

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2892

Appeal MA11-462

Corporation of the City of Brantford

May 30, 2013

Summary: The appellant requested a copy of “any and all reports submitted to the finance committee dealing with top-10 tax arrears accounts” for a defined period of time. The city granted access to one responsive record, but denied access to four records (which included listings of the top-10 tax arrears accounts) on the basis of the discretionary exemptions in section 6(1)(b) (in-camera minutes) and section 11(c) (economic or other interests). The appellant argued that the public interest override (section 16) applied to the records. The city’s decision to deny access to the records is upheld, and the city properly exercised its discretion to deny access to the records.

Statutes Considered: *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, sections 239(2)(e) and (f); *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 4(2), 6(1)(b).

Orders and Investigation Reports Considered: MO-1627, MO-2511-I and MO-2552-I.

Cases Considered: *St. Catharines (City) v. Ontario (Information and Privacy Commissioner)*, 2011 ONSC 2346 (Div. Ct.).

OVERVIEW:

[1] The appellant is a member of the media. He submitted a request to the City of Brantford (the city) under the *Municipal Freedom of Information and Protection of*

Privacy Act (the *Act*) which identified that the city council's finance committee regularly considers reports titled "Confidential information regarding top-ten largest tax arrears accounts ..." dated to the end of the most recent months. He then requested "any and all reports submitted to the finance committee dealing with top-10 tax arrears accounts for the period of [a specified date] to the date of ... this request."

[2] In response to the request, the city issued a decision in which it identified five responsive records. It provided access in full to one of the responsive records (entitled "Reinstatement of the Significant Tax Arrears Report") but denied access to the four remaining records (each entitled "Ten Largest Tax Arrears Accounts as at [four different identified dates]"). The city indicated that access to the records was denied on the basis of the exemptions in section 6(1)(b) (closed meeting) and section 11(c) (economic and other interests).

[3] The appellant appealed the city's decision. In his appeal letter, the appellant indicated that he believed the public interest override (section 16 of the *Act*) applied to the requested information. He also indicated that the records could be severed (section 4(2) of the *Act*), and that:

[T]here is overwhelming public interest among the city's ratepayers to know the identity of the property owners whose tax accounts are in arrears.

[4] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the city, initially.

[5] I also noted that previous orders of this office have addressed the issue of access to records of a similar nature in other municipalities. For example, Orders MO-1627, MO-2511-I and MO-2552-I all examined the issue of access to portions of records containing lists of property owners whose tax accounts were in arrears. In some of those cases, the record relating to corporate property owners whose tax accounts were in arrears was made publically available. In addition, Order MO-1627 made a distinction between individuals whose tax accounts were in arrears, and corporations whose tax accounts were in arrears. I invited the parties to provide representations on the issues, with reference to those previous orders.

[6] The city provided representations in response to the Notice of Inquiry. I then sent the Notice of Inquiry, along with a copy of the non-confidential portions of the city's representations, to the appellant, who also provided representations in response.

[7] I also note that, in its representations, the city for the first time raised the possible application of section 12 (solicitor-client privilege) to the records. In the circumstances, and because of my findings below, I will not review the possible application of that section to the records.

Preliminary matter

[8] As noted above, the appellant was provided with one record in response to his request. This record is not a list of top-10 tax arrears; rather, it is titled "Reinstatement of the Significant Tax Arrears Report" and attaches an example of the type of report to be prepared. In his representations the appellant raises some questions about this record, particularly the attached sample report. I note that this record was never a record at issue in this appeal, and the city's decision letter stated that the record "in its entirety" was provided to the appellant. The appellant is invited to contact the city to clarify any issues he may have with the record provided to him.

RECORDS:

[9] The records at issue in this appeal consist of four reports entitled "Ten Largest Tax Arrears Accounts as at [four different dates, being April 30, 2011, May 31, 2011, July 31, 2011 and August 31, 2011]."

DISCUSSION:

Does the discretionary exemption at section 6(1)(b) apply to the records?

[10] Section 6(1)(b) 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.

[11] 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.¹

¹ Orders M-64, M-102, MO-1248.

[12] Previous orders have found that:

- “deliberations” refer to discussions conducted with a view towards making a decision;² and
- “substance” generally means more than just the subject of the meeting.³

[13] 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.⁴

[14] The first and second parts of the test for exemption under section 6(1)(b) require the institution to establish that a meeting was held by the institution and that it was properly held *in camera*.⁵

[15] In determining whether there was statutory authority to hold a meeting *in camera* under part two of the test, the question to ask is whether the purpose of the meeting was to deal with the specific subject matter described in the statute authorizing the holding of a closed meeting.⁶

[16] With respect to the third requirement set out above, the wording of the provision and previous decisions of this office make it clear that in order to qualify for exemption under section 6(1)(b), there must be more than merely the authority to hold a meeting in the absence of the public. Section 6(1)(b) of the *Act* specifically requires that disclosure of the record would reveal the actual substance of deliberations which took place at the institution’s *in camera* meeting, not merely the subject of the deliberations.⁷

[17] Section 6(2) of the *Act* sets out exceptions to section 6(1)(b). It reads, in part:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,

(b) in the case of a record under clause (1)(b), the subject matter of the deliberations has been considered in a meeting open to the public.

² Order M-184.

³ Orders M-703, MO-1344.

⁴ Order MO-1344.

⁵ Order M-102.

⁶ *St. Catharines (City) v. IPCO*, 2011 ONSC 346 (Div. Ct.).

⁷ Orders MO-1344, MO-2389 and MO-2499-I.

[18] In determining whether the records at issue qualify for exemption under section 6(1)(b) of the *Act*, I will consider the three-part test set out above.

Parts 1 and 2 – was an in camera meeting of council, board, commission or other body, or a committee of one of them held and was it authorized by statute?

[19] The city indicates that the records at issue “relate to a closed meeting of a committee of Council being the Finance Committee.” The city explains that the Finance Committee is a standing committee of Council whose function is to advise Council of matters relating to finances of the municipality, “including without limitation the development and implementation of the City’s long-term strategic financial plan, internal and external audits, budget policy, budget monitoring, tax policies and policy direction and prioritization relating to financial matters and budgets.”

[20] The city submits that the meetings of the Finance Committee were held on May 18, June 22, August 24 and September 14, 2011 and that they were properly held *in camera* on the basis of section 239(2) of the *Municipal Act, 2001*, which is mirrored in section 15.4 of the Procedural By-laws of the city. The city refers to several subsections of section 15.4 of its Procedural By-laws, which are consistent with section 239 of the *Municipal Act, 2001*, and provides a copy of the By-laws to this office. The city points out that sections 15.4.2(e) and (f) of the Procedural By-law state that “a meeting or part of a meeting may be closed to the public if the subject matter being considered is:

- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- (f) advice that is subject to solicitor-client privilege, including communication necessary for that purpose.

[21] The city confirms that prior to holding the *in camera* meetings, the Finance Committee adopted a resolution to move *in camera* as required, and provided copies of these resolutions with its submissions. The resolutions indicate that the Finance Committee went *in camera* due to litigation or potential litigation⁸ on May 18 and September 14, 2011, and due to personal matters about an identifiable individual⁹ on June 22 and August 24, 2011.

[22] The city indicates that the clerk made a clerical error in citing section 239(2)(b) of the *Municipal Act, 2001* and provides an affidavit, sworn by the clerk, in which she affirms that, in preparing the representations in this appeal, it came to her attention that a clerical error had been made. She states:

⁸ Section 239(2)(e) of the *Municipal Act, 2001*.

⁹ Section 239(2)(b) of the *Municipal Act, 2001*.

[S]taff in the City's Finance Department checked off the wrong box in the City's Report Template as the relevant Sections of the *Municipal Act, 2001* that would apply to the report. Staff incorrectly checked off the box referencing S.239(2)(b)...but should have checked off the box referencing S239(2)(e)....

[23] The city also argues that certain information in three of the records also constitutes advice that is subject to solicitor-client privilege, including communications necessary for that purpose. It provides a description of the information in the records that it argues constitutes solicitor-client privileged information. The city also acknowledges that it should have checked "advice subject to solicitor-client privilege" as a reason for moving *in-camera* pursuant to section 15.4.2(f) of the procedural By-law and section 239(2)(f) of the *Municipal Act, 2001*, but that it only realized this during the preparation of these representations. The city asks that I consider this as an additional ground for considering the records at a closed meeting.

[24] The appellant does not dispute that the city's Finance Committee met and received the records at issue at properly constituted *in camera* meetings. Rather, he focusses his submissions on the city's exercise of discretion and refusal to sever the records. He states:

I have no objections to the city's stated rationale for considering portions of the subject records in-camera, as is permitted under the Ontario Municipal Act. I also do not challenge the city's rights to consider the opinion of its solicitors in verbal and written form as permitted under the Ontario Municipal Act. ...

[25] Based on the submissions and supporting documentation provided by the city, and my review of the records at issue, I am satisfied that the first two parts of the section 6(1)(b) test have been met. I accept that the city held *in camera* meetings on the dates identified above, and that these meetings were authorized by section 239(2)(e) of the *Municipal Act, 2001*.

[26] The minutes of the *in camera* meetings provided by the city with its representations indicate that the Finance Committee went into closed sessions to discuss confidential information relating to the top ten largest tax arrears accounts. Moreover, I find that the records themselves provide the evidentiary basis for determining that section 239(2)(e) authorized the Finance Committee to hold the closed meetings that took place. Further, I accept the city's submission that section 239(2)(b) was marked on the record in error as the information contained in the four records is similar and is consistent with the section 239(2)(e) claim.

Part 3 – would disclosure of the records reveal the actual substance of the deliberations of the meetings?

[27] The city argues that disclosure of the records would reveal the actual substance of the deliberations of the meetings. It states:

... the records requested comprise reports from the City's Treasurer and ... disclosure of these records would reveal the substance of the deliberations of the meetings. Divulging the reports would reveal information collected by the City Treasurer as requested by Council about the financial situation of the City and the ten largest unpaid property tax accounts at the City Anyone reading these records would gain insight into the substantive discussions that occurred during the Finance Committee meetings at which these records were presented.

[28] The city then refers to the fact the disclosure of the four staff reports at issue would reveal the substance of the deliberations. It states:

All of the records contain information that relates to litigation or potential litigation, including matters before administrative tribunals. It is reasonable to assume that the in-camera discussions included the financial situation of the owners and the tenants that occupy the properties, the sale of land for tax arrears process under the *Municipal Act, 2001*, other debt collection mechanisms such as litigation and advice from staff. ...

[29] The city then refers to other portions of its representations where it makes submissions on why the tax sale process and other debt collection options constitute litigation and why these records were created for the dominant purpose of litigation.

[30] As noted above, the city also argues that certain information in three of the records also constitutes advice that is subject to solicitor-client privilege, including communications necessary for that purpose, and states that "revealing those portions of [the records] would reveal the substance of deliberations regarding those proceedings."

[31] As noted above, the appellant does not dispute that the city's Finance Committee had the authority to meet and receive the records at issue at properly constituted *in camera* meetings. Rather, the focus of his submissions is on the city's exercise of discretion and failure to sever the records. The relevant portion of his representations read:

I have no objections to the city's stated rationale for considering portions of the subject records in-camera, as is permitted under the Ontario Municipal Act. I also do not challenge the city's rights to consider the

opinion of its solicitors in verbal and written form as permitted under the Ontario Municipal Act. From what I am able to determine, severing the list of top-10 corporate tax accounts in arrears and releasing that information in no way prejudices the city's rights to consider the other related information in these reports in a properly convened closed-session meeting. I believe releasing the list, while maintaining the private nature of the appropriate portion(s) of the report would not compromise any advice being received by members of council on any administrative or legal measures being taken to recover owed taxes from those on the list.

Analysis and findings

[32] Under this part of the three-part test, I must determine whether disclosure of the records, or portions of them, would reveal the actual substance of the deliberations of the *in-camera* meetings.

[33] To begin, I note that the decision of the Divisional Court in *St. Catharines (City) v. Ontario (Information and Privacy Commissioner)*¹⁰ (*St. Catharines*) reviewed the approach to take in determining whether records or portions of records qualify for exemption under section 6(1)(b). The court determined that, if a portion of a record contains material which an institution is authorized to consider *in-camera*, that complete record can be considered at an *in-camera* meeting. In other words, the possible severing of a record is not done on the basis of deciding which portions of a record relate to the material which an institution is authorized to consider *in-camera*.

[34] However, the Divisional Court proceeded affirm that, even if a full record could be considered *in camera*, severance could be made, and portions disclosed, based on whether disclosing those portions would reveal the substance of the deliberations of the *in-camera* meeting.

[35] I will apply this approach to the four records at issue, all of which I have found were properly considered in an *in-camera* meeting, to determine whether disclosure of these records, or severed portions of them, would reveal the substance of the deliberations of the *in-camera* meetings.

[36] There are four records at issue in this appeal. Each of these records consists of a fairly brief report prepared for the Finance Committee, and an attached list of the city's ten largest tax arrears accounts as of the date of each report. The lists of the ten largest tax arrears accounts includes information such as the owners' name and address, roll and account number, occupant's name, property value information, amounts owing (current and previous) and a "comments" section.

¹⁰ 2011 ONSC 2346 (Div.Ct.).

[37] Based on my review of the reports and the attached list of the ten largest tax arrears accounts contained in each of these lists, I am satisfied that disclosure of these reports and attached lists would reveal the substance of the deliberations of the *in-camera* meetings. The reports and the attached lists were clearly prepared for the meetings and were the subject of the discussions in the *in-camera* meetings. Furthermore, based on my review of the records and the representations of the city, I am satisfied that disclosure of certain portions of these records, including some portions of the reports and information contained in the "comments" sections of the lists, would reveal the actual substance of the deliberations of the *in-camera* meetings.

[38] Although the appellant accepts that portions of the records might qualify for exemption, he argues that severing and disclosing portions of the records (for example, the identity of the corporations in the lists), would not reveal the substance of the deliberations of the *in-camera* meetings. In support of his position he refers to orders MO-1627, MO-2511-I and MO-2552-I, which I invited the parties to address, in which similar lists of corporations in tax arrears in other municipalities were disclosed. These orders examined the issue of access to portions of records containing information about property owners whose tax accounts were in arrears.

[39] Order MO-1627 dealt with a request to the Municipality of Red Lake for a complete list of all properties in tax arrears as of a defined date. That record included similar information as is at issue in this appeal (although it did not include the names of any parties, it did include identifying information such as the roll number). The municipality denied access to the record on the basis that it contained the personal information of the parties listed in the records, and based on the exemption in section 11, which is also claimed in this appeal. Section 6(1)(b) was not raised in that appeal.

[40] In that appeal, adjudicator Cropley determined that the roll numbers of properties on the list that were owned by individuals constituted the personal information of those individuals. However, she also found that if the roll number of the individuals were severed from the records, the remaining information would not constitute the personal information of identifiable individuals. In addition, she found that any information in the records relating to a sole proprietorships, partnerships, unincorporated associations or corporations, including the assessment roll numbers for these properties, did not qualify as personal information. After rejecting the municipality's section 11 claim, she ordered that the record be disclosed, except for the roll numbers of the properties owned by individuals.

[41] Orders MO-2511-I and MO-2552-I are two related decisions which resulted from a request to the City of Toronto for a list of the largest property tax debtors with tax arrears greater than \$500,000 as of a certain date. The city indicated that the list of all 20 properties owned by named corporations with tax arrears of \$500,000 or more was regularly made publically available, and that list was not at issue in that appeal. The only property information at issue related to an individual, as opposed to a corporate,

owner. As in this appeal, the city claimed that the record qualified for exemption under section 6(1)(b). Adjudicator Bhattacharjee upheld the section 6(1)(b) claim for the record, but in both interim orders, ordered the city to re-exercise its discretion with respect to certain portions of the record, and consider disclosing those portions (specifically – information under the headings: Ward, Property Classification, Outstanding Taxes, Comments & Collection Efforts Taken, and Use of Bailiff for the Arrears). I note that Orders MO-2511-I and MO-2552-I were issued prior to the Divisional Court’s decision in *St. Catharines*, referenced above.

[42] The appellant’s position is that these other orders have found that information about corporations whose taxes are in arrears has been disclosed in previous orders and that, based on those decisions, it should be possible to sever and disclose portions of the lists at issue in this appeal – particularly basic information such as the identities of the corporate entities listed.

[43] I agree with the appellant that order MO-1627 ordered a list similar to the ones at issue in this appeal to be disclosed. I also note the City of Toronto’s policy of making the list of certain corporate entities with property tax arrears public on its website.¹¹ These factors support the appellant’s position that certain information in these lists ought to be disclosed and that they have, generally, not been found to qualify for exemption under the *Act*. However, there are different, additional circumstances in this appeal which I must consider.

[44] In the first place, the request in this appeal was not simply for a record of the top ten tax arrears accounts, but specifically for the copy of these records which were submitted to the finance committee (meeting *in-camera*) dealing with the tax arrears. In that respect the request in this appeal was specifically for the records considered at *in-camera* meetings.

[45] Secondly, the request in this appeal is not simply for a current list of the top ten tax arrears accounts. Instead, the appellant’s request is for each of these lists submitted to the finance committee over a defined period of time. As a result, the records at issue consist of four sequential, separate lists considered by the committee at four different, sequential *in-camera* meetings.

[46] In these circumstances, I am satisfied that disclosure of portions of the records would reveal the substance of the deliberations of the *in-camera* meetings of the finance committee. I note that four lists at issue in this appeal all contain differences, with each sequential list containing changes when compared with the previous list. These changes relate to different types of information contained in the records including the parties listed, amounts owing, actions taken, as well as the specific categories of information contained in each list. Based on the information contained in

¹¹ See order MO-2552-I.

the records and the representations of the city, I am satisfied that disclosure of any portions of each of these four lists would reveal the substance of deliberations of the *in-camera* meetings of the finance committee in which these lists were considered, or would permit the drawing of accurate inferences with respect to these deliberations.¹²

[47] In addition, I considered whether I could order a portion of one of the lists to be disclosed, as revealing the information in one list, without the capacity to compare that information to similar information in a subsequent list, might be possible. However, in this appeal the records at issue, which were specifically requested, are the lists provided to the *in-camera* meetings over a defined period of time. I have decided not to sever the records in such a way as to provide one part of one of the records (which may not, on its own, reveal information covered by section 6(1)(b)). Although in one portion of his representations the appellant questions whether the city would have disclosed a "stand-alone" list, later in his representations the appellant indicates that, if he were to receive partial release of the records, he would subsequently make requests for the same portions of all records prepared since the filing of his request. Based on the wording of the request, I will not sever the records in such a manner.

[48] Accordingly, I find that the records at issue qualify for exemption under section 6(1)(b) of the *Act*.

Exercise of Discretion

[49] 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.

[50] 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.

¹² See orders P-226, P-293, P-331, P-361 and PO-2160, which applied this analysis in the context of similar wording in section 12(1) of the *Freedom of Information and Protection of Privacy Act*.

[51] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.¹³ This office may not, however, substitute its own discretion for that of the institution.¹⁴

Relevant considerations

[52] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:¹⁵

- 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
- 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

¹³ Order MO-1573.

¹⁴ Section 43(2).

¹⁵ Orders P-344, MO-1573.

- the age of the information
- the historic practice of the institution with respect to similar information.

[53] The city takes the position that it exercised its discretion pursuant to section 6(1)(b), and did so in good faith. It notes that one of the responsive records (though not a list of top ten tax arrears) was disclosed to the appellant. It then states that, after "careful consideration," it chose not to disclose the remaining records, and that it did so taking into account proper considerations.

[54] The appellant provides two main arguments in support of his position that the city did not properly exercise its discretion in deciding to withhold the records under section 6(1)(b).

[55] The appellant's first argument is that the city improperly failed to consider whether portions of the records could be severed under section 4(2) of the *Act*.

[56] The appellant's second argument raises the public interest in records containing information relating to the corporations who are in tax arrears. He states:

Tax accounts in arrears create a financial burden for the city as the lost revenue from these properties must either be discounted from monies available to support the city's operations or must be raised from other sources. There would be significant public interest in knowing who amongst the city's corporations is in arrears on its property taxes.

[57] The appellant also states:

... some context specific to this city is pertinent in establishing public interest in the disclosure of this list. City council has, over the past years, been put into a situation where due to tax arrears it has through a lack of interest in the sale by tax arrears process come into possession of a number of brownfield properties. Those contaminated sites have become a financial burden to the city, now tasked with maintaining and securing them while either awaiting their sale or remediation and development. There are a number of similar brownfield sites in private ownership throughout the city and disclosure of the top-10 corporate tax accounts in arrears would show whether any are these derelict sites. Given the human and fiscal resources expended on brownfield remediation within [the city], any correlation between the top-10 list and privately held brownfield sites would be of significant public interest ...

... there is public interest in knowing which corporations find themselves in significant arrears on their tax accounts in order to put pressure on the city to remedy the debts as owed. ...

Findings

[58] To begin, I note that the appellant has identified a public interest in the records at issue. Section 16 of the *Act* provides for a “public interest override” and reads:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[59] The public interest override in section 16 does not apply to section 6 of the *Act*. However, the courts have found that the public interest may be a factor to consider when an institution is exercising its discretion in deciding whether or not to apply an exemption.¹⁶

[60] I have considered the issue of whether the city properly exercised its discretion to apply the exemption in section 6(1)(b) to the records at issue. I have also considered the matters raised by the appellant. In the circumstances, I am satisfied that the city properly exercised its discretion to apply the section 6(1)(b) exemption.

[61] With respect to the appellant’s argument that the city failed to consider the severance provision in section 4(2) of the *Act*, I addressed the severance issue above. I found that, in the circumstances and because of the specific request in this appeal (a series of records), the appellant’s interest in continued access to portions of the lists, and the application of the section 6(1)(b) exemption, I would not order disclosure of a severed portion of the records.

[62] With respect to the appellant’s position that the city failed to consider the public interest in these records, I note that previous orders of this office have commented on the public interest in records relating to parties in tax arrears. For example, in Order MO-2511-I, dealing with the City of Toronto and referenced above, adjudicator Bhattacharjee stated:

... The majority of the City’s individual property owners pay their taxes in full and on time and have a right to expect some transparency from the City with respect to properties owned by other individuals for which significant tax arrears are owing. ... I agree with the appellant that the public should have the right to access information that is not personally

¹⁶ See *Ontario (Public Safety and Security) v. Criminal Lawyers’ Association*, 2010 SCC 23, reversing 2007 ONCA 32, which reversed (2004) 70 O.R. (3d) 332 (Div. Ct.).

identifiable, including the ward in which the property is located, the type of property (residential, commercial, industrial, etc.), the amount in tax arrears that are owing, and most importantly, what efforts the City is making to collect these arrears.

With respect to the latter information, the City discloses its collection efforts in full with respect to named corporations who owe more than \$500,000 in property tax arrears. ... In the interests of transparency, the City should consider disclosing the same information relating to the property owned by the affected party "in trust," as long as [her personal information is] severed from [the record].

[63] In light of the public interest and transparency arguments raised by the appellant, and his reference to the possibility of severing portions of the lists, I considered whether the city properly exercised its discretion in this appeal. I note again that the request in this appeal is for a sequential series of lists that were prepared for *in-camera* meetings. Although the appellant states that he assumes the city "would not have released a stand-alone list of the top-10 corporate tax accounts in arrears as it relies on section 11(c) of the *Act* ...," a stand-alone list is not the record at issue before me.

[64] In the circumstances, and based largely on the wording of the request and the nature of the records at issue, I find that the city properly exercised its discretion to apply section 6(1)(b), and did not take into account irrelevant considerations or fail to take into account relevant considerations in exercising its discretion. As a result, I uphold the township's decision to apply section 6(1)(b) to the record.

[65] Because of this finding, it is not necessary to review the possible application of section 11(c) to the records, nor the possible application of the public interest override (which does not apply to section 6(1)(b), but does apply to section 11).

ORDER:

I uphold the city's decision, and dismiss the appeal.

Original Signed by: _____
Frank DeVries
Adjudicator

_____ May 30, 2013