



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2183

Appeal MA-060199-1

Township of Severn



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NATURE OF THE APPEAL:

A request was submitted to the Township of Severn (the Township) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

Public works report No W06-013
Minutes of the Corporate Services meeting that discussed the report and all related items to the report No W06-013

The Township granted partial access to a responsive record, denying access to the withheld portions pursuant to section 7(1) (advice to government) of the *Act*.

The requester (now the appellant) appealed the Township's decision.

During the course of the mediation stage of the appeal process, the Township confirmed that it is maintaining its reliance on section 7(1) to the withheld information. The parties were unable to resolve this issue during mediation.

I commenced my inquiry by issuing a Notice of Inquiry, setting out the facts and issues in the appeal, and seeking representations from the Township. The Township submitted representations in response and agreed to share the non-confidential portions with the appellant.

I then sought representations from the appellant and included with my Notice of Inquiry a copy of the Township's non-confidential representations. I did not share those portions of the Township's submissions that I found to be confidential. The appellant submitted representations in response.

DISCUSSION:

ADVICE TO GOVERNMENT

General principles

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.

Section 7(2)(a) provides an exception to the 7(1) exemption and reads:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

- (a) factual material;

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.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal applied for S.C.C. 31226; see also *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal applied for S.C.C. 31224].

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 applied for S.C.C. 31226; see also *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal applied for S.C.C. 31224]

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 applied for S.C.C. 31224; 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 applied for S.C.C. 31226]

Representations

The Township states that the information contained in the record provides advice and recommendations for Township Council on how to proceed to resolve a matter involving the appellant. The Township cautions that its representations specifically make reference to the alleged advice that is also set out in the record. Accordingly, this information was not shared with the appellant because to do so would make the appeal moot. The Township further indicates that the record also contains factual material that is distinct from the advice and recommendations contained in the record and that this information was disclosed to the appellant at the time of the original request.

Although the appellant submitted detailed representations I find that they are not helpful in determining whether the section 7(1) exemption applies in the circumstances of this case.

Analysis and findings

Having carefully reviewed the Township's representations and the record at issue I am satisfied that the record contains information that qualifies as advice or recommendations within the meaning of section 7(1). However, based on my review of the file, it is also apparent that the Township has already disclosed this advice or recommendations to the appellant. This is apparent for two reasons. First, the section of the record marked "Recommendation" was not severed from the copy that was disclosed to the appellant in response to his request. Second, the portion of the Township's representations under the heading "What is the specific advice? What is the recommended course of action?", which I agreed to not share with the appellant for the reasons set out above, contains the same information as that in the "Recommendation" section of the record. The Township released this information to the appellant despite the fact that it qualifies for exemption under section 7(1).

The remaining undisclosed portions of the record contain only factual background information that is contextual in nature, along with a restatement of the recommended course of action. I find that the factual background information falls clearly within the exception in section 7(2)(a) and is, therefore, not exempt under section 7(1). With regard to the remaining information (a restatement of the recommended course of action), this information is set out in a portion of the record that has been disclosed to the appellant and, therefore, I find that it would be absurd to withhold it from the appellant.

Accordingly, under the unique circumstances before me, I have no alternative but to order the release of the record at issue in its entirety to the appellant.

ORDER:

I order the Township to release the record at issue to the appellant in its entirety.

Original signed by: _____
Bernard Morrow
Adjudicator

_____ April 17, 2007 _____