutes of the closed meeting do disclose the substance of deliberations at the meeting:

- the second full paragraph, and
- the first indented line, which indicates who moved and seconded a motion.

All of this information therefore falls within the section 6(1)(b) exemption.

Section 6(2): Exceptions to the Exemption

As explained above, section 6(2)(b) operates as an exception to the exemption. If the subject matter of the deliberations has been considered in a meeting open to the public, the head cannot rely on section 6(1)(b) to withhold the record.

The Corporation states that the determination on the refusal to accept the legal clinic's faxes was disclosed in minutes of a public meeting. However, after my review of the minutes of the public meeting held that same day, and a Board resolution dated September 19, 2004, I am not satisfied that *the information* which I have found to fall within the section 6(1)(b) exemption, has been considered in a meeting open to the public. Accordingly, I find that the exceptions in section 6(2) have no application to this appeal.

I now turn to a consideration of section 15(a) of the *Act*.

INFORMATION CURRENTLY AVAILABLE TO THE PUBLIC

If information is publicly available, it may be exempt under section 15(a), which reads:

> A head may refuse to disclose a record if,
>
> > the record or the information contained in the record has been published or is currently available to the public.

The Corporation submits, by way of an alternative argument, that any relevant information in the record should not be disclosed, because it is currently available to the public. As I have already determined that the second full paragraph and the indented paragraph indicating who moved and seconded a motion all fall within the section 6(1)(b) exemption, I will only consider whether the balance of the undisclosed information in the relevant portion of the record should be withheld under section 15(a). This would be the first full paragraph, the content of the motion and its outcome and the last paragraph.

The Corporation submits, and I agree, that the content and outcome of the motion made at the closed meeting on August 26, 2004 was subsequently disclosed in the Corporation's letter to the legal clinic dated August 27, 2004. The Corporation also submits that this information is contained in a resolution made at a public meeting held on September 29, 2004. The Corporation submits that the last paragraph represents a "further review regarding the procedure

of adding to the public meeting". While it requests that this portion be kept confidential, at the same time it submits that this portion is exempt from disclosure under section 15(a) of the *Act*.

For the section 15(a) exemption to apply, the Corporation must establish that the record or the information contained in the record is available to the public generally, through a regularized system of access, such as a public library or a government publications centre [Orders P-327, P-1387 and MO-1881].

To show that a "regularized system of access" exists, the Corporation must demonstrate that

- a system exists
- the record is available to everyone, and
- there is a pricing structure that is applied to all who wish to obtain the information

[Order MO-1881]

Examples of the types of records and circumstances that have been found to qualify as a "regularized system of access" include

- unreported court decisions [Order P-159]
- statutes and regulations [Orders P-170, P-1387]
- property assessment rolls [Order P-1316]
- septic records [Order MO-1411]
- property sale data [Order PO-1655]
- police accident reconstruction records [Order MO-1573]

The exemption may apply despite the fact that the alternative source includes a fee system that is different from the fees structure under the *Act* [Orders P-159, PO-1655, MO-1411 and MO-1573].

Analysis

The Corporation submits that the information contained in the first and last full paragraphs of the relevant portion of the minutes of the closed meeting is contained in the public minutes. I do not agree. While there is some overlap in the information, it does differ. As a result I am not satisfied that the information in the first and last full paragraph is "published or is currently available to the public" so as to fall within section 15(a).

Furthermore, while the content and outcome of the motion made at the closed meeting on August 26, 2004 is contained in the letter dated August 27, 2004, in my opinion, based on the materials before me, it is not reproduced in a public resolution, nor is it found in the copy of the August 26, 2004 minutes of the public meeting that I was provided. I am not satisfied that reproducing the content and outcome of the motion in a letter qualifies as being "published or is currently available to the public" so as to fall within section 15(a). Nor, for that matter, does it qualify as a "regularized system of access".

I therefore conclude that the exemption in section 15(1)(a) does not apply to the first full paragraph, the content and outcome of the motion and the last full paragraph of the relevant portion of the minutes of the closed meeting dated August 26, 2004. I will therefore order this information disclosed to the appellant.

THE EXERCISE OF DISCRETION

Where appropriate, institutions have the discretion under the *Act* to disclose information even if it qualifies for exemption under the *Act*. Because section 6(1)(b) is a discretionary exemption, I must also review the Corporation's exercise of discretion in deciding to deny access to the relevant portions of the minutes of the closed meeting.

On appeal, this office may review the institution's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so.

I may find that the Corporation 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 these cases, I may send the matter back to the Corporation for an exercise of discretion based on proper considerations [Order MO-1573].

The Corporation submits generally that it correctly exercised its discretion on the basis of the wide scope of the appellant's initial request. Its representations recount in a general way the steps it took to consider the application of the section 6(1)(b) exemption. It submits that its exercise of discretion to withhold the information was "lawful and appropriate"

In my view, based on the steps that the Corporation took in this matter, I am satisfied that it considered relevant factors, and did not consider irrelevant ones, and therefore properly exercised its discretion to withhold the information, in the circumstances of this case.

ORDER:

1. I uphold the decision of the Corporation to deny access to the second paragraph and first indented line of the portion of the minutes of the closed meeting relating to the Corporation's refusal to accept faxes from the appellant that are highlighted on a copy of that portion of the minutes provided to the Corporation with this order. The highlighted information is **not** to be disclosed.

2. I order the Corporation to disclose the first full paragraph, the content and outcome of the motion and the last full paragraph, of the portion of the minutes of the closed meeting relating to the Corporation's refusal to accept faxes from the appellant by **October 19, 2006**.

3. I do not uphold the Corporation's fee claim of $346.00.

4. The fee that the Corporation may claim is $136.00. After deducting the deposit of $100.00, the sum of $36.00 remains outstanding.

5. In order to verify compliance with the terms of the order, I reserve the right to require the Corporation to provide me with a copy of the record as disclosed to the appellant.

Original signed by: September 27, 2006
Steven Faughnan
Adjudicator