



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

# **ORDER MO-2493**

**Appeal MA08-331**

**City of Vaughan**



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## **NATURE OF THE APPEAL:**

The City of Vaughan (the City) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

Please consider this a freedom of information request under the [Act]. Please provide a copy of the Mayor's response to my letter submitted to the City Manager and [Audit and Operational Review Committee] regarding her 2007 and 2006 Mayor's office expenses.

The report was not published, as was the City's Manager's report, and the report was erroneously presented into closed session. Given the closed session was erroneously used to prevent the document from being disclosed, I am requesting the documentation provided to the council members, and/or the Ernst and [Young] auditors, in its entirety.

I am requesting the submission, report, and all receipts and explanations provided by the mayor and/or her staff. This document is in one place, and is located in the mayor's office, and/or in the office of her staff. The document is also located with the city auditor, and/or the document is also located with the external auditor.

The City identified a ten-page memorandum as the responsive record and denied access to it, citing the application of the discretionary exemption at 6(1)(b) of the *Act* (closed meeting). The requester, now the appellant, appealed the City's decision to this office.

During mediation, the City advised that it did not notify the Mayor pursuant to section 21(1)(b) of the *Act* as it takes the position is that the personal privacy exemption in section 14(1) of the *Act* does not apply to the record. However, the City advised the mediator that the Mayor was aware that an access request for the memorandum she prepared had been made. In addition, during the inquiry process the City advised me that it had consulted with the Mayor before it submitted its representations.

No issues were resolved at mediation and the appeal was transferred to the adjudication stage of the appeals process, in which an adjudicator conducts an inquiry under the *Act*. I began my inquiry by sending the City a Notice of Inquiry setting out the facts and issues in the appeal, and inviting it to provide representations. I received representations from the City and provided a complete copy of them, along with a Notice of Inquiry, to the appellant.

The appellant did not provide representations in response to the Notice of Inquiry. However, the appellant set out her position in her letter of appeal and argued that the record contains her personal information because the Mayor's memorandum was prepared to respond to her concerns. In addition, during the inquiry process, the appellant sent me an e-mail questioning the City's decision to deny her access to the Mayor's memorandum given that information regarding the Mayor's expenses in 2006 and 2007 is available on the City's website.

I subsequently wrote to the City and invited it to respond to the appellant's position that the information at issue in this appeal is contained in audit reports posted on the City's website. In response, the City provided reply representations.

After all representations were received in the inquiry stage of the appeal process, the appellant sent an e-mail to a staff member of this office asserting that the scope of her request included additional records. I wrote to the appellant advising that the time to add additional issues to this appeal had expired given that the appeal was in the final stage of the inquiry process. The appellant was invited to file a reasonable search appeal with this office, but she did not do so. This matter was again recently raised by the appellant and the position of this office regarding the scope of this appeal was confirmed with the appellant.

## **RECORD AT ISSUE:**

The sole record at issue is a ten-page memorandum, dated May 6, 2008 from the Mayor to the Audit and Operational Review Committee (the Audit Committee) and the City Manager.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

In order to determine whether the personal privacy provisions of the *Act* applies, it is necessary to decide whether it contains "personal information" and, if so, to whom it relates. That term 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 if 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 where 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 11].

Sections 2(2), (2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

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 and 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.)].

As noted above, the City takes the position that the personal privacy exemption in section 14(1) of the *Act* does not apply to the information in the record. The City claims that the record does not contain the "personal information" of the Mayor or any other identifiable individuals.

I have carefully reviewed the record and find, for the most part, it contains information which relates to the Mayor only in her professional, official or business capacity. The Mayor prepared

the record to respond to concerns about her use of public funds to pay for expenses from her office. 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 and MO-2344].

In my view, the business or official capacity-related information in the record does not reveal anything of a personal nature about the Mayor, and it is therefore not personal information, as asserted by the City. However, there are portions on pages 2, 4, 6, 7 and 8 of the record which contain information which relates to the Mayor's medical history. I find that, contrary to the position taken by the City, this information appears to qualify as the Mayor's personal information.

As I have already noted, the appellant also takes the position that the record contains her personal information. She is the individual who brought these concerns to the City's attention and her name appears in the record, along with references to specific expenses. In particular, the appellant argues that the "response from the Mayor addresses my questions, contains my personal information and is in response to my questions." Given that the appellant's name appears with information identifying that she brought questions about the Mayor's expenses to the City's attention, I am satisfied that those portions of the record which identify the appellant constitute her personal information within the meaning of paragraph (h) of the definition of that term.

Though not identified by name, the Mayor's Executive Assistant and another individual are referred to in the record, along with expense and/or reimbursement information. In my view, the information which relates to the Executive Assistant appears only in this individual's professional, official or business capacity. There is nothing about this information that could reveal anything personal about the Executive Assistant, and I am therefore satisfied that the information relating to that individual does not meet the definition of "personal information" in section 2(1).

Other portions of the record refer to a further individual who is not named, but who is referred to in a way that would serve to identify him or her. I find that these references qualify as the "personal information" of this individual as they are associated with information about a financial transaction, in which this individual was involved, as described in paragraph (b) of the definition. This information consists of three references to the individual, found on pages 2, 3 and 7 of the record. Furthermore, this individual is not employed by the City. As a result, I find that this information does not relate to the individual in a professional, official or business capacity, and appears to constitute the individual's personal information.

To summarize, I have found that the bulk of the record does not contain personal information, consistent with the position taken by the City. Small portions appear to constitute the personal information of the Mayor and one other individual. The record also contains the appellant's personal information.

I have observed, above, that small portions of the record appear to consist of personal information. Privacy protection is one of the purposes of the *Act* outlined in section 1(b). In addition, section 21(1)(b) requires notification prior to disclosure of personal information that might be an unjustified invasion of personal privacy. Records whose disclosure is an unjustified invasion of personal privacy are usually exempted under either the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b), unless the public interest override at section 16 of the *Act* applies.

Accordingly, I will not order these small portions of the record disclosed at this time, and will invite the appellant to indicate whether she requires access to them, in which case this office will immediately conduct an inquiry on that issue.

Because the record contains the appellant's personal information, Part II of the *Act* (relating to personal information) comes into play, and if the record qualifies for exemption under section 6(1)(b), section 38(a), which is found in Part II, would apply. This section states:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

I will now consider whether the record qualifies for exemption under section 6(1)(b)/38(a).

### **CLOSED MEETING**

The City claims that the entire record qualifies for exemption under section 6(1)(b), which states:

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]

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].

As noted above, the appellant did not provide representations in response to the Notice of Inquiry. However, in her appeal letter, the appellant states that the Mayor's memorandum was "improperly filed" and should not have been used at a closed meeting. The appellant also states that:

The circumstances are that I (as a resident) filed a series of questions regarding the use of public funds to pay expenses of the Mayor's office. The City Manager forwarded the questions and my letter to the Audit Committee. The Audit Committee then forwarded [it] to City Council. City passes a resolution ordering the City Manager to file a report with Council to address the questions and the Mayor to file a response with the City Manager, that would be incorporated into the City's Manager's response. The Mayor failed to adhere to the resolution by Council and did not file a response with the City Manager.

The appellant advises that instead of submitting her response to the City Manager, the Mayor filed her response with the Audit Committee.

***Part 1 – meeting or council, board, commission or other body, or a committee of one of them***

The City submits that a meeting of the Audit Committee took place on May 6, 2008. In support of its position, the City attached a copy of the Audit Committee's public report/minutes for the May 6, 2008 meeting to its representations.

The appellant does not dispute that a meeting took place and I am satisfied that the City has provided sufficient evidence to demonstrate that on May 6, 2008, a meeting of the Audit Committee took place. Accordingly, I find that part 1 of the test has been met.

***Part 2 – statute authorizes the holding of the meeting in the absence of the public***

The City submits that the meeting was held in camera in accordance with section 239(2)(b) of the *Municipal Act*, which 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;

The City also submits that section 2.4 of the City's By-law to Govern the Proceedings of Council and Committees of Council By-law Number 400-2002 authorized the holding of the meeting in question in the absence of the public. This section contains virtually the same wording as section 239(2) of the *Municipal Act*.

The City states:

The City of Vaughan at a closed session meeting received a confidential memorandum from [the Mayor] dated May 6, 2008. This memorandum was prepared in response to the appellant's letter dated April 14, 2008.

...

It is the City of Vaughan's position that an authorized meeting took place and it has met the requirements for part two of the test.

In support of its position, the City referred me to the Audit Committee's public report/ minutes of the May 6, 2008 meeting, which states:

The Audit and Operational Review Committee resolve into closed session for the purpose of discussing i) personal matters about an identifiable individual, including municipal or local board employees with respect to Item 6, PERSONAL MATTER.

The portion of the public report/minutes which discusses the matter identified as Item 6, PERSONAL MATTER states:

The Audit and Operational Review Committee recommends:

- 1) That the confidential memorandum from [the Mayor], dated May 6, 2008, in response to [the appellant's letter dated April 4, 2008], be received;
- 2) That the confidential written submission of [the appellant] be received;
- 3) That all documentation related to this matter be referred to an external forensic auditor to bring back a comprehensive report before the summer hiatus if possible, and that this be coordinated by the City's Internal Auditor; and

...

[The Mayor] declared an interest with respect to the foregoing matter as it relates to her expenses and following submission of documentation, left the meeting when the matter was considered.

Based upon the evidence provided by the parties, it appears that a closed meeting of the Audit Committee was held to discuss the Mayor's response to the appellant's letter dated April 14, 2008. The subject matter being considered was the Mayor's response to the concerns raised by the appellant about her expense claims.



Given the subject matter of the meeting, I am satisfied that the City was authorized by section 239(2)(b) of the *Municipal Act* to hold a meeting in the absence of the public to discuss the appropriateness of her expenses claims. In the circumstances, I am satisfied that the subject matter of the meeting was about her in a personal sense.

Accordingly, I am satisfied that the Audit Committee's meeting which considered the Mayor's memorandum dealt with a "personal matter" and that the City was authorized under section 239(2)(b) of the *Municipal Act* to close the meeting to the public. As a result, I find that part 2 of the test has been met.

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

Under part 3 of the test

- "substance" generally means more than just the subject of the meeting [Orders M-703, MO-1344 and MO-2337]
- "deliberations" refer to discussions conducted with a view towards making a decision [Orders M-184, MO-2337, MO-2368, and MO-2389]

The City submits that disclosure of the memorandum would reveal the substance of the Audit Committee's in camera portion of its May 6, 2008 meeting. In support of its position, the City states:

The memorandum addresses the specific issues as stated in the Appellant's letter dated April 14, 2008. The purpose of the closed session meeting was to discuss [the Mayor's] responses to the issue that were raised by the [a]ppellant. There is a direct link between the [a]ppellant's letter and [the Mayor's] responses. Therefore, it is reasonable to conclude that [disclosure] of the confidential memorandum from [the Mayor] would reveal the substance of the deliberations that took place at the May 6, 2008 Audit and Operational Review Committee closed session meeting.

I have carefully reviewed the memorandum and am not satisfied that its disclosure would reveal the substance of the Audit Committee's in-camera deliberations. The Mayor's memorandum was prepared to respond to questions regarding her use of public funds. However, I note that the record does not provide recommendations to the Audit Committee or provide evaluative information about the expenses discussed. Instead, the memorandum simply contains the Mayor's explanations regarding a number of expenses submitted by her. In my view, disclosure of the memorandum would not reveal the nature or substance of the actual discussions the Audit Committee had about the information contained in it. For instance, disclosure of the memorandum itself would not reveal which expenses the Audit Committee determined were appropriate and which, if any, the Audit Committee determined required further investigation. In addition, disclosure of the memorandum alone would not explain why the Audit Committee passed a resolution to recommend that an independent third party review the appellant's

complaints and the Mayor's response. Furthermore, the memorandum does not contain any information which would inform or advise the Audit Committee as to whether or not the expenses had been submitted in accordance with the City Council's Budget and Expenditure policy.

Accordingly, I find that part 3 of the test under section 6(1)(b) has not been met. As all three parts of the test must be met for that section to apply, I find that the memorandum does not qualify for exemption under section 6(1)(b), and is therefore not exempt under section 38(a).

As no other exemptions apply to the portions of the record that do not contain the personal information of the Mayor or the other identifiable individual, I will order that it be disclosed to the appellant. This consists of the majority of the record.

With respect to the information which I found constitutes the personal information of the Mayor or the other identifiable individual (the affected parties), the personal privacy provisions of the *Act* may apply to this information. Accordingly, I have highlighted the portions of the record that contains this information in the copy of the records which I have sent to the City with this Order. This information should not be disclosed to the appellant at this time. If the appellant indicates that she continues to seek access to this information, and she advises this office of this fact in writing, within 30 days after the City sends the record to her pursuant to this order, this office will conduct an immediate inquiry to address that issue.

**ORDER:**

1. I order the City to disclose the record to the appellant by February 25, 2010 but not before February 19, 2010. For the sake of clarity, I have highlighted the portions of the record that **should not** be disclosed to the appellant.
2. In order to verify compliance with this Order, I reserve the right to require a copy of the information disclosed by the City pursuant to order provision 1 to be provided to me.

Original signed by: \_\_\_\_\_  
Jennifer James  
Adjudicator

January 21, 2010 \_\_\_\_\_