



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2087

Appeal MA-060001-1

Halton Regional Police Services Board



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NATURE OF THE APPEAL:

The Halton Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

A certified copy of all information relating to and for the “report to the Deputy Chief of Administration” as referred to in the:
Halton Regional Police Service
Public Agenda – Recommendation Report,
To: Chairman and Police Service Board Members
From: Chief [name]
Subject: Secure/Rotational Towing Service in Halton
Report # PO-5-6-CPA-R-05
Date: June 14, 2005

The Police located records responsive to the request and denied access to them on the basis that they were tabled during the in-camera portion of a meeting of the Halton Regional Police Services Board. The Police advised that they were relying on the exemption in section 6(1)(b) (closed meeting) of the *Act* to deny access to these records.

The requester (now the appellant) appealed the decision of the Police.

As mediation was not possible, the file was moved to the adjudication stage of the appeal process. I sent a Notice of Inquiry to the Police, outlining the issues in the appeal and inviting their representations, which the Police provided in response. I then sent the Notice of Inquiry to the appellant, along with a copy of the representations of the Police, with confidential information severed. The appellant provided representations. I then sought and received further submissions from the Police in reply.

RECORDS:

The records at issue consist of 17 pages comprising:

- three formatted copies of a record entitled “Rotational Towing Review” dated June 8, 2005, with the following variations:
 1. the first copy is missing the conclusion section;
 2. the second copy has the heading “Appendix ‘A’;” and,
 3. the third copy has the headings “Appendix ‘A’ and “Confidential;”
- a single copy of a record entitled “Towards a New Towing Philosophy;”
- a single copy of a record entitled “Tow Industry – Services;”
- a single copy of a record entitled “Violations”.

DISCUSSION:

RESPONSIVENESS OF RECORDS

In order for me to ensure that the records listed above contain the requested information; namely, all information relating to and including the “report to the Deputy Chief of Administration”, I wrote to the Police seeking clarification as to which of these records are responsive to the appellant’s request. In response I received the following information from the Police:

1. How are the documents listed above related to each other?

Answer

The documents formed part of the report submitted by the Deputy Chief to the Police Services Board meeting. Initially, the Towing Coordinator authored confidential reports at the Deputy Chief’s request. These reports formed the substance of the confidential report to the Board.

2. Which documents in particular comprise the document or documents requested by the appellant?

Answer

The appellant is looking to seek access to the confidential report submitted to the Police Services Board. This report contains potential financial decisions which could prejudice potential towing contracts. In addition, confidential legal issues and legal positions/opinions are contained in the report.

3. Which document or documents were deliberated at the closed meeting of the Halton Regional Police Services Board of June 23, 2005?

Answer

It is my understanding that all the documents formed part of the deliberations including the confidential board report the requester is seeking access to.

After considering the representations of the Police and upon review of the records listed above, I find that all of the documents are responsive to the appellant’s request (Order P-880). I also find that all of these documents, taken together, were either part of or contain information that was related to the report to the Police’s Deputy Chief of Administration.

Deliberations at a Closed Meeting

The Police rely on section 6(1)(b) to deny access to the records . 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.

For this exemption to apply, the Police 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]

Parts 1 and 2 of the test

Did the Police hold a meeting that was authorized by statute to be held in the absence of the public?

The Police held a meeting on June 23, 2005. A portion of this meeting was held in the absence of the public (the closed meeting). The Police maintain that there exists statutory authority which enabled them to hold this closed meeting.

The Police rely on section 35 of the *Police Services Act* (the *PSA*). This statutory provision gives municipal Police Services Boards the authority to hold meetings. Sections 35(3) and (4) of the *PSA* provide that these meetings can be closed to the public in certain circumstances. These sections read:

35 (3) Meetings and hearings conducted by the board shall be open to the public, subject to subsection (4), and notice of them shall be published in the manner that the board determines.

(4) The board may exclude the public from all or part of a meeting or hearing if it is of the opinion that,

(a) matters involving public security may be disclosed and, having regard to the circumstances, the desirability of avoiding their disclosure in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public; or

(b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public. R.S.O. 1990, c. P.15, s. 35

Section 31(6) of the *PSA* authorizes a Police Services Board to pass a by-law to make rules for the effective management of the police force. The Halton Regional Police Services Board also relies on their own procedural bylaw, Number 97-2, which includes provisions authorizing the holding of their meetings in the absence of the public.

Section 20.2 of By-law 97-2 delineates the subjects which may be discussed in a closed meeting of the Halton Regional Police Services Board. Section 20.2(i) of By-law 97-2 states:

The following subject matters may be discussed in a closed meeting of the Board, unless prohibited by law.

(i) matters involving public security, the revelation of which would endanger the security of Board property, or the operation of the policing services.

The appellant challenges the statutory authority of the Police to deliberate the subject matter of the records in a closed meeting. The appellant submits that the Police Services Board was not authorized by section 20.2(i) of By-law 97-2 to discuss in-camera the issue of the termination of the rotational towing system in Halton Region.

I have considered the representations of the appellant and the Police, along with the relevant statutory provisions. Given that section 6(1)(b) requires a statutory basis for holding a meeting in the absence of the public, I have assessed that issue in relation to section 35(4) of the *PSA*. Based on the confidential submissions of the Police, I am satisfied that the subject matter of the records falls within the enumerated subject area of "matters involving public security". Section 35(4)(a) of the *PSA* authorizes the holding of a meeting in the absence of the public to discuss matters involving public security. Upon review of the records and the Police submissions in their entirety, I am also satisfied that the desirability of avoiding the disclosure of the contents of the records in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.

In conclusion, section 35(4) of the *PSA* provides the Police with the statutory authority to discuss the records at a closed meeting of the Board. Therefore, I find that the Police were authorized by law to hold the closed meeting on June 23, 2005 to deliberate the subject matter of the records.

Did the Police deliberate the subject matter of the records in a closed meeting?

The appellant submits that even if the Police did have the authority to deliberate the subject matter of the records in a closed meeting, the Police did not consider the subject matter of the records in issue in a closed meeting. The appellant states:

While reviewing the Public Minutes of the Halton Regional Police Services Board, June 23, 2005, meeting, Part 8, In-Camera Report, states that “the Chairman reported that during the In-Camera session, the Board discussed personnel and legal matters”. I found no information contained within the minutes that Item 4.5 PO5-6CPA-R-05, and more specifically, the requested report, “the Report to the Deputy Chief of Administration” was discussed in-camera.

The appellant relies on the findings of Former Commissioner Tom Wright in Order M-102:

Since meetings in the absence of the public are such a departure from the norm, in my opinion, there must be clear and tangible evidence that the meeting or parts of it were actually held in-camera. For example, evidence could consist of a notation in the minutes of a meeting that a decision was made that the public be excluded from the meeting while a particular agenda item was discussed.

The appellant submits that in this appeal, clear and tangible evidence that the records were discussed in a closed meeting does not exist.

I note, however, that in Order M-102, former Commissioner Wright found that:

(Although) the agenda for the ... meeting indicates that certain "private" and "personnel" matters were to be discussed,...there is no indication in the minutes themselves that the meeting, or any part of it, was actually held in-camera (emphasis added).

As conceded by the appellant, the minutes of the June 23, 2005 Halton Regional Police Services Board meeting indicate that part of this meeting was actually held in-camera.

Accordingly, I do not agree with the appellant’s submission that the records could not have been discussed at the closed portion of the June 23, 2005 meeting. The minutes for that meeting state that “the Chairman reported that during the closed session, the Board discussed personnel and legal matters”. In my view, the reference in the public minutes to the closed portion as being a discussion of “personnel and legal matters” could be construed to include the discussion of the subject matter of the records in issue at the closed portion of the Board meeting on June 23, 2005.

In conclusion, I am satisfied that a meeting of the Board took place on June 23, 2005, and that a portion of that meeting was held in the absence of the public. I also find that sections 31(6) and 35(4) of the *Police Services Act*, along with By-law 97-2, authorize the holding of that meeting, or part of that meeting, in-camera. Accordingly, parts 1 and 2 of the test under section 6(1)(b) of the *Act* have been met.

Part 3 of the Test

Would disclosure of the records reveal the actual substance of the deliberations of the closed meeting?

I must also consider whether disclosure of the records would reveal the actual substance of the deliberations of the meeting. Previous orders have determined that:

- “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].

Previous orders of this office have established that it is not sufficient that the record itself was the subject of deliberations at the meeting in question [see Order M-98, M-208], where the record does not reveal the actual substance of the deliberations or discussions that took place leading up to the decisions that were made.

The records in issue in this appeal consist of a multi-document report containing a detailed discussion of the arguments in favour of the elimination of the rotational towing system in Halton Region. I find that disclosure of the records would reveal the substance of what was discussed at the closed portion of the Board meeting.

As disclosure of the records in this appeal would reveal the substance of the deliberations at the closed meeting, part 3 of the test under section 6(1)(b) has been met and they are, accordingly, exempt under section 6(1)(b).

Section 6(2)(b): Exception to the Exemption

Section 6(2) of the *Act* sets out certain exceptions to sections 6(1)(b). Section 6(2)(b) reads:

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;

With his letter of appeal (and also accompanying his written submissions in reply to the Notice of Inquiry), the appellant provided a document entitled:

Halton Regional Police Service

Public Agenda - Recommendation Report

To: Chairman and Police Services Board Members

From: [named] chief

Subject: Secure Rotational Towing Service in Halton

Report #: PO-5-6-CPA-R-05 Date: June 14, 2005

The appellant highlighted the portion of this report which states:

In a report (the records in this appeal) to the Deputy Chief of Administration, staff has recently audited the rotational system and reported a significant number of deficiencies, inadequate provision of service incidents and non-compliance to the guidelines. Staff has consequently recommended the termination of the rotational system effective July 1, 2005.

Although, the "Public Agenda - Recommendation Report" discusses the deficiencies in the rotational towing system in Halton Region, which include public safety issues such as "chasing" (tow trucks racing to motor vehicle accident locations to solicit business from motorists, creating traffic hazards and life threatening concerns), I find that it does not reveal the actual substance of the deliberations of the in-camera portion of the Police Services Board meeting held on June 23, 2005 as set out in the records in issue.

The records in issue in this appeal contain much more detailed information about rotational towing. By comparison, the document provided by the appellant, the "Public Agenda - Recommendation Report", simply reviews the rotational towing service in Halton Region in a general way and recommends changes to it.

I agree with the findings of Adjudicator Donald Hale in Order M-241, where he states:

In my view, the Council's adoption of a report, without discussion in a public meeting, cannot be characterized as the consideration of the subject matter of the in-camera deliberations as contemplated by section 6(2)(b) of the *Act*.

I therefore find that the exception in section 6(2)(b) does not apply to the records at issue. Accordingly, the records are exempt from disclosure under section 6(1)(b) of the *Act*.

ORDER:

I uphold the Police's decision to deny access to the records.

Original Signed By: _____

Diane Smith
Adjudicator

September 21, 2006 _____