



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2169

Appeal MA-060224-1

City of Kawartha Lakes



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NATURE OF THE APPEAL:

The City of Kawartha Lakes (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

A copy of the December 19, 2000 Transition Board resolution to give bonuses to some municipal employees who had been seconded to work for the Board. Three bonuses amounted to \$14,500, the largest being a \$10,000 bonus paid to the Board Secretary.

The City denied access to the responsive records pursuant to the discretionary exemption in section 6(1)(b) (closed meeting) and the mandatory exemption in section 14(1) (invasion of privacy), read in conjunction with the presumption in section 14(3)(f) of the *Act*.

The requester (now the appellant) appealed the City's decision. As mediation was not successful, the file was moved to the adjudication stage of the appeal process. I sought representations from the City and the three municipal employees (the affected persons), initially. I received representations from the City and two of the affected persons. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, along with a complete copy of the City's representations and the non-confidential portions of the two affected persons' representations to the appellant, seeking his representations. I received submissions from the appellant in response.

RECORD:

The record at issue in this appeal consists of the withheld information from a page of the December 19, 2000 minutes of the Transition Board meeting.

DISCUSSION:

CLOSED MEETING

The City relies on 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]

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].

Representations

The City submits that:

The record at issue is a copy of the December 19th Transition Board resolution to give bonuses to some municipal employees who had been seconded to work for the Board. The resolution authorizing the paying of bonuses to the three seconded employees was passed by the Transition Board during the closed portion of its meeting held on December 19, 2000. The closed portion of the meeting was held in the absence of the public under the authority of the *Municipal Act*. A copy of the resolution closing the meeting to the public is enclosed. The disclosure of the requested record would reveal the names of the three seconded employees as well as the amount of bonuses paid to each of them...

I have been advised that the closed minutes from the December 19, 2000 meeting were inadvertently posted on the Transition Board website at some point, however, this was done in error and should not have happened. It is our position that even though the record was once made public by error, it should not be made public again.

The two affected persons who provided representations confirm therein that the resolution to give bonuses to them (which is referred to in the record) was passed in a closed meeting of the Board.

The appellant submits that as the information in the record is already public, as it was at one time released on City's website, the sections of the *Act* that support withholding of this information now make little sense. In particular, he states:

In this case although deliberation did not take place in an open meeting, the record with respect to the subject matter has already been made public and along with it the substance of the subject-matter of the closed session deliberations.

Findings

As conceded by all the parties to this appeal, the resolution of the Transition Board was passed at a meeting held in the absence of the public. Part one of the three part test under section 6(1)(b) has, therefore, been met.

The City relies on the *Municipal Act* as its authority to hold this meeting in the absence of the public. Section 55(5) of the *Municipal Act*, R.S.O. 1990, c. M.45, in force at the time the resolution was passed, stated:

A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

- (a) the security of the property of the municipality or local board;
- (b) personal matters about an identifiable individual, including municipal or local board employees;
- (c) a proposed or pending acquisition of land for municipal or local board purposes;
- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- (f) the receiving of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (g) a matter in respect of which a council, board, committee or other body has authorized a meeting to be closed under another Act.

Section 55(7) of that *Act* stated that:

Before holding a meeting or part of a meeting that is to be closed to the public, a council or local board shall state by resolution,

- (a) the fact of the holding of the closed meeting; and
- (b) the general nature of the matter to be considered at the closed meeting.

I find that the City was authorized, by section 55(5)(b) of the *Municipal Act* as it then read, to hold the Transition Board meeting in the absence of the public because the subject matter of the records concerned personal matters about identifiable municipal employees.

The City has provided me with a copy of the resolution closing the meeting to the public, in accordance with section 55(7) of the *Municipal Act*, as it then read. I find that the City was authorized by statute to hold the meeting in the absence of the public, thereby satisfying part two of the test under section 6(1)(b).

Based on my review of the resolution at issue, I further find that disclosure of the record would reveal the substance of the deliberations at the meeting and the third part of the test has also been met.

In conclusion, I find that all three parts of the test under section 6(1)(b) have been satisfied to exempt the record from disclosure.

Section 6(2)(b) lists an exception to the exemption in section 6(1)(b). It reads:

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;

Upon review of the record and the representations of the parties, I find that the subject matter of the deliberations in question have not been considered in a meeting open to the public. The appellant appears to be relying on this exception because, at one time, the record was posted inadvertently on the City's website. However, I find that the exception in section 6(2)(b) to the section 6(1)(b) exemption does not apply in this case as the inadvertent posting of the record on the City's website, cannot be equated to a deliberation of the resolution at an open meeting of the Transition Board. Therefore, I find that the exception in section 6(2)(b) is inapplicable to the circumstances in this appeal.

INFORMATION AVAILABLE TO THE PUBLIC

The appellant relies on section 15(a) in seeking disclosure of the record, as the record had been at one time been released inadvertently on the internet. This section states:

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;

However, section 15(a) of the *Act* is not an exception to an exemption allowing disclosure of a record. It is an exemption which entitles a head to refuse to disclose a record. Accordingly, I find that section 15(a) is inapplicable in this case.

PUBLIC INTEREST OVERRIDE

Upon review of the appellant's representations, it appears that appellant is raising the possible application of the public interest override at section 16. The appellant states that:

Given the circumstances in which bonuses were provided to a select few without the knowledge of both staff and the general public there is little doubt that such activities of the City of Kawartha Lakes Transition Board should be subjected to public scrutiny. If closed session meetings are used as a vehicle to provide benefit to only a few without public scrutiny, then the legislation fails to meet its intended goals....

[T]he institution has chosen to make once public information unavailable. Can information once made public become personal information thereafter? The answer is clearly no. The requested information has been placed in the public domain and can never again be made personal or solely the substance of closed session deliberations. As such there is no reason to refuse its disclosure.

Section 16 of the *Act* reads:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

Section 16 does not override section 6 of the *Act*. As I found the record to be exempt under section 6(1)(b), the appellant cannot rely on the "public interest override" provision in section 16 to obtain disclosure of the record. As the exemption in section 6(1)(b) applies to the undisclosed information in the record, the City is precluded from disclosing it to the appellant.

ORDER:

I uphold the City's decision.

Original Signed by: _____
Diane Smith
Adjudicator

_____ March 1, 2007