



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

# **FINAL ORDER MO-2546-F**

**Appeal MA09-155**

**Municipality of Meaford**



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## NATURE OF THE APPEAL:

This is my final order disposing of the sole outstanding issue in Interim Order MO-2536-I.

The Municipality of Meaford (the Municipality) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the amount of money paid to a former senior administrator with the Municipality (the former administrator) upon the severing of his employment with the Municipality.

The Municipality identified the responsive record as a two-page signed copy of the Minutes of Settlement reached between the former administrator and the Municipality. The Municipality denied access to the record based on the exemptions in section 14(1) (invasion of privacy) and 6(1)(b) (closed meeting) of the *Act*.

The appellant appealed the Municipality's decision.

After conducting an inquiry and receiving representations from the Municipality, the appellant and an affected party, I issued Interim Order MO-2536-I. In that order, I found that only portions of the record were responsive to the request (namely, clauses 2, 3, 4, 5 and 6 of the Minutes of Settlement), and I rejected the affected party's argument that the record was excluded from the scope of the *Act* on the basis of section 52(3). With respect to the issues regarding access to the responsive portions of the record, I found that small portions of the responsive record qualified for exemption under section 14(1) of the *Act*, but that the remaining responsive portions of the record did not qualify for exemption under that section. I then found that the record qualified for exemption under section 6(1)(b) of the *Act*, and went on to review the Municipality's exercise of discretion to apply this exemption to the record.

In conducting my review of the Municipality's exercise of discretion, I found that the Municipality did not exercise its discretion in bad faith or for an improper purpose. However, given the circumstances, I found that since the Municipality considered that "the privacy of the individual should be protected" in exercising its discretion not to disclose the record, it had taken into account an irrelevant consideration in denying access to the record. Furthermore, I found that the Municipality failed to take into account a number of relevant factors. I stated:

On my review of the Municipality's representations, I also find that the Municipality failed to take into account a number of relevant factors. These factors include the transparency purpose of the *Act*, the public interest in information relating to the amount paid under a settlement agreement, and the fact that, in the absence of a section 6(1)(b) exemption claim, a significant amount of information about the termination of employment with public bodies is often ordered disclosed (as identified in my discussion of the personal privacy exemption, above). The Municipality does not refer to any of these factors, nor is there any evidence that they were considered by it. Although the Municipality states that it "examined all possible scenarios involving the release of this document," it does not indicate that it considered these factors.

As a result, I found that the Municipality erred in exercising its discretion under section 6(1)(b), as it took into account an irrelevant consideration, and also failed to consider relevant considerations. Therefore, I ordered the Municipality to re-exercise its discretion to apply section 6(1)(b) to the record at issue. The relevant order provision from Interim Order PO-2536-I reads:

I order the Municipality to re-exercise its discretion under section 6(1)(b) of the *Act*, using the discussion above as a guide.

I order the Municipality to provide me with representations on its exercise of discretion no later than **July 27, 2010**.

I will defer my final decision with respect to disclosure of the record pending my review of the Municipality's exercise of discretion as required by Provision 4.

In compliance with these provisions, the Municipality provided representations to me, in which it indicated that it re-exercised its discretion with respect to the factors and considerations identified in Interim Order MO-2536-I, and confirmed its decision to apply the section 6(1)(b) exemption to the record. The Municipality's representations were shared with the appellant, who also provided representations on the issue of the Municipality's exercise of discretion.

## **DISCUSSION:**

### **EXERCISE OF DISCRETION**

As identified in Interim Order MO-2536-I, the section 6(1)(b) exemption is discretionary, and permits 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)].

The Municipality's representations on the re-exercise of its discretion confirm that, in accordance with the order provisions in Interim Order MO-2536-I, it re-exercised its discretion. The Municipality states that, in doing so, it considered a number of factors including the

transparency purpose of the *Act*, the public interest in the requested information, and the fact that, in the absence of a section 6(1)(b) claim, a significant amount of information about the termination of employment with public bodies is often ordered disclosed. The Municipality states that it considered these factors in determining whether or not to disclose the information. It concludes by indicating that, because the information was discussed in a closed session of council, it would re-affirm its decision to apply the exemption in section 6(1)(b) to the record, and that access to the record was denied.

In the appellant's response representations, she takes issue with the Municipality's re-exercise of discretion. She identifies that the main reason why the Municipality chose to re-affirm its decision to deny access is that the information was discussed in a closed session, and refers to other information discussed in other closed sessions which was eventually made public. She therefore questions why this information was treated differently. She also refers to situations where, although certain information discussed in closed session was not made public, other, more general information about the closed session discussions was disclosed, and wonders why that approach was not taken by the Municipality in this appeal.

I have carefully considered the representations provided to me regarding the Municipality's re-exercise of discretion. I am satisfied that the Municipality has reviewed the information at issue and the application of section 6(1)(b) and has, in good faith, considered only relevant factors, including those identified in Interim Order MO-2536-I, in revisiting the exercise of its discretion. I understand the appellant's frustration with the decision by the Municipality to re-affirm its decision. However, although the Municipality could have re-exercised its decision in a different way and decided to disclose some of the information, on my review of the Municipality's representations, I am satisfied that the Municipality considered relevant considerations and did not take into account irrelevant considerations in re-affirming its decision to apply section 6(1)(b).

Accordingly, I find that the Municipality properly exercised its discretion to deny access to the record.

**ORDER:**

I uphold the decision of the Municipality.

Original signed by: \_\_\_\_\_  
Frank DeVries  
Adjudicator

August 18, 2010 \_\_\_\_\_