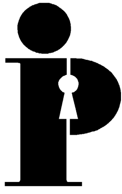

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-2204

Appeal MA06-252

Town of Aylmer

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NATURE OF THE APPEAL:

The Town of Aylmer (the Town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following records:

(1) the entire Report prepared by a [named consultant] for a named community centre's Board of Management in 2004.

(2) the Operational Review discussed by the community centre's Board at its meeting of November 9, 2004 if this document is different from the report requested in (1) above.

(3) copies of all invoices paid in 2004, 2005, and 2006 to date to [the consultant] or the firm he represents.

(4) The minutes of the community centre's Board of Management meetings for 2004, 2005 and 2006 to date.

(5) Copies of all cellular phone bills (including details of all calls made) used by all employees at the community centre's for the year 2006 to date.

(6) Copy of the financial statements or results for the [community centre] for the year 2005.

In its decision letter, the Town advised that the first two items identified in the request were the same Report, that is, the Systems/Operational Review for the community centre dated October 19, 2004. The Town granted access to Item #4. The requester obtained elsewhere the records responsive to Item #6. The Town further advised that some information responsive to Items #1, #2, #3, and #5 had been severed pursuant to the mandatory exemption in section 14(1) (invasion of privacy) of the *Act*.

The requester (now the appellant) appealed the Town's decision and indicated that his appeal related specifically to Items #2 and #5 of his request.

During mediation, the Town provided the appellant with additional records regarding Item #5. Accordingly, the appellant advised the mediator that Item #5 was no longer at issue. Therefore, following mediation, the only record remaining in dispute is the undisclosed portions of the single record responsive to Items #1 and #2 of the request.

Although in its decision letter, the Town only raised the application of section 14(1) of the *Act* to the record, however on the index of records and on the copy of the severed record provided to this office, the following discretionary exemptions were cited: sections 6(1)(b) (closed meeting), 7(1) (advise and recommendations), 10(1)(a) (third party information), 11(e) (positions, plans, procedures, criteria or instructions), and 11(f) (plans relating to the management of personnel) of the *Act*.

Also during mediation, the Town provided the appellant with a further supplementary decision letter disclosing the severances on pages 4, 9 and 20 of the record, to which it had applied section 10(1)(a). Therefore, the application of section 10(1)(a) of the *Act* to the record is no longer at issue.

The appellant advised the mediator that, pursuant to section 11.01 of the Information and Privacy Commissioner's (IPC) Code of Procedure, he is raising as a preliminary issue the Town's late raising of new discretionary exemptions in sections 6(1)(b), 7(1), 11(e) and 11(f) of the *Act*. The Town first raised the application of these discretionary exemptions more than 35 days after the Town was notified of the appeal. The appellant also raised with the mediator the possible application of the exception in section 7(2)(e) (performance or efficiency report) and section 16 (public interest override) of the *Act*.

As it was not possible to resolve the appeal by mediation, the file was transferred to me to conduct the inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal to the Town, seeking its representations, initially. I received representations from the Town. I sent a Notice of Inquiry to the appellant seeking his submissions, along with the non-confidential portions of the Town's representations. I received representations from the appellant in response. I sent a copy of these representations to the Town seeking further representations on the applicability of sections 7(2)(e) and 16 of the *Act* to the record. I then received the reply representations of the Town.

RECORD:

The record is a Systems/Operational Review for the community centre dated October 19, 2004, consisting of 31 pages plus a cover page. The severances claimed by the Town are more particularly described in the following index:

Location of Severances	**Section(s) Applied**
Page 10, paragraphs 1, 2, 4	14(1)
Page 11, paragraph 4	14(1)
Page 11, paragraph 5	7(1), 11(f), 14(1)
Page 12, all paragraphs except 1	7(1), 11(f), 14(1)
Page 13, all paragraph	7(1), 11(f), 14(1)
Page 15 paragraph 2, 1st sentence	7(1), 14(1)
Page 17, paragraph 3	14(1)
Page 18, paragraphs 3, 4	7(1), 11(f), 14(1)
Page 21, paragraphs 4 to 8	7(1), 11(e), 14(1)
Page 22	7(1), 11(e), 14(1)
Page 23, paragraph 3	7(1), 11(e), 11(f), 14(1)
Page 23, paragraph 6, last sentence	14(1)

Page 24, paragraph 2	7(1), 11(f), 14(1)
Page 25, paragraph 4, last 2 sentences	7(1), 11(f), 14(1)
Page 26, last 3 paragraphs	6(1)(b), 7(1), 11(e), 11(f), 14(1)
Pages 27 to 29	6(1)(b), 7(1), 11(e), 11(f), 14(1)
Page 30, paragraph 5, last sentence	7(1), 14(1)
Page 31, paragraphs 3, 4	11(f), 14(1)

DISCUSSION:

LATE RAISING OF DISCRETIONARY EXEMPTIONS

The Town has sought to claim the discretionary exemptions in sections 6(1)(b), 7(1), 11(e) and 11(f) to the record. The Town was sent a Confirmation of Appeal notice from the IPC on August 9, 2006. In this notice, the Town was advised that it had until September 14, 2006, to claim discretionary exemptions in addition to those set out in its decision letter. The Town advised the mediator in October 2006 that it intended to raise these discretionary exemptions. Although the appellant was advised by the mediator of the Town's late raising of these discretionary exemptions, the Town did not provide the appellant with a decision letter raising these exemptions.

Section 11.01 of the IPC's Code of Procedure provides:

> In an appeal from an access decision, excluding an appeal arising from a deemed refusal, an institution may make a new discretionary exemption claim only within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.

The purpose of this office's 35-day policy is to provide institutions with a window of opportunity to raise new discretionary exemptions, but only at a stage in the appeal where the integrity of the process would not be compromised and the interests of the requester would not be prejudiced. The 35-day policy is not inflexible, and the specific circumstances of each appeal must be considered in deciding whether to allow discretionary exemption claims made after the 35-day period (Orders P-658, PO-2113). The 35-day policy was upheld by the Divisional Court in *Ontario (Ministry of Consumer and Commercial Relations) v. Fineberg* (21 December 1995), Toronto Doc. 110/95, leave to appeal refused [1996] O.J. No. 1838 (C.A.).

Representations

The Town submits that:

> …it should be permitted to raise the discretionary exemptions in sections 6(1)(b), 7(1), 11 (e) and 11(f). The Town first learned of the appeal on or about July 21, 2006, when it was advised of the appeal by the Information and Privacy Commissioner (IPC). There was no indication by the IPC in this correspondence that the Town only had 35 days from the date of the appeal to claim additional discretionary exemptions. This is the first IPC appeal dealt with by the Town and as such, they were unfamiliar with this timeline. The new exemptions were first raised to the IPC on or about August 3, 2006 when it sent index records and the severed records to it on August 3, 2006, falling within the 35 day time period set out by section 11.01 of the IPC Code of Procedure. Although the Town did not advise [the appellant] of the new exemptions until sometime after the 35 days had expired, they did so soon thereafter at the mediation. Further, the Town's initial argument is that section 14 applies to justify all of the severed portions of [the record]. The additional exemptions raised through sections 6(1)(b), 7(1), 11(e) and 11(f) are in the alternative, and as such were not listed initially in the decision letter sent to [the appellant] on or about July 5, 2006...
>
> In Order P-658, former adjudicator Anita Fineberg explored the purpose of section 11(1) of the Code of Procedure. In that order she indicated that unless the scope of the exemptions being claimed are known at an early stage in the proceedings, it will not be possible to effectively seek a mediated settlement of the appeal under section 51 of the *Act*. It is the Town's position that it verbally communicated the new exemptions it intended to rely upon to [the appellant] at the mediation and as such, this information played a factor at the mediation of the appeal and was within the knowledge of [the appellant] at that time. As such, it is the Town's position that the late raising of the exemptions did not compromise the mediation procedure or the goals of the parties.
>
> … In the present case, [the appellant] was made aware of the Town's intention to rely on the new exemptions prior to the notice of inquiry being issued and particularly at the mediation of the matter. He was formally advised in writing on or about February 5, 2007, prior to him even being requested to provide his written representations to the IPC for the inquiry. As such, the late raising of the exemptions do not require a re-notification to [the appellant] in order to provide him with an opportunity to submit representations on the applicability of the newly claimed exemptions and therefore will not delay the appeal…
>
> In Order PO-2394 adjudicator Stephanie Haly allowed an institution to raise a late discretionary exemption and noted that the 35 day policy is not inflexible. Additionally, she noted that, "the specific circumstances of each appeal must be

> considered individually in determining whether discretionary exemptions can be raised after the 35-day period." She concluded in that decision that the "integrity of the appeals process has not been compromised and the appellant's interests have not been prejudiced as the appellant has been provided with an opportunity to address the issue of the application of section 14(1)(e). Furthermore, I accept the Ministry's representations that only recently have circumstances come to its attention which warrant the Ministry claiming section 14(1)(e). Accordingly, I will consider the application of section 14(1)(e) to the information at issue." The Town submits that for the case at hand, the appeal process has not been compromised and [the appellant's] interests have not been prejudiced and he will in fact be provided with an opportunity to address the issue of the application of sections 6(1)(b), 7(1), 11(e) and 11(f), without any delay.

The appellant submits that:

> The first I heard of these late exemptions was during the first conference call of meditation. Mediation continued with the mediator requesting the Town to provide me with the index of records with the additional exemptions. This was not done. It took your letter of January 30, 2007 with the request highlighted in bold to finally receive the index.
>
> The Town's contention that "this is the first appeal dealt with by the Town and as such, they were unfamiliar with the time line" is well, simply unbelievable. The IPC Office has been around for many years. I have learned what my requirements were from research and the well-informed website available and this is my first experience with the IPC. As well, it is evident the Town's representations were dealt with by those with legal experience so they had the benefit of legal knowledge and advice.
>
> Considered in its entirety, I ask that you refuse to accept the late raising of these exemptions as I would view it is condoning or validating the pattern of obstruction that takes away from the "integrity of the appeals process."

Analysis/Findings

I agree with the Town's representations that the late raising of the exemptions in this appeal at the mediation stage has not prejudiced the interests of the appellant. The appellant was made aware of the late raising of these discretionary exemptions by the mediator in October 2006. In this case, I find that the integrity of the process would not be compromised by allowing the Town to rely on sections 6(1)(b), 7(1), 11(e) and 11(f). The appellant has been allowed to make representations on these exemptions, both at the mediation stage and in response to the Notice of Inquiry sent to him. As a result, I cannot conclude that this appeal would have proceeded in a different manner had this exemption been raised earlier. The inquiry process is moving along pursuant to the same time lines that it would have if the Town had not raised these new

exemptions. I will, therefore, permit the Town to raise the application of the discretionary exemption in sections 6(1)(b), 7(1), 11(e) and 11(f).

CLOSED MEETING

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 institution 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].

The Town has applied the exemption in section 6(1)(b) to the last three paragraphs of page 26 and to pages 27 to 29, compromising almost the entire discussion under Recommendation 11 of the record.

Recommendation 11 recommends that the Town:

> Create a Manager of Operations position, and hire a person with the ability to fulfill all the responsibilities required of the position and who has the ability to manage all the functions of the Operations Department. Redefine the role of the chief operator.

Representations

The Town submits that:

> The [community centre's] Board of Management held a meeting on November 9, 2004. This is a joint Board of the two municipal councils; the Town of Aylmer and the Town of Malahide. This is a "local Board" as defined in subsection 1(1) of the *Municipal Act, 2001* S.0. 2001, c.25…
>
> An in-camera portion of the meeting was held in the absence of the public. The statute authorizing the holding of the meeting in the absence of the public is the *Municipal Act* and subsections 239(2)(b) and 239(2)(d) thereunder. Resolution #... closed the meeting to the public… Disclosure of the information contained in the last three paragraphs of page 26 and all of pages 27, 28 and 29 would reveal the substance of the deliberations at this meeting on November 9, 2004… These 13 general recommendations [in the record] were released verbatim at the meeting when the meeting came out of its in-camera session. The deliberations referred to involved discussions of the Board with a view towards making a decision and would in fact give away details of that discussion.
>
> The subject matter of the in camera deliberations at the Board meeting of November 9, 2004 have not been considered in a meeting open to the public.

The appellant submits that discussions took place at the open session of the Board of the information in the record that is not directly tied to the published Summary of Recommendations.

In reply, the Town submits that the discussion at the open session of the Board meeting on November 9, 2004, did not concern the same subject matter as that addressed in the severed portions of the record.

Analysis/Findings

Part 1 - a council, Board, commission or other body, or a committee of one of them, held a meeting

The Town and the appellant both agree that a meeting of the Board was held to consider the subject matter of the record. I accept that this meeting did, in fact, take place. Therefore Part 1 of the three part test under section 6(1)(b) has been met.

Part 2 - a statute authorizes the holding of the meeting in the absence of the public

The Town relies on sections 239(2)(b) and (d) of the *Municipal Act* as its authority to hold meetings in the absence of the public. These sections state:

> A meeting or part of a meeting may be closed to the public if the subject matter being considered is,
>
>> (b) personal matters about an identifiable individual, including municipal or local Board employees;
>>
>> (d) labour relations or employee negotiations;

The Town has provided me with a copy of the resolution closing the November 9, 2004 meeting to the public, in accordance with section 239(4)(a) of the *Municipal Act*.

This section states that:

> Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local Board or committee of either of them shall state by resolution,
>
>> the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting;

I have reviewed the record, along with the above-noted representations. I find that the Town was authorized by section 239 of the *Municipal Act* to hold a closed meeting to consider the subject matter of the severed information under Recommendation 11. Therefore, I find that Part 2 of the test has been satisfied.

Part 3 - disclosure of the record would reveal the actual substance of the deliberations of the meeting

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]

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.

Based on my review of the severed information under Recommendation 11, I find that disclosure of its contents would reveal the substance of the deliberations at the closed meeting. Accordingly, I conclude that 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 from disclosure the severed information under Recommendation 11, comprising the last three paragraphs of page 26 and pages 27 to 29 of the record.

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

Section 6(2)(b) sets out 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. Although the minutes of the Board's open meeting refers briefly to some information in the record, the substance of the exempt information has not been considered publicly. I agree with the findings of Adjudicator Donald Hale in Order M-241, where he found that:

> 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*.

Accordingly, I find that the exception in section 6(2)(b) is inapplicable to the circumstances in this appeal.

Therefore, subject to my discussion of the Town's exercise of discretion, below, I find exempt from disclosure the last three paragraphs of page 26 and pages 27 to 29 of the record, compromising all of the severed portions of the discussion under Recommendation 11.

ECONOMIC AND OTHER INTERESTS

The purpose of section 11 is to protect certain economic interests of institutions. The report *titled Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) explains the rationale for including a "valuable government information" exemption in the *Act*:

> In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute . . . Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

The Town provided both confidential and non-confidential representations concerning the applicability of sections 11(e) and (f). The non-confidential portions reiterate the statutory requirements at issue.

The appellant did not address this issue in his representations.

Section 11(e): positions, plans, procedures, criteria or instructions

The Town has applied the exemptions in section 11(e) to:

- page 21, paragraphs 4 to 8, page 22 (part of the discussion under Recommendation 7)
- page 23, paragraph 3, (part of the discussion under Recommendation 8)

There is no need for me to determine if section 11(e) applies to the last three paragraphs of page 26 and pages 27 to 29, as I have made a determination concerning these severances under section 6(1)(b).

Section 11(e) states:

> A head may refuse to disclose a record that contains,
>
> > positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution;

In order for section 11(e) to apply, the institution must show that:

1. the record contains positions, plans, procedures, criteria or instructions

2. the positions, plans, procedures, criteria or instructions are intended to be applied to negotiations

3. the negotiations are being carried on currently, or will be carried on in the future, and

4. the negotiations are being conducted by or on behalf of an institution. [Order PO-2064]

Section 11(e) was intended to apply in the context of financial, commercial, labour, international or similar negotiations, and not in the context of the government developing policy with a view to introducing new legislation [Order PO-2064].

The terms "positions, plans, procedures, criteria or instructions" are referable to pre-determined courses of action or ways of proceeding [Order PO-2034].

Analysis/Findings re section 11(e)

The record is a systems/operational review of a community centre in the Town of Aylmer, which was officially opened on June 11, 2004. The record is dated October 19, 2004 and concerns a review of the community centre conducted between September 23, 2004 and October 15, 2004. The record includes an Executive Summary with 13 recommendations. The Executive Summary and the recommendations were made public.

Recommendation 7 recommends that the Town:

> Review the existing Maintenance Manual (cleaning); assign task frequencies; develop daily, weekly, monthly & quarterly work assignments and frequencies that are completed on each specific day; implement a quality control system that ensures that the work is completed at the prescribed standard.
>
> Consider sealing all untreated concrete.

Upon review of the record and the confidential portion of the Town's representations, I find that the severed portions of the discussion under Recommendation 7 do not contain positions, plans, procedures, criteria or instructions that are intended to be applied to negotiations. The severed information consists of a review of the cleaning of the community centre. Therefore, I find that the severed portions of the discussion under Recommendation 7, at pages 21 and 22 of the record, are not exempt under section 11(e).

<u>Recommendation 8</u> recommends that the Town:

> Develop a detailed Preventative Maintenance Program that defines the maintenance tasks required on all the mechanical, electrical, building and ancillary equipment. The Preventative Maintenance Program should identify the daily, weekly, monthly and quarterly tasks that are to be completed on each specific day.

Based on my review of the record, I find that the severed portion under Recommendation 8 concerns a discussion of the Prevention Maintenance Program. Considering the contents of the record itself and the representations of the Town, I find that this severed information is not intended to be applied to negotiations. This information is a generalized statement concerning maintenance tasks. Therefore, I find that the severed portion of the discussion under Recommendation 8 at page 23 of the record is not exempt under section 11(e).

Section 11(f): plans relating to the management of personnel

The Town has applied the exemption in section 11(f) to:

- page 11, paragraph 5
- page 12, all paragraphs except paragraph 1, page 13, (the entire discussion under Recommendation 1)
- page 18, paragraphs 3 and 4, (part of the discussion under Recommendation 5)
- page 23, paragraph 3, (part of the discussion under Recommendation 8)
- page 24, paragraph 2, (part of the discussion under Recommendation 9)
- page 25, paragraph 4, last 2 sentences, (part of the discussion under Recommendation 10)

Again, it is not necessary for me to determine if section 11(f) applies to last three paragraphs of page 26 and to pages 27 to 29, as I have made a determination concerning these severances pursuant to section 6(1)(b).

Section 11(f) states:

> A head may refuse to disclose a record that contains,
>
>> plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;

In order for section 11(f) to apply, the institution must show that:

1. the record contains a plan or plans, and

2. the plan or plans relate to:

   (i) the management of personnel, or

   (ii) the administration of an institution, and

3. the plan or plans have not yet been put into operation or made public [Order PO-2071]

Previous orders have defined "plan" as "…a formulated and especially detailed method by which a thing is to be done; a design or scheme" [Order P-348].

Analysis/Findings

The Town has sought to exempt from disclosure pursuant to section 11(f), part of the findings at page 11 and certain portions of the discussion following Recommendations 1, 5, 8, 9, 10, 11 and 13.

<u>Findings at page 11</u>

This portion of the record is a general statement concerning the community centre and does not contain "a formulated and especially detailed method by which a thing is to be done; a design or scheme". It is, therefore, not exempt under section 11(f).

<u>Recommendation 1</u> recommends that the Town:

> Re-evaluate work assignments; set quality control standards and initiate a monitoring method that ensures the prescribed standards are met and maintained.

The Town has sought to exempt the entire discussion under Recommendation 1 from disclosure pursuant to section 11(f). Based on my review of the record and the confidential representations of the Town, I find that the discussion which follows Recommendation 1, at pages 12 and 13,

relates to the management of personnel or the administration of an institution that have not yet been put into operation or made public.

Therefore, subject to my discussions of the Town's exercise of discretion and the public interest override provision in section 16 below, I find that the discussion under Recommendation 1 is exempt from disclosure pursuant to section 11(f).

Recommendation 5 recommends that the Town:

> Review the existing Health and Safety Program as it relates to the [community centre]. Post the Town of Aylmer Health and Safety Policy; Establish Health and Safety guidelines specific to the [community centre].
>
> Consider: Establishing an Occupational Health and Safety Committee specific to the [community centre].

This portion of the record is a comparison of the procedures at the community centre with its predecessor and does not contain "a formulated and especially detailed method by which a thing is to be done; a design or scheme". Therefore, I find that it is not exempt under section 11(f).

Recommendation 8 as outlined in my findings concerning section 11(e), does not contain a "plan", namely, a formulated and especially detailed method by which a thing is to be done; a design or scheme. The information at page 23 under this recommendation is, therefore, not exempt.

Recommendation 9 recommends that the Town:

> Implement the necessary purchased service contracts.

The discussion under this recommendation contains a plan relating to the administration of the community centre. However, based on the wording of the severed information and the representations of the Town, I find that these plans would have already been put into operation or made public. Therefore, the severed information under Recommendation 9 is not exempt under section 11(f).

Recommendation 10 recommends that the Town:

> Create an Event Manager that would be responsible for the operation of the building on those occasions when the building is busy with multiple events.

The discussion under this recommendation contains a plan relating to the management of personnel. However, based on the minutes of the open meeting of the Board where the record was discussed, I find that the plan referred to in the severed portion of Recommendation 10 has

been made public. Therefore, the information under Recommendation 10 is not exempt under section 11(f).

ADVICE TO GOVERNMENT

The Town has claimed the exemption in section 7(1) to all of the undisclosed portions of the record, except for the severed portion of the discussion under Recommendation 13 at paragraphs 3 and 4 of page 31.

Section 7(1) states:

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

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 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]

Sections 7(2) creates a list of mandatory exceptions to the section 7(1) exemption. If the information falls into one of these categories, it cannot be withheld under section 7.

The appellant has raised the application of section 7(2)(e), which states:

> Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains:
>
> > a report or study on the performance or efficiency of an institution;

The word "report" appears in several parts of section 7(2). This office has defined "report" as a formal statement or account of the results of the collation and consideration of information. Generally speaking, this would not include mere observations or recordings of fact [Order PO-1709, upheld on judicial review in *Ontario (Minister of Health and Long-Term Care) v. Goodis*, [2000] O.J. No. 4944 (Div. Ct.)].

Representations

The Town submits that:

> [A] consultant [was retained] by the Board of Management of the [community centre] in order to conduct a systems/operational review of the [community centre] by resolution [#] passed on September 29, 2004 at a public meeting, resulting in a written report by him dated October 19, 2004. The report contains various recommendations to the [community centre's] Board of Management in order to increase the functioning of the systems and operational aspects of the [community centre].
>
> To force the Town to disclose this information to a member of the public would compromise the Town's ability to freely and frankly receive advice and recommendations within the deliberative process of its government decision and policy making. It would also compromise the Town's ability to take actions and make decisions without unfair pressure from the public. In fact, it is the Town's position that some level of privacy is in the public's best interest, otherwise full and frank disclosure would not be made in the process of the review by [name], an exercise that was intended to suggest constructive criticism on the operations of the [community centre]. If it was known to the parties participating in this process that all of the information was to be made public, it is the Town's position that all of the severed information would not have been collected and the review would not accurately reflect the 2004 situation of the [community centre]…
>
> The information contains recommendations that clearly suggest courses of action that were meant to ultimately be accepted or rejected by the Town. The advice or recommendations provided by [the consultant] are explicit and suggest express suggestions on what the Town should do.
>
> Factual or background information, analytical information, evaluative information, notifications or cautions, views and/or draft documents were disclosed and were not severed from [the record]. As such, the information that was severed under the exemption of section 7 relates solely to the advice or recommendations provided by [the consultant].
>
> All of the advice and recommendation items made by [the consultant] were communicated to the [community centre's] Board of Management and Town of Aylmer in his written review. If the Town was required to disclose all of the advice and/or recommendations by [the consultant], this could reasonably be expected to inhibit the free flow of advice or recommendations to the government. The Town of Aylmer does not want this information disclosed to the public given that it contains commentary about staff that was used in formulating the specific recommendations and would result in harm to the staff's morale, reputation and

> would inhibit the full and frank disclosure of information that was needed to arrive at the 13 specific recommendations.
>
> The Town of Aylmer's position is that [the consultant's] review is not a report or study on the performance or efficiency of an institution. This is because the review deals with procedures used by the [community centre], how the procedures were used and implemented by staff, and to advise on the staffing level at the facility including whether it was sufficient and whether the appropriate job descriptions had been assigned.

The appellant submits that:

> Section 7(2)(e) is the major factor in arguing for this appeal and applies to this case.
>
> The title of the report is "Systems/Operational Review" and is a report on the performance and efficiency of an institution, specifically the [community centre].
>
> I ask why this exception is specifically mentioned in the *Act*. It must be to allow the public access to information in determining whether government activities and services are performing acceptably and efficiently. Full disclosure keeps government accountable.
>
> In support, previous Orders include:
>
>> Order M-480 - County of Bruce - March 7, 1995
>>
>>> "These corrective recommendations are aimed at assisting the County to operate the seniors homes more efficiently."
>>
>> Order M-700 - Corporation of the Townships of Casmiri, Jennings & Appleby - Feb. 7, 1996
>>
>> Order M-941 - The Corporation of the Town of Oakville - May 22, 1997
>
> I ask your consideration to apply Section 7(2)(e) and release the contents of the report in its entirety.

In reply the Town submits that:

> … a "report" is a formal statement or account of the results of the collation and consideration of information. Generally speaking this would not include mere observations of recordings of fact (Order PO-1709 and MO-1870-I). Portions of the severed record upon which the Town is relying upon the section 7 exemption deal with observations and recordings of fact.

> Additionally, the Town of Aylmer notes that portions of the severed record for which the section 7 exemption have been relied upon deal with information particular to individual employees. In Order M-700, relied upon by the appellant, it is noted that the appellant in that decision indicated that he was not interested in receiving access to the names of any employees that appeared in the report. [The appellant] has not made this statement. Also, the Town of Aylmer notes that in this order, Adjudicator Fineberg did not require the disclosure of personal information.

Analysis/Findings

I find that the record in this appeal is similar to the record under consideration in Order M-941.

In that order, Inquiry Officer Mumtaz Jiwan described the record as:

> …a report of an operational review of the Town's Department of Public Works, prepared by consultants retained by the Town for this purpose. The report, dated October 1990, identifies and addresses issues in the following areas: operational and strategic planning, communications, department structure and staffing, operating changes in each section, overall management direction and financial implication.

In Order M-941, Inquiry Officer Jiwan found that the exception in section 7(2)(e) applied to the record. In that order, she stated:

> …that the record is a preliminary step in the review exercise. Therefore, in my opinion, it would be quite removed from the deliberative process of decision-making and policy-making which has yet to take place.
>
> In my view, disclosure of such a report prepared by consultants retained by the Town would not inhibit the free flow of advice and recommendations within the Town's deliberative process of decision-making and policy-making.
>
> I find that only certain portions of the record contain advice or recommendations pursuant to section 7(1) of the *Act*. The remaining portions contain factual information, analyses, opinion and survey responses, the disclosure of which would not reveal the advice and recommendations nor would it permit the drawing of accurate inferences about the substance of the recommendations.
>
> I must now consider whether any of the mandatory exceptions contained in section 7(2) of the *Act* apply to those parts of the record that I have found to be exempt under section 7(1).

> Section 7(2)(e) provides that an institution shall not refuse to disclose a record which contains "a report or study on the performance or efficiency of an institution". This section is unusual in the context of the *Act* in that it constitutes a mandatory exception to the application of an exemption for discrete types of documents, namely reports on institutional performance. Even if the report or study contains advice or recommendations for the purpose of section 7(1), the Town must still disclose the entire document if the record falls within this category.
>
> As indicated previously, the record is an operational review of the public works department relating to the efficiency and effectiveness of the department. The record is clearly a report which includes factual information, survey results, analyses and recommendations. In my view, the primary focus of the report is to find ways in which to increase the productivity of the public works department or in other words, to improve its performance or efficiency. I find that the record falls squarely within the exception provided by section 7(2)(e).
>
> In reaching this decision, I am mindful of the differences between the wording of the exception in section 7(2)(e) of the *Act* and the concordant section, section 13(2)(f) of the provincial *Act*.
>
> The latter section prohibits a head from refusing to disclose "a report or study on the performance or efficiency of an institution, whether the report or study is of a general nature or is in respect of a particular program or policy".
>
> Previous orders of the Commissioner have adopted a broad interpretation of this section in order to not restrict access to those reports or studies which focus on one or more discrete program areas within an institution, rather than the institution as a whole. This interpretation is consistent with the general principle of providing requesters with a general right of access to government information and accords with the plain meaning of this exception. If the interpretation of section 7(2)(e) of the *Act* was limited to performance or efficiency reports of an institution as a whole, the exception would be rendered virtually meaningless and result in an anomalous distinction between the scope of access provided under the municipal as opposed to the provincial legislation. This distinction would be nonsensical given that the purposes and principles of both access schemes are the same (Orders P-658 and M-700).

I agree with this approach and adopt it for the purposes of this appeal. In the present appeal, the record is a systems/operational report reviewing the performance or efficiency of a named community centre. Subject to my discussion below of the mandatory exemption in section 14(1), I find that the mandatory exception in section 7(2)(e) applies. Therefore, none of the severed portions of the record are exempt under section 7(1).

EXERCISE OF DISCRETION

The only portions of the record that I have found to be exempt under the discretionary exemptions in sections 6(1)(b), 7(1) and 11(e) and (f) are:

- the discussion under Recommendation 1, at pages 12 and 13, (pursuant to section 11(f)); and,
- the last three paragraphs of page 26 and pages 27 to 29, compromising all of the severed portions of the discussion under Recommendation 11, (pursuant to section 6(1)(b)).

The discretionary exemptions permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner may find that the institution 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 either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
  - information should be available to the public
  - individuals should have a right of access to their own personal information
  - exemptions from the right of access should be limited and specific
  - the privacy of individuals should be protected

- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information

Representations

The Town submits that:

> …disclosure would give away the substance of deliberations during in camera Town council meetings and in camera local Board meetings and it would compromise negotiations carried on by the Town in disclosing its positions, plans and procedures relating to Town; affairs and its own management of personnel and/or the administration of the [community centre].
>
> The Town submits that [the appellant] is an individual that is not requesting disclosure of his own personal information, but rather information pertaining to the [community centre]. The Town is not aware of any sympathetic or compelling reason why [the appellant] has requested the information…
>
> Additionally, the Town submits that disclosure may not increase public confidence in the operation of the institution as the severed information deals with issues that arise when an institution is in the midst of a transition period… The Town submits that the severed information is extremely sensitive to the institution and its staff in general and is not particularly sensitive to [the appellant]…

The appellant did not make representations on this issue.

Analysis/Findings

I find that in denying access to the portions of the record that I have found to be exempt pursuant to the discretionary exemptions in sections 6(1)(b) and 11(f), the Town exercised its discretion in a proper manner, taking into account relevant factors and not taking into account irrelevant factors.

PERSONAL INFORMATION

The Town has claimed that all of the exempt portions of the record contain personal information of identifiable individuals other than the appellant. The term "personal information" is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> > (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
> >
> > (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
> >
> > (c) any identifying number, symbol or other particular assigned to the individual,
> >
> > (d) the address, telephone number, fingerprints or blood type of the individual,
> >
> > (e) the personal opinions or views of the individual except where they relate to another individual,
> >
> > (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
> >
> > (g) the views or opinions of another individual about the individual, and

> (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order P-11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Representations

The Town submits that the information that has been severed discloses the classification, salary range, benefits, employment responsibilities, financial or other details of a contract for personal services and personal information about a deceased individual.

The appellant did not address this issue in his representations.

Analysis/Findings

Upon review of the record and the confidential and non-confidential portions of the Town's representations, I find that only certain small portions of the undisclosed information on pages 27 to 29 contain the personal information of identifiable individuals. In particular, I conclude that these portions of the record contain an examination of identifiable individuals' job performances, which has been found to be "personal information". In Order P-1180, former Inquiry Officer Anita Fineberg stated:

> Information about an employee does not constitute personal information where the information relates to the individual's employment responsibilities or position. Where, however, *the information involves an examination of the employee's performance or an investigation into his or her conduct*, these references are considered to be the individual's personal information. [emphasis added]

In my view, the remainder of the undisclosed portions of the record does not contain "personal information" of identifiable individuals in their personal capacity. This information is general information concerning the operation of the community centre. Although there are names of employees of the Town and the community centre in the record, these individuals are identified solely in their professional, business or official capacity. The information associated with these individuals does not reveal anything of a personal nature about these individuals. I disagree with the position taken by the Town that the remaining severed information includes comments on individuals' job performances and that identifiable individuals would be identified. In my view, this is simply not the case.

As I have determined that the information at pages 27 to 29 of the record is exempt from disclosure under section 6(1)(b), it is not necessary for me to determine whether disclosure of the personal information at pages 27 to 29 would constitute an unjustified invasion of the personal privacy of identifiable individuals other than the appellant pursuant to section 14(1) of the *Act*.

The Town has only raised the exemption in section 14(1) to the undisclosed information in the record at page 10, paragraphs 1, 2, and 4, page 11, paragraph 4, page 17, paragraph 3, and page 23, paragraph 6, last sentence. I have found that these portions of the record do not contain personal information. Therefore, section 14(1) does not apply to these severances and I will order these portions of the record to be disclosed to the appellant.

PUBLIC INTEREST OVERRIDE

Section 16 states:

> 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 is only potentially applicable to the information under Recommendation 1 at pages 12 and 13 of the record that I have found to be exempt under sections 11(f). Section 16 is not applicable to the information that I have found to be exempt under section 6(1)(b), as section 16 cannot be applied to information found to be exempt under section 6(1). For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the record. Second, this interest must clearly outweigh the purpose of the exemption.

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Order P-984]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Order P-984].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347, P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

A public interest is not automatically established where the requester is a member of the media [Orders M-773, M-1074].

The word "compelling" has been defined in previous orders as "rousing strong interest or attention" [Order P-984].

Any public interest in non-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)].

A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.)]

- the integrity of the criminal justice system has been called into question [Order P-1779]

- public safety issues relating to the operation of nuclear facilities have been raised [Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805]

- disclosure would shed light on the safe operation of petrochemical facilities [Order P-1175] or the province's ability to prepare for a nuclear emergency [Order P-901]

- the records contain information about contributions to municipal election campaigns [*Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773]

A compelling public interest has been found not to exist where, for example:

- another public process or forum has been established to address public interest considerations [Orders P-123/124, P-391 and M-539]

- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations [Orders P-532, P-568]

- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding [Orders M-249, M-317]

- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter [Order P-613]

The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

Representations

The Town submits that:

> …in disclosing the requested information, this would not serve the purpose of informing the citizenry about the activities of their government, or add in any way to the information that the public has to make effective use of means of expressing public opinion or to make political choices. In fact, the information is in the course of informing decisions to be made by the Town of Aylmer, which decisions will eventually be released to the public and thereafter be open to public scrutiny. However these decisions have not been made at this stage. In fact, to disclose the information at this stage would be against the public interest in having the public overly familiar with third parties' personal information and an outside consultant's commentary on individual's job performances, where it is not of a level to raise public concern. Further, it is in the public's best interest to allow the Town to obtain a review of the [community centre] by means of confidential interviews with staff, including full and frank disclosure both within the interviews and in the commentary included in the review, in order to highlight areas where improvements can be made. If this process was completely transparent, full and frank disclosure would likely not be made, and the severed information and helpful recommendations of the consultant would not have been obtained. Further, the Town is concerned that if [the appellant] obtains the severed information, he may take steps to make negative public comments about individual employees of the [community centre].
>
> Additionally, the Town submits that a significant amount of information has already been disclosed to [the appellant] and this is adequate to address any public interest considerations. The Town submits that this reasoning was a factor in finding that a compelling public interest did not exist in orders P-532 and P-568.

> The Town also submits that even if there was a compelling public interest, which it strongly denies, such a public interest does not clearly outweigh the purpose of the established exemption claim in a specific circumstance…

The appellant submits that there is compelling public interest in the performance and operation of the community centre. He provided numerous newspaper articles concerning problems with the administration and management of the community centre. One of these articles spawned a Town-wide petition to the Town's council to take remedial action. He claims that over 900 citizens signed this petition. This apparently was followed by a recent public meeting concerning the Town's, and in particular, the community centre's budget.

In reply, the Town submits that:

> The Town of Aylmer does not deny that the [community centre] has been a prominent issue in the Town and amongst its citizens. However, the Town of Aylmer submits that the disclosure of the severed information does not provide [the appellant] with any further information supporting his concern over the fiscal viability of the [community centre's] complex. In particular, the Town reiterates that the severed portions of the record, if required to be disclosed, would be disclosing information relating to individual employees and would not be in the public interest.
>
> In fact, the Town submits that given the level of coverage this issue has received, as evidenced by the numerous newspaper articles submitted by [the appellant], these employees would likely be exposed to the same level and type of exposure, the result of which would be the public disclosure of personal information relating to them. Given the small town context, this could have a very damaging effect on the individual employees and such damage would far outweigh any public interest benefit to be gained by the disclosure.

Analysis/Findings

The only information in the record that I could apply the public interest override to is the portion of the record concerning the discussion under Recommendation 1 at pages 12 and 13, which I found to be exempt under section 11(f). This severed information does not contain personal information, as I have already found to be exempt under section 6(1)(b), the portion of the record that contains personal information, namely at pages 27 to 29. Therefore, the information at issue under Recommendation 1 does not contain "third parties' personal information and an outside consultant's commentary on individual's job performances" as submitted by the Town in its representations.

Recommendation 1 recommends that the Town:

> Re-evaluate work assignments; set quality control standards and initiate a monitoring method that ensures the prescribed standards are met and maintained.

The portion of the record that I have found to be exempt under section 11(f) concerns the discussion related to plans regarding work assignments. Section 11(f) states:

> A head may refuse to disclose a record that contains,
>
>> plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;

For section 16 to apply, two requirements must be satisfied

1. there must be a compelling public interest in disclosure, and
2. this compelling public interest must clearly outweigh the purpose of the exemption.
   [Order P-1398]

Part 1- Is there a compelling public interest in disclosure?

As noted above, the record is dated October 19, 2004, and concerns a review of the community centre conducted between September 23, 2004 and October 15, 2004. Recommendation 1 concerns plans relating to the management of personnel. Based on my review of the record and the representations of the parties, I find that disclosure would serve to inform the citizenry as to why the specific details of the consultant's report under Recommendation 1 have not been put into operation or made public.

The community centre issue has roused strong public interest or attention. Disclosure of the information at issue would add to the information the citizens of the Town have to make effective use of the means of expressing their public opinion or making political choices [Order P-984]. As the information at issue does not contain personal information of identifiable individuals, disclosure of the information at issue would not prevent the Town from conducting confidential interviews with staff in the future in order to obtain their comments concerning areas where improvement could be made to Town practices and procedures. Therefore, I find that there is a compelling public interest in the disclosure of the severed information under Recommendation 1 of the record.

Part 2 – Does the compelling public interest clearly outweigh the purpose of the exemption?

Although I have found that there is a compelling public interest in the disclosure of the information at issue, this must then be balanced against the purpose of the section 11(f) exemption. Section 16 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information which has been requested. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption.

Generally speaking, section 11 is intended to protect certain interests, economic and otherwise, of the Government of Ontario and other government institutions. In my view, the harm sought to be avoided by section 11(f) is the creation of an unfair advantage for those with whom an institution may do business with by the premature disclosure of plans relating to the management of personnel or the administration of the institution. Such disclosure would lead to an undermining of the institution's ability to accomplish its objectives.

In particular, Assistant Commissioner Brian Beamish stated in Order PO-2536, that the purpose of section 18 of the provincial *Act* (the equivalent of section 11 of the municipal *Act*):

> …is to protect certain economic interests of institutions and avoid creating an unfair advantage for those with whom the institution may do business by the premature disclosure of plans to change policy or commence projects. The report titled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980, vol. 2 (Toronto: Queen's Printer, 1980*) (the Williams Commission Report) explains the rationale for including a "valuable government information" exemption in the *Act*:
>
> > In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute.
> >
> > …
> >
> > There are a number of situations in which the disclosure of a document revealing the intentions of a government institution with respect to certain matters may either substantially undermine the institution's ability to accomplish its objectives or may create a situation in which some members of the public may enjoy an unfair advantage over other members of the public by exploiting their premature knowledge of some planned change in policy or in a government project.
> >
> > …
> >
> > [T]here are other kinds of materials which would, if disclosed, prejudice the ability of a governmental institution to effectively discharge its responsibilities. For example, it is clearly in the public interest that the government should be able to effectively negotiate with respect to contractual or other matters with individuals, corporations or other government. Disclosure of bargaining strategy in the form of instructions given to the public officials who are conducting the negotiations could significantly weaken the government's ability to bargain effectively.

The information at issue in the record reviews the work assignments and the quality control standards in place at the community centre. Based on my review of this information, along with the Town's representations, I find that although this information technically qualifies as exempt under section 11(f), disclosure would not create an unfair advantage as described above, nor would it substantially undermine the Town's ability to accomplish the stated objectives discussed under Recommendation 1 in the record.

In my view, the public interest in having an informed public discussion concerning the information at issue is more important than the Town's desire to keep confidential the consultant's discussion in the record of recommended improvements to the quality control standards of the community centre. Therefore, I find that the compelling public interest in disclosure of the information at issue does clearly outweigh the purpose of the section 11(f) exemption and section 16 does apply to it.

Conclusion

In conclusion, the only information in the record that I have found to be exempt from disclosure is the discussion under Recommendation 11 at the last three paragraphs of page 26 and at pages 27 to 29.

ORDER:

1. I order the Town to disclose to the appellant by **July 23, 2007** all of the information in the record, except for the discussion under Recommendation 11 at the last three paragraphs of page 26 and at pages 27 to 29.

2. In order to verify compliance with this order I reserve the right to require the Town to provide me with a copy of the record disclosed to the appellant pursuant to Provision 1, upon my request.

Original signed by: June 22, 2007
Diane Smith
Adjudicator