



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

ORDER MO-2368

Appeal MA07-205

Municipality of Clarington



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NATURE OF THE APPEAL:

This appeal concerns a request, submitted to the Municipality of Clarington (the Municipality) for a copy of “the C.A.O.’s [Chief Administrative Officer] report on the Municipal Solicitor” (the Report), made pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

The Municipality denied access to the Report in its entirety, claiming the application of the discretionary exemption in section 6(1)(b) (closed meeting) of the *Act*. In its decision letter, the Municipality stated that the Report had been considered during a closed session of the General Purpose and Administration Committee (the GPA Committee) in accordance with section 239(2)(b) of the *Municipal Act, 2001* (the *Municipal Act*), which states that a meeting or part of a meeting may be closed to the public if the subject matter being considered is “personal matters about an identifiable individual, including municipal or local board employees.”

The requester (now the appellant) appealed the Ministry’s decision. In his appeal letter, the appellant asserted that the Report was in existence prior to a closed session of the GPA Committee. The appellant stated that access to the Report would not reveal the substance of deliberations of the Committee.

During the mediation stage of the appeal process, the Municipality advised the mediator that it had intended to claim, in addition to section 6(1)(b), the mandatory exemption in section 14(1) (personal privacy) of the *Act*, supported by the presumption in section 14(3)(f) (finances). As a result, the Municipality issued a supplementary decision letter citing the application of section 14(1), supported by section 14(3)(f), to the Report. The Municipality stated that the section 14(3)(f) presumption was applicable because the Report describes financial transactions between an identifiable individual and the Municipality.

Also during mediation, the appellant advised the mediator that he did not believe that section 6(1)(b) or 14(1) were applicable to the Report and that taxpayers have a right to this information, thereby raising the application of the section 16 “public interest override” with regard to the application of section 14(1). Section 16 cannot apply to override section 6(1)(b).

The parties were not able to resolve the appeal through mediation and the file was transferred to the adjudication stage for an inquiry.

I commenced my inquiry by issuing a Notice of Inquiry, which set out the facts and issues in this matter, and seeking representations from the Municipality on all issues and from the lawyer who is the subject of the Report (the affected party) on the application of the section 14(1) personal privacy exemption only. Both the Municipality and the affected party responded. The Municipality provided representations on all issues. With regard to the application of the section 14(1) exemption, the Municipality chose to not submit representations, having concluded that section 14(4)(b) would apply in the circumstances of this case to limit the application of the section 14(3)(f) presumption. The affected party did not provide representations, instead stating in a brief letter that he adopted those provided by the Municipality.

I then sought representations from the appellant and included with my Notice of Inquiry a complete copy of the affected party’s letter and the Municipality’s non-confidential

representations. Portions of the Municipality's representations were severed due to confidentiality concerns. The appellant chose to not submit representations.

RECORDS:

There is one record at issue, the Report, titled "Review of Legal Services", dated April 10, 2007, prepared by the Chief Administrative Officer of the Municipality for a meeting of its GPA Committee on the same date.

DISCUSSION:

The Municipality submits that the names of the applicants are exempt from disclosure under the discretionary exemption in 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 Municipality 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]

Representations

The Municipality submits that on April 10, 2007 its GPA Committee met to discuss Municipality business. A portion of that meeting was open to the public, while a portion of it was “closed”.

The Municipality states that the Report was discussed at the “closed” portion of the meeting. The Municipality submits that the GPA Committee is the standing committee of its Council. It comprises all members of Council. Its general function is to consider and deliberate upon all staff reports to determine what action should be taken as a result of its deliberations, and where action is to be taken, make appropriate recommendations to Council.

The Municipality states that at the public portion of the April 10, 2007 meeting, the GPA Committee “correctly determined that its deliberations respecting the review of legal services including its consideration of the [Report] were personal matters respecting [the affected party].”

The Municipality identifies the affected party as its solicitor, who at the date of the Report “had provided legal services to the Municipality for about 18 years” and, at the time of submitting its representations, was continuing to provide legal services.

The Municipality states that the GPA Committee “correctly decided under section 239(2)(b) of the *Municipal Act*, that the portion of its meeting dealing with these personal matters would be closed to the public.”

Section 239(2)(b) states:

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

personal matters about an identifiable individual, including
municipal or local board employees;

In its representations, the Municipality makes reference to Resolution #GPA-306-07, which included a motion that was passed before the GPA Committee, authorizing the holding of a “closed” meeting and the general nature of the matters to be discussed at the meeting.

At the mediation stage of the appeal process, the Municipality provided an excerpt from the Minutes from the public portion of the GPA Committee meeting that contains the text of Resolution #GPA-306-7, which states:

THAT committee recess for 5 minutes and that the meeting resume in “closed” session to allow for consideration of two confidential legal matters and a personal matter.

Also during the mediation stage, the Municipality provided a copy of the Minutes of the “closed” meeting of the GPA Committee held April 10, 2007, which included a resolution “[that] the Report [...] be received for information.”

The Municipality, therefore, submits that the Minutes of the “closed” meeting confirm that the GPA Committee did, in fact, conduct a portion of its meeting *in camera* to “consider the personal matters about [the affected party].” The Municipality states that “it is apparent on the face of [the Report] that the disclosure of it would reveal the actual substance of the deliberations of the members at the closed portion of the GPA meeting on April 10, 2007.”

As stated above, the appellant chose to not submit representations.

Analysis and findings

Based on my review of the Minutes of the “closed” meeting of the GPA Committee held on April 10, 2007, along with the Report and the representations of the City, I am satisfied that a meeting of the GPA Committee did take place on April 10th and that portions of that meeting were held *in camera*. Accordingly, I find that the first requirement of the test under section 6(1)(b) has been met.

Turning to the second requirement of the test, I am also satisfied that statutory authority exists in section 239(2)(b) of the *Municipal Act* for the holding of a meeting in the absence of the public. As set out above, section 239(2)(b) permits meetings to be held *in camera* if the subject matter being considered is “personal matters about an identifiable individual, including municipal or local board employees.” However, in my view, despite the wording of Resolution #GPA-306-7, which calls for a “closed” meeting to consider a “personal matter”, I find that the subject matter of that portion of the GPA Committee meeting, the review of legal services, is not a “personal matter” but rather a “professional” or “business” matter.

The term “personal matter” is not specifically defined in the *Municipal Act*. However, the term “personal information” is, in my view, an analogous term that is defined in the *Act*, and our office has given considerable thought to the scope of its interpretation.

To qualify as “personal information” under the *Act*, 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]. However, 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].

In Order PO-2225, Assistant Commissioner Tom Mitchinson adopted a two-step approach to interpreting the distinction between personal information and business information. In that case, the requester sought access to the names of those landlords who were not corporations and who

owed money to the Ontario Rental Housing Tribunal (the Tribunal). The issue was whether the names of those individuals qualified as personal information and, if so, whether that information was exempt pursuant to the personal privacy exemption. The Assistant Commissioner, in concluding that the names of non-corporate landlords is “about” those individuals in a business rather than a personal capacity and, as such, not personal information, set out the following two-step approach for conducting this analysis in his decision:

. . . the first question to ask in a case such as this is: “*in what context do the names of the individuals appear*”? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere? In my view, when someone rents premises to a tenant in return for payment of rent, that person is operating in a business arena. The landlord has made a business arrangement for the purpose of realizing income and/or capital appreciation in real estate that he/she owns. Income and expenses incurred by a landlord are accounted for under specific provisions of the *Income Tax Act* and, in my view, the time, effort and resources invested by an individual in this context fall outside the personal sphere and within the scope of profit-motivated business activity.

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The analysis does not end here. I must go on to ask: “*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual*”? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

As far as the information at issue in this appeal is concerned, disclosing it would reveal that the individual:

1. is a landlord;
2. has been required by the Tribunal to pay money to the Tribunal in respect of a fine, fee or costs;
3. has not paid the full amount owing to the Tribunal;
4. may be precluded from proceeding with an application under the *TPA*.

In my view, there is nothing present here that would allow the information to “cross over” into the “personal information” realm. The fact that an individual is a landlord speaks to a business not a personal arrangement. As far as the second point is concerned, the information at issue does not reveal precisely why the

individual owes money to the Tribunal, and the mere fact that the individual may be personally liable for the debt is not, in my view, personal, since the debt arises in a business, non-personal context. The fact that monies owed have not been fully paid is also, in my view, not sufficient to bring what is essentially a business debt into the personal realm, nor is the fact that a landlord may be prohibited by statute from commencing an application under the *TPA*.

Although Assistant Commissioner Mitchinson's approach was focused on the interpretation of the definition of "personal information", I find that it can be applied in the present context, in interpreting the scope of the term "personal matter".

In applying step one of this approach to the circumstances in this case, I observe that the information at issue arises in the context of a long-term business relationship between the affected party and the Municipality that is removed from the personal sphere. The affected party is a provider of professional legal services to the Municipality and it is in the context of that relationship the Report was put before the GPA Committee for discussion. Accordingly, in my view, the subject matter being considered by the GPA Committee was not a personal matter, but rather a business matter.

Turning to step two, I must then ask whether there is something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the affected party even if the information appears in a business context. In my view, there is nothing about the information in the Report that, if disclosed, would reveal something of a personal nature about the affected party. The information in the Report constitutes a comprehensive review of the legal services provided by the affected party to the Municipality, including the scope of his retainer and a breakdown of legal costs for an identified year. The Report also includes a succession planning review for the delivery of future legal services. Those portions of the Report that address succession planning do not even mention the affected party. They provide an impersonal discussion and analysis of various options for the future delivery of legal services to the Municipality. In my view, disclosure of the contents of the Report will not reveal something of a personal nature about the affected party.

In conclusion, based on my analysis, I find that the subject matter of the Municipality's "closed" meeting is not a "personal matter", but rather a "business matter" and, accordingly, in the context of this case, the *Municipal Act* does not authorize the holding of a meeting in the absence of the public. Accordingly, I find that the second requirement of the test under section 6(1)(b) has not been met.

Having found that the second requirement of the test has not been satisfied, I am not required to examine the third requirement. However, for the sake of completeness, I will do so. In order to meet this requirement, the Municipality must show that disclosure of the contents of the Report would reveal the actual substance of the deliberations at the closed meeting. 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].

In Order MO-1344, Assistant Commissioner Mitchinson addressed the application of section 6(1)(b) as follows:

To satisfy the third requirement of the test, the Board must establish that disclosure of the record would reveal the actual substance of the deliberations on this *in camera* meeting. As I found in Order M-98, the third requirement would not be satisfied if the disclosure would merely reveal the **subject** of the deliberations and not their **substance** (see also Order M-703). “Deliberations” in the context of section 6(1)(b) means discussions which have been conducted with a view to making a decision (Orders M-184, M-196 and M-385).

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It is clear from the wording of the statute and from previous orders that to qualify for exemption under section 6(1)(b) requires more than simply the authority to hold a meeting in the absence of the public. The *Act* specifically requires that the record at issue must reveal the substance of deliberations which took place at the meeting.

In my view, based on the evidence before me, disclosure of the Report would merely reveal the subject of the deliberations and not their substance. The Minutes of the closed meeting reflect that the Report was to be “received for information.” However, the Minutes reveal nothing regarding the substance of any deliberations concerning the Report. There is no evidence in the Minutes regarding the nature of any possible discussions with a view to making a decision. Based on the sparse wording of the Minutes of the closed meeting and the other evidence before me, it is conceivable that the Report was simply received for information purposes for review and discussion at some later date. In any event, there is nothing in the Minutes that reveals the substance of any deliberations. Accordingly, I find that the third requirement has not been met.

In conclusion, I find that the contents of the Report are not exempt from disclosure pursuant to section 6(1)(b) and I will order its disclosure.

ORDER:

I order the Municipality to disclose the Report to the appellant in its entirety by **January 6, 2009** but not before **December 30, 2008**.

Bernard Morrow
Adjudicator

November 26, 2008