

Information and Privacy Commissioner,  
Ontario, Canada



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

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## INTERIM ORDER MO-2845-I

Appeal MA11-555

City of Cornwall

February 14, 2013

**Summary:** The requester sought records regarding the departure of a senior manager from the city's employment. The city denied access to the responsive records pursuant to the discretionary exemptions in sections 6(1)(b), 11, and 12 and the mandatory personal privacy exemption in section 14(1) of the *Act*. Interim Order MO-2815-I ordered the city to exercise its discretion with respect to portions of the records. This order requires the city to disclose the information in the records that it has decided to disclose and to re-exercise its discretion concerning the remaining portions of the records.

**Orders and Investigation Reports Considered:** Interim Order MO-2815-I.

### OVERVIEW:

[1] The City of Cornwall (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA or the *Act*) from a member of the media for access to the following information:

Any documents, motions or resolutions regarding the departure of former administrator [name of the affected person] from [named lodge], including any financial settlements or ongoing payments and who approved the terms of departure.

[2] The city located the responsive records and denied access to them pursuant to the discretionary exemptions in sections 6(1)(b) (closed meeting), 11 (economic and other interests) and 12 (solicitor-client privilege) of the *Act*.

[3] The requester, now the appellant, appealed the decision.

[4] During the course of mediation, the city issued a supplementary decision letter and added the mandatory exemption in section 14(1) (personal privacy) of the *Act* to withhold access to the records.

[5] No further mediation was possible and, the file was transferred to the adjudication stage of the inquiry process, where an adjudicator conducts an inquiry. I sought and received representations from the city and the affected person. I then sought representations from the appellant and provided it with a copy of the city's representations. Portions of the city's and all of the affected person's representations were withheld due to confidentiality concerns. The appellant did not provide representations in response.

[6] I then issued Interim Order MO-2815-I, in which the following order provisions were made:

1. I uphold the decision of the city that the mandatory exemption in section 14(1) of the *Act* applies to the letter and clauses 1, 6 and 11 of the agreement.
2. I uphold the decision of the city that the discretionary exemption in section 6(1)(b) of the *Act* applies to the minutes of the in-camera meeting.
3. I uphold the city's decision that the discretionary exemption in section 12 applies to the opening paragraphs and clauses 2, 3, 4, 5, 7, 9, 10, and 12 to 14 of the agreement.
4. I order the city to exercise its discretion under sections 6(1)(b) and 12 in accordance with the analysis set out above concerning the information in the minutes and the opening paragraphs [the preamble] and clauses 2, 3, 4, 5, 7, 9, 10, and 12 to 14 of the agreement. I order the city to advise the appellant, the affected person and this office of the result of this exercise of discretion, in writing. If the city continues to withhold this information, I also order it to provide the appellant with an explanation of the basis for exercising its discretion to do so and to provide a copy of that explanation to the affected person and to me. The city is required

to send the results of its exercise of discretion, and its explanation to the appellant, with a copy to this office and to the affected person, by no later than January 2, 2013. If the appellant and/or the affected person wish to respond to the city's exercise of discretion, and/or its explanation for exercising its discretion to withhold information, they must do so within 21 days of the date of the city's correspondence by providing me with written representations.

[7] Following the issuance of Interim Order MO-2815-I, the city provided the appellant, the affected person and this office with a letter explaining that it was prepared to:

- disclose the Minutes In-Camera Committee of Council (the minutes) in a severed format, providing the names of individuals attending meetings, and the dates, times and locations of meetings.
- disclose paragraphs 1 and 4 of the preamble as well as sections 2, 4, 5 (severed), 7, 8, 9, 10, 12 to 14 of the Minutes of Settlement and Release Agreement (the agreement).
- uphold its original decision not to disclose the paragraphs 2 and 3 of the preamble as well as section 3 and a portion of section 5 of the agreement and the remainder of the minutes.

[8] Neither the appellant nor the affected person responded to this decision by the city to disclose certain information or its explanation for exercising its discretion to withhold other information in the records.

[9] In this order, I order the city to disclose the information in the records that it has decided to disclose and to re-exercise its discretion concerning the remaining portions of the records.

## **RECORDS:**

[10] Remaining at issue is the information contained in:

- the Minutes In-Camera Committee of Council (the minutes), except for the names of individuals attending the in-camera meeting, and the date, time and location of this meeting.
- paragraphs 2 and 3 of the preamble as well as section 3 and a portion of section 5 of the Minutes of Settlement and Release Agreement (the agreement).

## **DISCUSSION:**

### **Did the city exercise its discretion under sections 6(1)(b) and 12? If so, should this office uphold the exercise of discretion?**

[11] The sections 6(1)(b) and 12 exemptions are discretionary and 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.

[12] 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.

[13] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>1</sup> This office may not, however, substitute its own discretion for that of the institution.<sup>2</sup>

[14] Concerning its exercise of discretion under section 6(1)(b), the city states that:

The Adjudicator indicates that, subject to the review of the city's exercise of discretion, it was found that the in-camera minutes are exempt by reason of section 6(1)(b). However it was also noted [in paragraph 57 of Interim Order MO-2815-I] that section 6(1)(b) is not intended to protect records merely because they refer to matters discussed at a closed meeting and as an example, it has been found not to apply to the names of individuals attending meetings, and the dates, times and locations of meetings and therefore, we are prepared to release the in-camera minutes in its modified format, providing the names of individuals attending meetings, and the dates, times, locations of meetings, and titles of items of consideration at the meeting.

[15] Concerning its exercise of discretion under section 12, the city states that:

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<sup>1</sup> Order MO-1573

<sup>2</sup> Section 43(2) of the *Act*

...[it] is upholding its original decision not to disclose the 2nd and 3rd preamble clauses as well as section 3 and a portion of section 5 of the agreement. The city maintains that it continues to be exposed to additional liability due to the nature of confidentiality within these paragraphs.

### ***Analysis/Findings***

[16] It is clear from a review of the city's letter written in response to Interim Order MO-2815-I, that it has not provided representations as to why it has decided not to disclose the information in the minutes of the in-camera meeting, other than the names of individuals attending the in-camera meeting, and the date, time and location of this meeting. This information describes specifically what was discussed at the meeting. As I do not have an explanation from the city explaining why it exercised its discretion to withhold this information, I will order it to re-exercise its discretion.

[17] The city has provided an explanation as to why it has not disclosed paragraphs 2 and 3 of the preamble as well as section 3 and a portion of section 5 of the agreement, namely, that it continues to be exposed to additional liability due to the nature of confidentiality of this information. Based on my review of the particular information at issue in the record, and taking into consideration the application of section 12 to this information, I find that the city has failed to take into account other relevant considerations in exercising its discretion.

[18] In Interim Order MO-2815-I, I ordered the city to exercise its discretion under sections 6(1)(b) and 12 in accordance with the analysis set out in that order. This order included a listing of relevant considerations that may be considered by an institution in exercising its discretion. As set out in Interim Order MO-2815-I, these relevant considerations may include:<sup>3</sup>

- 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

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<sup>3</sup> Orders P-344 and MO-1573

- 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.

[19] In addition, I stated in Interim Order MO-2815-I that additional unlisted considerations may be relevant.

[20] In conclusion, the city has not provided the appellant, the affected person or this office with any explanation as to why it exercised its discretion not to disclose the information in the minutes, other than the names of individuals attending the in-camera meeting, and the date, time and location of this meeting. Similarly, the city has not provided a sufficiently detailed explanation as to whether it considered relevant considerations in exercising its discretion with respect to paragraphs 2 and 3 of the preamble, as well as section 3 and a portion of section 5 of the agreement.

[21] Concerning the information at issue in the minutes and the agreement, relevant considerations may particularly include:

- information should be available to the public
- 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 appellant has a sympathetic or compelling need to receive the information
- whether disclosure will increase public confidence in the operation of the city
- the nature of the information and the extent to which it is significant and/or sensitive to the city, the appellant or any affected person

[22] Furthermore, the city has decided to exercise its discretion to disclose:

- the Minutes In-Camera Committee of Council (the minutes) in a severed format, providing the names of individuals attending meetings, and the dates, times and locations of meetings.
- paragraphs 1 and 4 of the preamble as well as sections 2, 4, 5 (severed), 7, 8, 9, 10, 12 to 14 of the Minutes of Settlement and Release Agreement (the agreement).

[23] The affected person did not provide a response objecting to the city's decision to exercise its discretion to disclose this information, although invited to do so in the city's letter written in response to Interim Order MO-2815-I. Accordingly, I will uphold the city's decision to disclose this information and I will order that it be disclosed.

## **ORDER:**

1. I order the city to disclose the following information to the appellant by **March 22, 2013** but not before **March 15, 2013**:
  - the Minutes In-Camera Committee of Council (the minutes) in a severed format, providing the names of individuals attending meetings, and the dates, times and locations of meetings.
  - paragraphs 1 and 4 of the preamble as well as sections 2, 4, 5 (severed), 7, 8, 9, 10, 12 to 14 of the Minutes of Settlement and Release Agreement (the agreement).
2. I order the city to re-exercise its discretion under sections 6(1)(b) and 12 in accordance with the analysis set out above concerning:
  - the Minutes In-Camera Committee of Council (the minutes), except for the names of individuals attending the in-camera meeting, and the date, time and location of this meeting.

- paragraphs 2 and 3 of the preamble as well as section 3 and a portion of section 5 of the Minutes of Settlement and Release Agreement (the agreement).
3. I order the city to advise the appellant, the affected person and this office of the result of this re-exercise of discretion, in writing. If the city continues to withhold this information, I also order it to provide the appellant with an explanation of the basis for re-exercising its discretion to do so and to provide a copy of that explanation to the affected person and to me. The city is required to send the results of its re-exercise of discretion, and its explanation to the appellant, with a copy to this office and to the affected person, by no later than **March 8, 2013**. If the appellant and/or the affected person wish to respond to the city's re-exercise of discretion, and/or its explanation for re-exercising its discretion to withhold information, they must do so within 21 days of the date of the city's correspondence by providing me with written representations.
  4. I remain seized of this matter pending the resolution of the issue outlined in provision 2.

Original signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

February 14, 2013 \_\_\_\_\_