

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

FINAL ORDER MO-2747-F

Appeal MA10-30

Municipality of Chatham-Kent

June 5, 2012

Summary: This is a final order resulting from Interim Order MO-2665-I. The appellant requested records relating to the 2007 compliance audit conducted into the election finances of a named mayoral candidate and the current Mayor of the Municipality of Chatham-Kent. The municipality withheld certain portions of the records pursuant to sections 14(1) and 6(1)(b). In Interim Order MO-2665-I I made a number of findings regarding the issues in this appeal. I also deferred my decision regarding the application of section 6(1)(b) to one record (Record 30) pending notification of an affected party. This final order addresses the remaining issues, and finds that Record 30 does not contain the personal information of an identifiable individual, nor does it qualify for exemption under section 6(1)(b).

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, 2(1), 2(2.1), 6(1)(b). *Municipal Act, 2001*, S.O. 2001, c. 25, s. 239(2)(b).

Orders and Investigation Reports Considered: MO-2665-I.

OVERVIEW:

[1] This order disposes of the issues still to be resolved from my interim decision in Order MO-2665-I.

[2] The appeal arises out of a request made to the Municipality of Chatham-Kent (the municipality) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for the following information:

[C]opies of all documents, audio recordings of interviews, statements, transcripts, receipts, submissions, and any other material collected by [a named consultant] pertaining to the 2007 compliance audit conducted into the election finances of [a named mayoral candidate and current Mayor].

[3] The municipality issued a decision granting access to a number of records and denying access to other responsive records based on the exemptions in sections 14(1) (personal privacy) and 6(1)(b) (closed meeting). The appellant appealed this decision to this office.

[4] Following the mediation process, I conducted an inquiry into the issues identified in this appeal. As a result, I issued Interim Order MO-2665-I in which I made a number of findings regarding the issues in dispute and a number of the records at issue in this appeal. However, with respect to one of the records at issue (Record 30), I deferred my decision regarding the application of the exemptions to that record pending notification of an affected party. The relevant portion of Order MO-2665-I reads:

Record 30

Record 30 consists of the in-camera minutes of an identified council meeting. The Municipality has claimed the application of section 6(1)(b) for this record, in its entirety.

Section 6 – closed meeting

Section 6(1)(b) of the *Act* 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.

Previous orders have held that, 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]

With respect to part 2 of the test, that *a statute authorizes the holding of the meeting in the absence of the public*, the municipality states that the meeting was held in the absence of the public under the authority of section 239(2)(b) of the *Municipal Act*. Section 239(1) of the *Municipal Act* requires meetings to be open to the public; however, section 239(2) provides certain exceptions to this. Section 239(2)(b) states:

(2) 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;

Although the municipality did not take the position that this record qualifies for exemption under section 14(1) or 38(b) of the *Act* (personal privacy), it has claimed that meeting involved "personal matters" under section 239(2) of the *Municipal Act*. This raises the issue of whether the subject matter of the meeting involves "personal information."

In order for me to determine whether section 6(1)(b) applies in the circumstances of this appeal, I must first determine whether the record contains personal information. Record 30 relates to the retainer agreement with the auditor. In light of the definition of personal information in section 2(1) and 2(2.1) of the *Act* (discussed below), the representations of the municipality and consistent with previous orders of this office¹, it would appear that the information contained in Record 30 is not the personal information of any identifiable individual, and that therefore the subject matter being considered is not "personal matters" as required by section 239(2)(b) of the *Municipal Act*.

However, I note that although the auditor is aware of the request resulting in this appeal, he has not been notified as a possible affected party in the appeal. I have decided, in light of the recent decision of the

¹ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

Divisional Court in *Northstar Aerospace v. Ontario (Information and Privacy Commissioner)*², that I will provide the auditor with the opportunity to make representations on this issue to me, prior to issuing a decision on the application of section 6(1)(b) to Record 30.

As a result, I will not address the possible application of section 6(1)(b) to Record 30 further until this party has had the opportunity to be heard on this issue.

[5] I accordingly sent a Notice of Inquiry to the auditor, inviting him to address the issues raised in this appeal as they relate to Record 30, and particularly the issues of whether the information in Record 30 relating to him is his personal information and, if so, whether disclosure would constitute an unjustified invasion of privacy. I did not receive representations from the auditor in response.

RECORD:

[6] The record at issue is identified by the municipality as "Record 30" and consists of the in-camera minutes of an identified council meeting.

ISSUES:

Issue A: Does Record 30 contain personal information?

Issue B: Does Record 30 qualify for exemption under section 6(1)(b) of the *Act*?

DISCUSSION:

Issue A: Does Record 30 contain personal information?

[7] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record 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,

² *Northstar Aerospace v. Ontario (Information and Privacy Commissioner)*, 2011 ONSC 2956.

- (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;

[8] 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.³

[9] 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.⁴

[10] Sections 2(2.1) and 2(2.2) also relate to the definition of personal information. Section 2(2.1) modifies the definition of the term "personal information" by excluding an individual's name, title, contact information or designation which identifies that individual in a "business, professional or official capacity." Section 2(2.2) further

³ Order 11.

⁴ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

clarifies that contact information about an individual who carries out business, professional or official responsibilities from their dwelling does not qualify as "personal information" for the purposes of the definition in section 2(1).

[11] 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.⁵

Analysis and findings

[12] As indicated above, Record 30 consists of the in-camera minutes of an identified council meeting, consisting of two pages. A large portion of this record consists of information about the process of the meeting, including listing the attendees and reviewing procedural matters concerning the meeting. With respect to the specific information relating to the auditor, this matter is addressed as one of the items, and includes references to other documents, a brief review of the discussion of the council, two specific motions and their results, and some other brief procedural matters.

[13] On my review of the item relating to the auditor, I find that this information is not the personal information of the auditor, as the auditor is involved in this matter in his professional capacity. Specifically, I find that the auditor's name is the type of information directly referred to in section 2(2.1) of the *Act* and, consequently, it is not his personal information as it is his name in his professional capacity. With respect to the other information contained in Record 30 relating to the auditor, I find that this information, including the fact that he conducted the audit, references to correspondence between him and the municipality, brief references to actions he was involved in, and the two motions relating to him, is also not his personal information, as it concerns him in his professional capacity.

[14] I have also considered whether this information reveals something of a personal nature about the auditor even though it relates to him in his professional capacity. I find that this information does not reveal something of a personal nature about the auditor. The correspondence and actions of the auditor referred to in Record 30 relate to his professional actions and correspondence and, in the absence of any additional evidence supporting a contrary finding, I find that this information is not the personal information of the auditor.

[15] Accordingly, I find that Record 30 does not contain the personal information of the auditor or of any other identifiable individual.

⁵ Orders P-1409, R-980015, PO-2225 and MO-2344.

[16] As Record 30 does not contain the personal information of any identifiable individual, there is no need to review the possible application of the mandatory exemption in section 14(1) (invasion of privacy) to this record.

Issue B: Does Record 30 qualify for exemption under section 6(1)(b) of the Act?

[17] As indicated above, the municipality takes the position that Record 30 is exempt under section 6(1)(b). That section 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.

[18] 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]

[19] Each part of this three-part test must be established to determine whether the record qualifies for exemption under this section. Based on the discussion set out above, I will only review the second part of the three-part test.

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

[20] As indicated above, with respect to part 2 of the test, that *a statute authorizes the holding of the meeting in the absence of the public*, the municipality states that the meeting was held in the absence of the public under the authority of section 239(2)(b) of the *Municipal Act, 2001*. Section 239(1) of the *Municipal Act, 2001* requires meetings to be open to the public; however, section 239(2) provides certain exceptions to this. Section 239(2)(b) states:

- (2) 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;

[21] I have found above that Record 30 does not contain the personal information of the auditor or of any other identifiable individual. Based on this finding, I also find that the subject matter being considered at the meeting to which Record 30 relates is not "personal matters" as required by section 239(2)(b) of the *Municipal Act, 2001*.

[22] As a result, I conclude that the municipality was not permitted, under section 239(2)(b), to hold a meeting closed to the public in order to consider the matters discussed in the meeting to which Record 30 relates. Accordingly, Record 30 does not meet the second part of the three-part test for section 6(1)(b) to apply, and I find that Record 30 does not qualify for exemption under that section. Since no other exemptions were claimed for this record, I will order the municipality to disclose Record 30 to the appellant.

ORDER:

1. I order the municipality to disclose Record 30 to the appellant by sending the appellant a copy of it by **July 10, 2012** but not before **July 5, 2012**.
2. In order to verify compliance with the terms of this order, I reserve the right to require a copy of the record that is provided to the appellant pursuant to order provision 1.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ June 5, 2012