

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3170

Appeal MA13-344

North Bay Hydro Holdings Limited

March 20, 2015

Summary: North Bay Hydro Holdings received a request for copies of its financial statements, as well as the financial statements for North Bay Hydro Services and North Bay Hydro Distribution. The requester was provided with copies of North Bay Hydro Holdings and North Bay Hydro Distribution's financial statements. North Bay Hydro Services denied the requester access to its financial statements and took the position that it was not an "institution" under the *Act*. In this order, I find that North Bay Hydro Services is an institution and order it to issue an access decision to the requester.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 2(1) definition of "institution", s.2(3) "Bodies considered part of municipality"; *Ontario Regulation 599/06 of the Municipal Act*, 2001, section 20.

Orders and Investigation Reports Considered: MO-2418, MO-2419, MO-2393, MO-2570, MO-2659 and MO-2904-R.

Cases Considered: *City of Toronto Economic Development Corporation v. Ontario (Information and Privacy Commissioner) (TEDCO)* [2008] O.J. No. 1799 (C.A.), reversing 278 D.L.R. (4th) 356 (Div. Ct.).

BACKGROUND OF APPEAL:

[1] In its Consolidated Financial Statements for the year ended December 31, 2013 reported on its website, the Corporation of the City of North Bay (the city) states under the heading "North Bay Hydro":

The City holds 100% of the shares of North Bay Hydro Holding Limited ("Holdco"). Holdco holds 100% of the shares of North Bay Distribution Limited ("Distribution") and North Bay Hydro Services Inc. ("Services").

[2] The city's website also states:

The Mayor and all Councillors are members of the business corporation North Bay Hydro Holdings Ltd.

OVERVIEW:

[3] An individual submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to North Bay Hydro Holdings for financial statements for:

- North Bay Hydro Holdings (Holdings or HoldCo) – December 31, 2011 to December 31, 2012
- North Bay Hydro Distribution Ltd (Distribution) – December 31, 2012
- North Bay Hydro Services Ltd (Services or ServeCo) – December 31, 2009 to December 31, 2012

[4] Holdco issued a decision letter to the requester granting access to its available financial statements. Holdco undertook to provide the appellant with additional financial statements once they were approved by its board. Holdco also provided the requester with the requested financial statements for Distribution, though the author of the decision letter advised:

Although I am not the head for North Bay Hydro Distribution Limited, please find enclosed the North Bay Hydro Distribution Limited Statements for the year ended December 31, 2012 as provided to me by that corporation for delivery to you.

[5] With respect to the financial statements requested for ServeCo, the author of the decision letter advised:

[P]lease note that I am not the head for this corporation. The financial statements requested by you for December 31, 2009 to December 31, 2012 will not be provided hereunder. To this end, I understand that you have received a letter from ... solicitor for North Bay Hydro Services Limited, dated April 8, 2013, with respect to the very same request. [Their solicitor] advised you that the said corporation is a private corporation and therefore denied your request.

[6] The requester (now the appellant) appealed Holdco's decision to this office.

[7] At the intake stage of the appeal, the appellant took the position that ServeCo is subject to the *Act* and that the requested records should be disclosed to him. ServeCo took the position that it is a private corporation and is not subject to the *Act*.

[8] The matter was not resolved at the intake stage and was transferred directly to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[9] During the inquiry stage, this office solicited and received representations from Holdco, ServeCo and the appellant. The non-confidential portions of their representations were exchanged with the parties, who were given an opportunity to make reply and sur-reply representations.

[10] The appeal file was subsequently transferred to me to issue a decision.

[11] I note that during the inquiry stage, the parties were asked to provide their submissions on whether ServeCo, as an affected party to the appeal, should be permitted to raise the possible application of the discretionary exemption at section 11 (economic and other interests) to the records.

[12] In this order, I find that ServeCo is an institution, and order it to issue an access decision in response to the appellant's request, treating the date of this order as the date of the request. Accordingly, the issue of whether ServeCo, as an affected party, should be permitted to raise a discretionary exemption is no longer an issue in this appeal as ServeCo may raise exemptions in the access decision it has been ordered to provide to the appellant.

DISCUSSION:

Is ServeCo an institution by virtue of section 2(1) of the *Act*?

[13] The access provisions of the *Act* apply to all municipal "institutions". Section 2(1) of the *Act* states that "institution" is:

- (a) a municipality,
- (b) a school board, municipal service board, city board, transit commission, public library board, board of health, police services board, conservation authority, district social services administration board, local services board, planning board, local roads board, police village or joint committee of management or joint board of management established under the *Municipal Act, 2001* or the *City of Toronto Act, 2006* or a predecessor of those Acts,
- (c) any agency, board, commission, corporation or other body designated as an institution in the regulations; ("institution")

[14] Based on the representations of the parties, it appears that the parties agree and I concur that ServeCo is not a "municipality" under paragraph (a) of the definition of the term "institution" in section 2(1) and that it is not one of the 15 entities described in paragraph (b) of the definition.

[15] Accordingly, the determination of whether ServeCo is an institution under section 2(1) rests on a consideration of paragraph (c), which provides that "any agency, board, commission, corporation or other body designated as an institution in the regulations" is an institution. Section 20 of the *Ontario Regulation 599/06* of the *Municipal Act* governs "municipal services corporations." Section 20 reads:

A corporation that is a wholly-owned corporation or a corporation whose business or activities include the provision of administrative services to any municipality, local board, public hospital, university, college or school board is deemed to be an institution for the purposes of the [*Act*].

[16] Section 1 of the *Municipal Act* provides that a "wholly-owned corporation" means,

- (a) a corporation all of whose shares are owned by a municipality or by a municipality and one or more other public sector entities, and

- (b) a corporation in which a municipality, by itself or together with one or more other public sector entities, has an entitlement to all of the voting rights allocated to the members of the corporation.

[17] Section 1 of the *Municipal Act* also provides that a “public sector entity” means,

- (a) a municipality,
(b) the Crown in right of Ontario,
(c) the Crown in right of Canada, or
(d) a combination of them;

[18] The parties agree that ServeCo is wholly-owned by Holdco. The parties also appear to agree that ServeCo does not provide administrative services to any municipality, local board, public hospital, university, college or school board. In its representations, ServeCo states that it “engages only in the following businesses and on a commercially prudent and “for profit” basis”:

- Renting, maintaining or selling hot water heaters;
- Street light maintenance services;
- Telecommunications services as permitted by the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998*;
- Sentinel light services; and
- Such other business activities as may be permitted by the regulations and approved by Holdings.

[19] The appellant submits that ServeCo should be designated as an institution by virtue of *Ontario Regulation 599/06* of the *Municipal Act*. The appellant takes the position that since Holdco is wholly-owned by the City of North Bay, it follows that ServeCo is also wholly-owned by the city.

[20] In response, ServeCo states in its representations:

... the clear language of Section 20 does not deem a corporation to be an institution if it is owned by a holding company, even if a municipality wholly-owns the holding company, much like it does not deem a corporation to be an institution even where a municipality owns 99.99% of the shares of that corporation, where the remaining .01% was owned by a private company or person.

[21] Having regard to the definition of “wholly-owned corporation” in *Ontario Regulation 599/06*, I agree with ServeCo and find that it does not meet the definition of institution as set out in paragraph (c) of section 2(1).

[22] Given that ServeCo is owned by a holding company and not by the city or the city and a public sector entity and it does not provide administrative services to any municipality, local board, public hospital, university, college or school board I find that it does not qualify as an "institution" under paragraph (c) of section 2(1).

Is ServeCo an institution by virtue of section 2(3) of the *Act*?

[23] Even if ServeCo does not qualify as an "institution" under section 2(1) it still may be subject to the *Act* under section 2(3). Section 2(3) states:

Every agency, board, commission, corporation or other body not mentioned in clause (b) of the definition of "institution" in subsection (1) or designated under clause (c) of the definition of "institution" in subsection (1) **is deemed to be a part of the municipality for the purposes of this Act if all of its members or officers are appointed or chosen by or under the authority of the council of the municipality** [Emphasis Added].

[24] The application of section 2(3) was considered by the Ontario Court of Appeal in *City of Toronto Economic Development Corporation v. Ontario (Information and Privacy Commissioner) (TEDCO)*.¹ In Order MO-2570, Commissioner Brian Beamish summarized the Court of Appeal's decision in *TEDCO*, as follows:

In that case, the Court counseled against a technical interpretation of the *Act* in considering whether the City of Toronto Economic Development Corporation (TEDCO) was part of the City under section 2(3). The Court stated (at para. 39) that "... a formal and technical interpretation [of section 2(3)] runs contrary to the purpose of the Act," and took into account, among other things, that the sole purpose of TEDCO was to "advance the economic development of the City." The Court also observed (at para. 32) that:

When one considers that the object or purpose of the Act is to provide a right of access to information under the control of municipalities and related municipal institutions, it would appear reasonable to conclude that TEDCO should be subject to the Act.

The *TEDCO* case involved an access to information request for records of TEDCO concerning the "Mega Studio Project" in the Port Lands. The facts are that the City of Toronto (the City) incorporated TEDCO under the *City*

¹ [2008] O.J. No. 1799 (C.A.), reversing 278 D.L.R. (4th) 356 (Div. Ct.).

of Toronto Act, 1985, and the Business Corporations Act. The City is the sole shareholder of TEDCO. All members of TEDCO's board of directors are appointed by City Council. The directors elect or appoint the officers of TEDCO pursuant to s. 5.01 of TEDCO's By-Law No. 1. The issue was whether the officers were "appointed or chosen by or under the authority of the council" as required by 2(3) given that section 5.01 of the by-law gave the directors, not council, the authority to elect or appoint the officers.

The Court of Appeal concluded that TEDCO was part of the City under section 2(3) since all of its officers are "appointed or chosen by or under the authority of the council of the municipality" within the meaning of that section. In writing for the Court of Appeal, Armstrong J.A. sets out the following reasons for the Court's finding:

First, the ordinary meaning of the word "authority" supports this conclusion. In the *Canadian Oxford Dictionary* (2nd ed., 2004), the main definition of "authority" has two parts: "(a) the power or right to enforce obedience. (b) delegated power." In my view, given the purpose of access to information legislation and the modern approach to statutory interpretation, it is preferable to read s. 2(3) in light of the second part of the definition, rather than imposing a restrictive interpretation that embraces only the first part. A similar point emerges from the *New Shorter Oxford English Dictionary* (1993), which provides as one of its definitions of "authority": "Derived or delegated power".

...

Second, beyond the ordinary meaning of the word "authority," the language of s. 2(3) is cast in broad terms which suggests that the legislature intended an examination of substance rather than a fixation on formal and technical appointment processes. The provision uses both the words "chosen" and "appointed" and also contemplates processes that are effected both "by the authority" and "under the authority" of City Council. In the face of this broad language, I question an approach that treats as decisive the mere fact that City Council has delegated direct appointment power to TEDCO's board of directors.

Third, although City Council does not *directly* choose TEDCO's officers and does not hold an official veto over that process, the City's role as TEDCO's sole shareholder provides a significant nexus between City Council's authority and the officers of TEDCO. TEDCO's board of directors, whose members are appointed directly by City Council, is always subject to City Council's removal power. This power finds expression in s. 3.06 of TEDCO's bylaw, which provides that City Council may "remove any director from office and ... elect any person in his stead". Moreover, City Council also has the discretion, as sole shareholder of TEDCO, to unilaterally make "shareholder agreements" that control the powers of the directors. Under s. 3.09 of the bylaw, all the powers of the board of directors are fully subject to shareholder agreements, including its power to appoint officers.

Fourth, a formal and technical interpretation of s. 2(3) runs contrary to the purpose of the Act. We are dealing with a corporation whose sole shareholder is the City of Toronto, whose sole purpose is to advance the economic development of the City, and whose board of directors – at the time of the proceedings before the adjudicator – was populated by persons directly appointed by City Council, including the Mayor of Toronto (or his/her designate), the Chair of the City's Economic Development and Parks Committee, two City Councillors, and the Commissioner of Economic Development, Culture and Tourism (or his/her designate). In light of what La Forest J. observed in the above-cited passage from *Dagg*, it seems to me that TEDCO is just another example of a complex bureaucratic structure of public administration. In my view, it is contrary to the purpose of the Act and access to information legislation in general to permit the City to evade its statutory duty to provide its residents with access to its information simply by delegating its powers to a board of directors over which it holds ultimate authority.

In summary, the court found that in light of the ordinary meaning of the word "authority" in section 2(3), the broad language of s. 2(3), the City's status as TEDCO's sole shareholder, and the purpose of the Act and access to information legislation in general, it would be wrong to exclude TEDCO from the Act's reach merely because City Council has delegated direct appointment power to the board of directors.

Representations of the parties

[25] ServeCo submits that it is not part of the city and cannot be deemed an institution by virtue of section 2(3). ServeCo submits that section 2(3) does not apply to it because "... its officers are not appointed by or under the authority of a municipality". ServeCo also submits that the circumstances in this appeal are distinguishable from those in the *TEDCO* decision.

[26] In support of its position that its officers are not appointed by or under the authority of the city, ServeCo states in its representations that:

... the officers of ServeCo are appointed by and under the authority of the Directors of ServeCo pursuant to section 133 of the OBCA [*Ontario Business Corporations Act*] and section 5.1 of the by-laws of the ServeCo... To be clear, the power to appoint officers of ServeCo is not conferred upon North Bay City Council, but rather, it is specifically conferred upon the Directors of ServeCo.

[27] ServeCo provided a copy of its by-laws with its representations. Section 5 of the by-laws is entitled "Officers". Sections 5.1 and 5.2 state:

5.1 Appointment – The board may from time to time designate the officers of the Corporation, appoint officers (and assistant to officers), specify their duties and, subject to the [*OBCA*] or the provisions of any unanimous shareholder agreement, delegate to such officers powers to manage the business and affairs of the Corporation. Except for the chairman of the board and the managing director, an officer may but need not be a director. Two or more offices may be held by the same person.

5.2 Term of Office (Removal) – In the absence of a written agreement to the contrary, the board may remove, whether for cause or without cause, any officer of the Corporation. Unless so removed, an officer shall hold office until his successor is appointed or until his resignation, whichever shall first occur.

[28] ServeCo advises that its directors are chosen by its board of directors. Section 3 of ServeCo by-laws is entitled "Directors". Sections 3.6 and 3.8 of the by-laws speak to the election and removal of directors:

3.6 Election and Term – The election of directors shall take place at the first meeting of shareholders and at each succeeding meeting of shareholders at which time the term of each director then in office shall

expire. Incumbent directors, if qualified, shall be eligible; for re-election. If an election of directors is not held at the proper time the incumbent directors shall continue in office until their successors are elected.

3.8 Removal – Subject to the provisions of the [*OBCA*], the shareholders may, by ordinary resolution passed at an annual or special meeting of shareholders, remove any director from office before the expiration of his term and may elect a qualified individual to fill the resulting vacancy for the remainder of the term of the director so removed, failing which such vacancy may be filled by the board.

[29] ServeCo also argues that for section 2(3) to apply, there must be evidence demonstrating that the municipality actually appointed or choose ServeCo's officers or board of directors. In support of this position, ServeCo states in its representations:

Further, to be deemed an institution pursuant to subsection 2(3) of the *Act*, a municipality must not only have the power to appoint officers or the ability to exert authority over the directors' selection of officers, but rather, the municipality must actually appoint officers or actually exert the authority over the directors' selection of officers. It is ServeCo's submission that a hypothetical situation wherein a municipality could potentially appoint officers or exert authority over the directors' selection of the officers of a corporation is not enough.

That the municipality must actually appoint officers or exert authority over the directors' selection of officers is clear from use of the word "are" in the following excerpt from subsection 2(3) of the *Act*: "...are appointed or chosen by or under the authority of ...". [Emphasis in the original]

[30] Along with its representations, ServeCo provided an affidavit from its Chief Operating Officer (COO). The COO states:

- ServeCo's directors are, and have always been, selected by ServeCo. HoldCo's appointment of ServeCo's directors is just a formality;
- ServeCo management and ServeCo's board of directors identify to HoldCo the necessary skills and experience required for incoming board members and nominate prospective board members;
- HoldCo has never failed to appoint a person nominated by ServeCo to sit on its board of directors and has never appointed an individual to ServeCo's board who was not first nominated by ServeCo;

- The officers of ServeCo are appointed by ServeCo's board of directors and have never been, appointed by or under the authority of HoldCo or the City of North Bay; and
- HoldCo and the City of North Bay have completely refrained from imposing, suggesting or persuading any direction or input in terms of who ServeCo's directors, officers, employees or contractors may be and how they conduct the business of ServeCo.

[31] Finally, ServeCo argues that the key facts the Court of Appeal relied upon to find a nexus between Toronto City Council's authority and the officers of *TEDCO* are distinguishable from the facts in this appeal. In support of this argument, ServeCo submits that:

- none of ServeCo's board members are members of city council, where *TEDCO*'s board of directors included the city of Toronto's mayor and city councilors;
- a holding company, not the City of North Bay, is the sole shareholder of ServeCo, where the City of Toronto is *TEDCO*'s sole shareholder;
- The holding company, not the municipality as in *TEDCO*, has the authority to unilaterally make shareholder agreements that control the power of the board of directors; and
- ServeCo's directors are appointed by the holding company, whereas *TEDCO*'s directors were appointed directly by Toronto's City Council.

[32] The appellant submits that ServeCo is an institution by virtue of section 2(3) and makes the following points:

- Any appointment or selection of ServeCo's officers and/or directors is carried out under the authority of North Bay city council; and
- North Bay city council exercises total control over the directors and officers of ServeCo by virtue of the city's 100% ownership of Holdco.

[33] In support of his position, the appellant provided a form printed from the city's website entitled "The City of North Bay Application for Citizen Appointments to the North Bay Hydro Services Board of Directors". The bottom of the form states:

The Council of the Corporation of the City of North Bay will consider all of the applications and will give final approval.

[34] In his reply representations, the appellant submits that the business relationship between the City of North Bay, Holdco, Distribution and ServeCo is an example of "complex bureaucratic structure of public administration" the Court of Appeal discussed at paragraph 39 of its decision in *TEDCO*.

[35] The appellant goes on to state that ServeCo's COO is its only officer and there are only two employees. The appellant also submits that ServeCo has no premises separate from Holdco or Distribution and that it relies entirely on the services and employees of the City of North Bay and/or Distribution for its internal operations. ServeCo did not specifically address this issue in its representations or provide a list of names of its current officers and board of directors to this office with its representations. However, I note that North Bay Hydro Distribution's financial statement for the year ended December 31, 2013 indicates that it provides "administrative and other services to an affiliated company, North Bay Hydro Services", including rent and equipment charges.

Analysis and Findings

[36] In summary, ServeCo argues that it is entirely independent from the holding company controlled by city council and submits:

- Its governing by-laws demonstrate that ServeCo officers and/or directors are not appointed or chosen or under the authority of North Bay's city council;
- In the alternative, evidence demonstrating that ServeCo officers and/or directors could technically be appointed, chosen or under the authority of city council is not sufficient for the purposes of section 2(3), as evidence demonstrating that city council actually exerted its influence is required; and
- The facts in this appeal are distinguishable from those in the *TEDCO* decision.

[37] In this appeal, ServeCo's by-laws indicate that its officers are appointed by its board of directors. In turn, the board of directors are elected by the corporation's shareholders. ServeCo's sole shareholder is the holding company which is owned by the City of North Bay.

[38] As a result, the holding company and not the municipality, appoints or chooses ServeCo's board of directors. Therefore, the issue I must determine is whether the

process by which the holding company appoints and elects ServeCo's directors could be said to be "appointed or chosen by or under the authority" of North Bay's city council.

[39] The appellant submits that the existence of the holding company in the circumstances of this appeal is an example of the type of "complex bureaucratic structures" the court in *TEDCO* warned against. The appellant argues that ServeCo officers and directors are appointed and chosen by, and under the authority of North Bay's city council.

[40] I have carefully reviewed the facts and circumstances of this appeal and for the reasons stated below find that ServeCo's board of directors are appointed, chosen by and under the authority of North Bay's city council. Accordingly, I find that ServeCo qualifies as an institution by virtue of section 2(3). In making my decision, I adopt the approach of the Court of Appeal in *TEDCO*. As noted above, the Court of Appeal in *TEDCO* counselled against a technical interpretation of the *Act* in considering whether a corporate entity is an institution. In that decision, the Court of Appeal deemed TEDCO to be part of the City of Toronto for the purposes of the *Act* and stated that "... a formal and technical interpretation runs contrary to the Act," and noted, among other factors, that the sole purpose of TEDCO was "to advance the economic development of the City".

[41] Given my finding, it is not necessary that I also examine whether ServeCo's officer(s) is also appointed, chosen by and under the authority of North Bay's city council. Even if it was found that ServeCo's officers were not chosen, appointed or under the authority of North Bay's city council, ServeCo would still be deemed to be part of the city given the nexus between city council and ServeCo's board of directors.

[42] One of ServeCo's main arguments is that the facts in this appeal are distinguishable from the key facts which the Court of Appeal in *TEDCO* considered in finding that TEDCO was an institution by virtue of section 2(3). In support of this position, ServeCo argues that in *TEDCO* the directors "... were appointed directly by the City of Toronto, whereas in this case, the Directors of ServeCo are appointed by HoldCo". But, this was not the Court of Appeal's finding. Rather, the Court of Appeal found that TEDCO was an institution by virtue of section 2(3) despite the fact that city council did "not directly choose TEDCO's officers and does not hold an official veto over that process". In my view, the appointment process considered in *TEDCO* is similar to the process in which ServeCo selects its directors. I find that any differences between the two appointment processes lead one to conclude that the City of North Bay's holding company has greater control over the process, given its final approval of who is to sit on the board, than that in *TEDCO*.

[43] In *TEDCO*, officers were found to be appointed by the board of directors and the directors, in turn, were appointed by Toronto's city council. In addition, TEDCO's board

of directors was populated "by persons directly appointed by City Council, including the Mayor of Toronto (or his/her delegate), the Chair of the City's Economic and Parks Committee, two City Councillors, and the Commissioner of Economic Development, Culture and Tourism (or his/her designate). The court in *TEDCO* found that this appointment process created a significant nexus between city council's authority and TEDCO's board of directors, whose members were subject to city council's removal power.²

[44] Though there is no evidence before me to suggest that ServeCo's board of directors are city employees or members of city council, ServeCo's board of directors are elected and can be removed by HoldCo's sole shareholder, the city of North Bay represented by its city council. Section 3.8 of ServeCo's by-laws provides that "[s]ubject to the provisions of the [*OBCA*], the shareholders may, by ordinary resolution passed at an annual or special meeting of shareholders, remove any director from office before the expiration of his term and may elect a qualified individual to fill the resulting vacancy for the remainder of the term of the director so removed, failing which such vacancy may be filled by the board".

[45] In addition, in *TEDCO* the Court of Appeal notes that "City Council also has the discretion, as sole shareholder of TEDCO, to unilaterally make "shareholder agreements" that control the powers of the directors".³ Whereas, 3.1 of ServeCo's bylaw states "Subject to the express provisions of a unanimous shareholder agreement, the directors shall manage or supervise the management of the business affairs of the Corporation". Further, the Shareholder Declaration defining the corporate relationship between HoldCo and ServeCo states:

The purpose of this Declaration is to restrict, to the extent and in the manner specifically set out herein, the Board's authority to manage or supervise the management of the business and affairs of the Corporation, and to provide the Shareholder with ability to make decisions regarding those matters (Section 3.1);

[46] I also note that section 5.1(b) of the Shareholder Declaration entitled "Financial Return" identifies the city as an "indirect shareholder" and provides:

² Section 3.06 of TEDCO's bylaw, provides that Toronto city council may "remove any director from office and ... elect any person in his stead".

³ Section 3.09 of TEDCO's bylaw provides that "[a]ll the powers of the board of directors are fully subject to shareholder agreements, including its power to appoint officers".

The Board shall establish policies to provide the City of North Bay (as indirect shareholder of the Corporation) with a profit on the Business which maintains or increases the value of the Corporation;

[47] In my view, ServeCo's position that it operates entirely independently from the City of North Bay is not supported by the evidence before me. ServeCo's officers are appointed by its board of directors, who in turn, are elected by ServeCo's sole shareholder, the city's holding company. However, the City of North Bay's mayor and councillors sit on the holding company's board of directors. In my view, this demonstrates that the city's councillors are the directing minds of ServeCo. The city councillors have final approval of who sits on ServeCo's board of directors and have the authority to remove and replace any director. In addition, the city councillors can substitute ServeCo's board's management decision with their own.

[48] The Shareholder Declaration indicates that the holding company is to "manage or supervise the management of the business affairs" of ServeCo and ensure that the holding company has the ability to make decisions regarding these matters. ServeCo's bylaws also provide that the city's holding company has the authority to remove ServeCo's officers and directors and appoint successors. In my view, ServeCo's evidence that the city's holding company, to date, has not interfered with its business practices or vetoed any individual it has nominated to sit on its board of directors does not diminish the fact ServeCo is under the authority of the city's holding company.

[49] In addition, Section 5.1(b) of the Shareholder Declaration identifies the City of North Bay as the "indirect shareholder" of ServeCo. This section of the Shareholder Declaration also provides that ServeCo's profits are to flow back to the municipality. Accordingly, it would appear that, like TEDCO, ServeCo's primary purpose is to advance the City of North Bay's economic and financial position.

[50] Though I do not agree with the appellant's analysis, I share the appellant's view that the circumstances of this appeal is another example of a complex bureaucratic structure of public administration the Court of Appeal in *TEDCO* warned against. In my view, it would be contrary to the purpose and intent of the *Act* to permit ServeCo to evade freedom of information legislation as a result of the city's councillors sitting on the board of the holding company as opposed to sitting on ServeCo's board. Regardless of what board the city councillors populate, the evidence demonstrates that they are the directing minds of ServeCo given their authority to appoint, remove and replace ServeCo's board, in addition to maintaining control over the management of ServeCo's business affairs.

[51] For all of these reasons, I find that ServeCo is deemed to be part of the City of North Bay for the purposes of this *Act*. Accordingly, I find that ServeCo is an institution by virtue of section 2(3).

ORDER:

I find that ServeCo is an institution under the *Act*, and order it to issue an access decision to the appellant, treating the date of this order as the date of the request, in accordance with sections 19, 21, 22 and/or 23 of the *Act*, as applicable.

Original Signed By:
Jennifer James
Adjudicator

March 20, 2015