

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4178

Appeal MA20-00060

The Corporation of the County of Bruce

March 29, 2022

Summary: The appellant seeks access to the minutes and reports for specific closed meetings held by the county. The county located responsive records and denied her access to them, claiming they were exempt under the discretionary exemption in section 6(1)(b) (closed meeting) of the *Act*. The appellant appealed the county's decision and also claimed the county clerk, who issued the access decision, was in a conflict of interest. In this order, the adjudicator finds that the county clerk was not in a conflict of interest, either actual or reasonably perceived, in reviewing and processing the appellant's request. The adjudicator also finds that the records, which are closed meeting minutes and reports, are exempt under section 6(1)(b) of the Act and upholds the city's exercise of discretion. The appeal is dismissed.

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

Orders and Investigation Reports Considered: Orders M-241, MO-2621, MO-3208, MO-3462, and MO-3955.

OVERVIEW:

[1] The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Corporation of the County of Bruce (the county) for all minutes, agendas, letters and reports for closed meetings of Bruce County Council held on specific dates.

[2] The county located records responsive to the appellant's request and denied her

access to them. The county claimed the records were exempt from disclosure under the discretionary exemption in section 6(1)(b) (closed meetings) of the *Act*.

[3] The appellant appealed the county's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC).

[4] During mediation, the appellant confirmed her interest in pursuing access to the records withheld from disclosure. In addition, the appellant took the position that the county clerk (the clerk) was in a conflict of interest position when processing the appellant's request, due to ongoing litigation involving the appellant and the county. The county maintained its section 6(1)(b) claim over the records.

[5] No further mediation was possible and the appeal was moved to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry. I began my inquiry by inviting the county to submit representations in response to a Notice of Inquiry, which summarized the facts and issues under appeal. The county submitted representations. I then invited the appellant to submit representations in response to the Notice of Inquiry and the county's representations, which were shared in accordance with Practice Direction Number 7 of the IPC's *Code of Procedure*. The appellant submitted representations and narrowed her request to seven records. I then sought and received reply representations from the county.

[6] In the discussion that follows, I find the county clerk was not in a conflict of interest, either actual or reasonably perceived, when she made her decision in response to the appellant's access request. I also find the records at issue are exempt under section 6(1)(b) of the *Act* and uphold the city's exercise of discretion to withhold them. I dismiss the appeal.

RECORDS:

[7] The following seven records are at issue in this appeal:

- March 2, 2017 – Museum Committee Closed Minutes
- March 2, 2017 – Closed Committee Report
- May 4, 2017 – Museum Committee Closed Minutes
- June 15, 2017 – Museum Committee Closed Minutes
- June 15, 2017 – Closed Committee Report
- January 3, 2019 – Museum Committee Closed Minutes
- January 3, 2019 – Closed Committee Report

ISSUES:

- A. Was the clerk of the county in a conflict of interest in making a decision on the appellant's access request?
- B. Does the discretionary exemption at section 6(1)(b) (closed meeting) apply to the records?
- C. Did the county exercise its discretion under section 6(1)(b)? If so, should the IPC uphold the exercise of discretion?

DISCUSSION:

Issue A: Was the clerk of the county in a conflict of interest in making a decision on the appellant's access request?

[8] The appellant submits that the clerk was in a conflict of interest in reviewing and responding to her access request. Specifically, the appellant raises concerns that the clerk's

... wide-ranging job responsibilities in a small municipal office have created a perception of conflict-of-interest that results from the challenging work she does supporting and advising others, as well as documenting, organizing, distributing, and retaining information related to the meetings of the Council members and County staff while, at the same time, responding to requests for information to the public.

The appellant notes the clerk is serving as a witness for the county in civil litigation involving the appellant's organization at the same time as she is responding to the appellant's access request for records that the appellant alleges *may* be relevant to the litigation.

[9] A *conflict of interest* is commonly understood as a situation in which a person, such as an elected official or public servant, has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties.

[10] In Ontario, there are various provincial laws and conflict of interest rules that apply, for example, to members of provincial parliament;¹ current ministry employees and public servants employed in and appointed to public bodies;² and members of municipal councils and local boards.³ There is no provincial law or regulation that sets out conflict of interest rules for municipal employees but some municipalities may have by-laws or policies that include such rules. In addition, municipal employees are subject to conflict of interest obligations established in common law.

¹ *Members' Integrity Act*, 1994, S.O. 1994, c. 38.

² Ontario Regulation 381/07 of the *Public Service of Ontario Act*, 2006, S.O. 2006, c. 35.

³ *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50.

[11] Previous IPC orders have considered the issue of conflict of interest with respect to staff at institutions that make decisions on access requests from the public under the *Act*, such as a clerk.⁴ In determining whether there is a conflict of interest, these orders posed the following questions:

- a. Did the decision-maker have a personal or special interest in the records?
- b. Could a well-informed person, considering all of the circumstances, reasonably perceive a conflict of interest on the part of the decision-maker?

These questions are not intended to provide a precise standard for measuring whether or not a conflict of interest exists in a given situation. Rather, they reflect the kinds of issues which need to be considered in making such a determination.

[12] In carrying out their functions under the *Act*, staff at institutions that make decisions on access requests from the public must comply with precise procedural obligations. However, those obligations are not equivalent to the impartiality that is required of a judge or an administrative decision-maker whose primary function is adjudication.⁵

[13] As background, the county states it is a named respondent in an Application in the Walkerton Superior Court of Justice commenced by an individual and The Southampton Cultural Heritage Conservancy.⁶ The appellant is a member of The Southampton Cultural Heritage Conservancy. The county states the Application was issued pursuant to the *Charities Accounting Act*⁷ to obtain an injunction against the county from tearing down a building on a property owned by the county. The Application also seeks an investigation by the Public Guardian and Trustee to scrutinize the county's use of funds from the estate of an individual for the purchase of said property.

[14] The county states it is the applicant in another Application involving The Southampton Cultural Heritage Conservancy relating to the gift of funds from the estate referred to above.

[15] The county submits the clerk was not in a conflict of interest in reviewing, processing and issuing the access decision in response to the appellant's access request. The county states the clerk was delegated the powers and duties of the Head for the purposes of the *Act* on April 6, 2017. The county states the clerk's position includes overseeing the administration of the *Act*, including making decisions regarding responses to requests under the *Act*. In addition, the county refers to its Staff Code of Conduct which recognizes that unbiased and professional judgment and wisdom must

⁴ See, for example, Orders M-640, MO-1285, MO-2073, MO-2605, MO-2867, MO-3204, MO-3208, PO-2381, MO-3513-I and MO-3672.

⁵ Order PO-2381, which cited *Imperial Oil Ltd. v. Quebec (Minister of the Environment)*, [2003] 2 SCR 624, 2003 SCC 58 (CanLII).

⁶ Court File No. CV-19/18.

⁷ R.S.O. 1990, c.C.10.

be employed daily. The county asserts its staff would not knowingly place themselves in situations of real, potential or apparent conflict of interest that arises from their work activities. The county states it discloses potential conflicts to supervisors or designates immediately.

[16] In this case, the county submits the clerk has no personal or special interest in denying the appellant access to the records at issue. The county also submits the clerk has no personal or special interest in the court proceedings referred to above. The county states the clerk provided affidavit evidence in the proceedings due to her position with the county, but has no direct or indirect pecuniary interest in the property in question or the outcome of the litigation.

[17] The appellant states she does not suggest that the clerk's conflict of interest involves financial benefit or personal gain. However, as I quoted above, the appellant states she is concerned that the clerk's wide-ranging job responsibilities in a small municipal office have created a *perception* of conflict of interest. The appellant refers to the fact the clerk served as a witness for the county in a legal case while also responding to an FOI request relating to The Southampton Cultural Heritage Conservancy.

[18] The appellant states the clerk has served in her position since January 2017, following service as Deputy Clerk for ten years prior. The appellant states she is "sure that [the clerk] has gained considerable on-the-job experience advising councillors and staff in procedures for open and closed meetings" of the county and committees. The appellant states the county was investigated for its improper closing of meetings in July 2014, when the clerk was serving as Deputy Clerk. The appellant notes that county staff received training on correct closed meeting procedures in January 2015 and February 2016. However, she is "concerned" that the training was "inadequate" and did "not have a lasting impact." The appellant submits the county's "secretive meetings" have continued with eighteen more unlawfully closed meetings identified in three separate investigations.

[19] The appellant raises concerns regarding the clerk's motivations in denying her access to the meeting minutes requested. The appellant suggests the clerk may be motivated by "self-preservation (job security and reputation), as well as the loyalty and fidelity assumed and expected by her employer, and the natural desire to protect others."

[20] The appellant notes she submitted her access request after the clerk had agreed to serve as a witness for the county in its defence against allegations of breach of trust. The appellant questions the decision-making process that led to her refusal of access, alleging that the clerk may have been in a conflict of interest in her "attempt to avoid public scrutiny of her work and the work of the [county] Councillors, and to avoid disclosure of information that could have future implications for the legal case involving the County's alleged breach of trust." The appellant submits the clerk's refusal to provide the information she requested "may be due to a failure to follow principled decision making."

[21] In its reply representations, the county submits the appellant's representations on conflict of interest are concerning and inappropriate. Furthermore, the county submits the appellant's comments are speculative and unfounded.

[22] As stated above, the appellant does not claim there is an actual conflict of interest; rather, she takes the position there may be a perceived conflict of interest. To support her claims, the appellant refers to the fact that the clerk processed her access decision while also participating as a witness to a legal case involving the county and the appellant's organization. The appellant also refers to the fact that the county has been found to have inappropriately closed meetings in the past and alleges that the clerk may be motivated by personal reasons in denying the appellant access to the records.

[23] The first question that must be asked in assessing whether the clerk was in a conflict of interest is whether she had a personal or special interest in the records requested by the appellant. Based on my review of the records at issue and the information provided by the parties, I find there is insufficient evidence to establish the clerk had any kind of personal or special interest in the closed meeting minutes or closed committee reports at issue. Further, there is no evidence or allegation from the appellant that the clerk has a personal interest in the property that is the subject matter of the litigation between the Southampton Cultural Heritage Conservancy and the county.

[24] With regard to the clerk's role as a witness in the litigation, the appellant did not provide any evidence to show the clerk was acting in her personal capacity as a witness and the clerk has confirmed she provided affidavit evidence in her role as the clerk. Therefore, while the clerk may have some interest in the litigation, it appears there is a tangential and remote connection between her interest in the litigation and the information contained in the records. Overall, I find this interest is minor and not sufficient to trigger a conflict of interest on her part. There is no evidence before me to show the clerk had a personal or special interest in the records beyond her role as a clerk to the county. Although the appellant suggests that a personal interest in denying access to the records may include preservation of her job and reputation, she did not provide any evidence to show that this was one of the clerk's motives when she made the access decision.

[25] In summary, I find there is insufficient evidence to establish the clerk was in a conflict of interest in making a decision on the appellant's access request.

[26] The second question to be considered is whether a well-informed person, considering all of the circumstances, could reasonably perceive a conflict of interest on the part of the clerk when she responded to the appellant's access request.

[27] I have reviewed the appellant's allegations regarding a perceived conflict of interest and find them to be speculative. The appellant raises a number of concerns regarding the county's history of improperly closing meetings and the clerk's role and responsibilities in relation to these meetings. The appellant also raises concerns

regarding the clerk's personal motivations and sense of loyalty to the county in denying the appellant access to the records. Based on my review, I find the appellant did not provide sufficient evidence to support her allegations. While the county may have closed meetings improperly, the appellant did not provide any evidence to demonstrate that the clerk was personally responsible for these decisions nor did she demonstrate that there is some connection between these improperly closed meetings and the clerk's access decision.

[28] I accept the appellant's claim that the clerk may have a wide-ranging set of responsibilities as an employee of a small municipality. However, as stated above, the clerk's obligations are not equivalent to the impartiality that is required of a judge or an administrative decision-maker whose primary function is adjudication.⁸ In Order MO-3208, the adjudicator addressed an appeal in which the Town of Collingwood denied an appellant access to records relating to a law enforcement matter. In that case, the appellant alleged that the town's clerk, who made the access decision, was in a conflict of interest because she was involved in a by-law enforcement matter that was the subject of the requested records. In Order MO-3208, the adjudicator stated,

I acknowledge that the town clerk was originally involved in the by-law enforcement matters that gave rise to the records responsive to the appellant's request. However, I accept that her involvement in such matters falls within the scope of her responsibilities as town clerk. I also accept that in a small municipality, the responsibilities of FOIC [freedom of information coordinator] are often undertaken by the individual who fills the role of the town clerk and that in such instances, as FOIC, the clerk will necessarily be required to process requests for records that relate to matters in which she might have been involved. In my view, this is not sufficient to establish a conflict of interest.

[29] This reasoning was adopted by the adjudicator in Order MO-3955, in which the clerk who made the access decision also served in an advisory role on a particular Business Improvement Association (the BIA) in the Township of Clearview. In that decision, the adjudicator found that the clerk's involvement with the BIA fell within the scope of her management and administrative duties as an officer of the township. Further, given that the township was a relatively small municipality, the adjudicator found it was inevitable that the clerk, as the delegated decision-maker under the *Act*, will be required to make decisions on requests for the records that relate to matters in which she may have been involved, such as the activities of the BIA. The adjudicator found that this did not mean that the clerk was in a reasonably perceived conflict of interest in making a decision on the appellant's access request.

[30] I agree with the above reasoning and adopt it for the purposes of this analysis. Similar to the Town of Collingwood and the Township of Clearview, the county is a small municipality and it is inevitable that the clerk, as a delegated decision-maker

⁸ Order PO-2381, which cited *Imperial Oil Ltd. v. Quebec (Minister of the Environment)*, [2003] 2 SCR 624, 2003 SCC 58 (CanLII).

under the *Act*, would be involved in other matters in her role, such as providing affidavit evidence in her role as the clerk for the county in a legal matter involving the county. However, this does not mean that the clerk was in a reasonably perceived conflict of interest in making a decision in response to the appellant's access request. Based on my review, the appellant did not provide sufficient evidence to demonstrate there is a reasonably perceived conflict of interest. As stated above, the appellant's allegations are speculative and she did not provide any concrete evidence to support her belief that there was a conflict of interest.

[31] In conclusion, I find the clerk was not in a conflict of interest, either actual or reasonably perceived, in responding to, reviewing, and deciding on the appellant's access request.

Issue B: Does the discretionary exemption at section 6(1)(b) (closed meeting) apply to the records?

[32] Section 6(1)(b) of the *Act* protects certain records that would disclose the deliberations of a closed meeting. That section 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.

[33] For this exemption to apply, the institution must show 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.⁹

[34] The institution must show that it held a meeting, and that it was authorized by law to hold the meeting *in camera*.¹⁰ For the meeting to be authorized to be held *in camera*, its purpose must have been to deal with a matter for which a closed meeting is authorized by statute.¹¹

[35] For section 6(1)(b) to apply, it must be established that disclosure of the record would reveal the actual substance of deliberations that took place at the *in camera* meeting, and not just the subject of the meeting or the deliberations.¹² *Deliberations*

⁹ Orders M-64, M-102 and MO-1248.

¹⁰ Order M-102.

¹¹ *St. Catharines (City) v. IPCO*, 2011 ONSC 2346 (Div.Ct.).

¹² Orders MO-703, MO-1344, MO-2389 and MO-2499-I.

refer to discussions conducted with a view towards making a decision.¹³

[36] Section 6(1)(b) does not protect records merely because they refer to matters discussed at a closed meeting, and it does not protect the names of individuals attending meetings, and the dates, times and locations of meetings.¹⁴

Part 1: the city's committee held a meeting

[37] The first part of the test for exemption under section 6(1)(b) requires the county to establish that a meeting was held.

[38] The county submits that all of the meetings in question were held by a Committee of County Council, thereby satisfying part 1 of the section 6(1)(b) test. The appellant agrees that all meetings were held by committees of the Bruce County Council, thereby satisfying part 1 of the test.

[39] The records support the county's position that a Committee of County Council held meetings on March 2, 2017, May 4, 2017, June 15, 2017, and January 3, 2019. Therefore, I find that the first part of the three-part test under section 6(1)(b) has been met.

Part 2: the Municipal Act, 2001 authorizes the holding in the absence of the public

[40] The second part of the test requires the county to establish that the meetings were properly held *in camera* (in the absence of the public)¹⁵ by identifying the relevant statutory authority to support it. In determining whether there was statutory authority to hold a meeting *in camera* under part two of the test, I must consider whether the purpose of the meeting was to deal with the specific subject matter identified in the statute authorizing the holding of a closed meeting.¹⁶

[41] Under section 239(1) of the *Municipal Act, 2001*, all meetings must be open to the public unless they fall within the prescribed exceptions. Section 239(2) of the *Municipal Act, 2001* sets out the exceptions that authorize the convening of a meeting in the absence of the public. The county submits that section 239(2)(c) of the *Municipal Act, 2001* authorizes the Bruce County Museum Committee with the authority to hold closed meetings if the subject matter being considered is "a proposed or pending acquisition or disposition of land by the municipality." In this case, the county states the subject matter under consideration at the meetings of March 2, 2017, May 4, 2017, and June 15, 2017 was the acquisition of a specific piece of property.

[42] With regard to the January 3, 2019 meeting, the county states that it relied on the exceptions in sections 239(2)(a) and (k) and 239(3.1). Section 239(2)(a) allows for

¹³ Order M-184.

¹⁴ Order MO-1344.

¹⁵ Order M-102.

¹⁶ *St. Catharines (City) v. IPCO*, 2011 ONSC 2346 (Div. Ct.).

a closed meeting where the subject matter being considered is "the security of the property of the municipality or local board." Section 239(2)(k) allows for a closed meeting where the subject matter being considered is "a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board." Section 239(3.1) allows a meeting of a council, local board or a committee to be closed where the meeting is held for the purpose of educating or training members and, at the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

[43] The county states that the January 3, 2019 minutes and report were the subject matter of a Closed Meeting Investigator's Investigation and included a copy of the Closed Meeting Investigation Report with its representations. The county states that while the Investigator concluded that the meeting was not properly closed in accordance with sections 239(2)(a) and (k) and 239(3.1), he also stated that the closed session dealt with the "disposition of property", which is a permitted exception under section 239(2)(c) even though it was not cited in the resolution.

[44] In conclusion, the county submits the *Municipal Act, 2001* authorized the holding of the meetings in question in the absence of the public.

[45] The appellant submits that the January 3, 2019 closed meeting was not properly closed. The appellant refers to the Closed Meeting Investigation and subsequent report that found that the county did not refer to the proper exemptions in sections 239 of the *Municipal Act, 2001* to close the meeting. Furthermore, the appellant submits the county discussed matters in that meeting that should have been presented for approval in an open meeting of Bruce County Council in accordance with By-law 2014-012.

[46] I have reviewed the parties' representations and the records themselves. I have also reviewed the Closed Meeting Investigator's Report regarding the January 3, 2019 meeting. Based on this review, I find the county was authorized to hold these meetings *in camera* under section 239 of the *Municipal Act, 2001*. Specifically, section 239(2)(c) of the *Municipal Act, 2001* provided the county with the statutory authority to hold the meetings dated March 2, 2017, May 4, 2017, June 15, 2017, and January 3, 2019 *in camera*. Section 239(2)(c) of the *Municipal Act, 2001* states:

A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

(c) a proposed or pending acquisition or disposition of land by the municipality or local board;

[47] The appellant's representations do not address whether the meetings of March 2, 2017, May 4, 2017, and June 15, 2017 were properly held. Rather, her representations focus on the fact that a Closed Meeting Investigator found that the meeting of January 3, 2019 was improperly held *in camera*.

[48] Based on my review of the closed meeting minutes and reports relating to March 2, 2017, May 4, 2017, and June 15, 2017, I find their contents support that they were prepared as confidential documents and the purpose of the *in camera* meeting was to deal with the proposed or pending acquisition or disposition of land by the municipality, as required by section 239(2)(c) of the *Municipal Act, 2001*.¹⁷

[49] With regard to the January 3, 2019 meeting, I also find that the purpose of the *in camera* meeting was to deal with the proposed or pending acquisition of land by the municipality, as required by section 239(2)(c) of the *Municipal Act, 2001*. I acknowledge the Closed Meeting Investigator's Report found that the January 3, 2019 meeting was not properly held *in camera* under the exemptions claimed by the county. However, the investigator stated that the closed session did relate to the *disposition of property*, which is permitted under section 239(2)(c) of the *Municipal Act, 2001*. The county states that the Bruce County Council passed a resolution on January 9, 2020 against making the closed committee report and minutes public.

[50] As stated above, the second part of the section 6(1)(b) test only requires the county to establish the meetings in question were properly held *in camera* by identifying the relevant statutory authority to support it. In determining whether there was statutory authority to hold a meeting *in camera*, I must consider whether the purpose of the meeting was to deal with the specific subject matter identified in the statute authorizing the holding of a closed meeting.¹⁸ In Order MO-2621, the adjudicator considered the jurisdiction of the IPC in a review under section 6(1)(b) and found,

... my jurisdiction is limited to a review of the [City of Ottawa's] denial of access to the responsive record under [the *Act*]. This office has no general authority or mandate to review the propriety of a municipal council (or its committee) holding a meeting in the absence of the public. That is the mandate of the meetings investigator, or the ombudsman in the case of a municipality that has not appointed its own meetings investigator under the *Municipal Act*. In the more limited context of reviewing the denial of access to a record under section 6(1)(b), **an adjudicator from this office reviews whether a statute *authorizes* the holding of the meeting in the absence of the public to determine whether the second requirement of the three-part test for the exemption is met.**¹⁹ [Emphasis added]

I agree with this principle and will apply it for the purposes of my analysis. I have reviewed the closed meeting minutes and the closed committee report for the January 3, 2019 and I agree with the investigator that the purpose of the meeting was to discuss the disposition of property. Accordingly, I find the meeting was authorized

¹⁷ *St. Catharines (City) v. IPCO*, 2011 ONSC 2346 (Div. Ct.).

¹⁸ *St. Catharines (City) v. IPCO*, 2011 ONSC 2346 (Div. Ct.).

¹⁹ This approach to reviewing an institution's exemption claim under section 6(1)(b) was confirmed in *City of St. Catharines v. Information and Privacy Commissioner of Ontario*, 2011 ONSC 346.

under section 239(2)(c) of the *Municipal Act, 2001* to be held in the absence of the public, thereby satisfying the second part of the section 6(1)(b) test.

[51] In conclusion, I find that the county was authorized under section 239(2)(c) of the *Municipal Act, 2001* to hold the meetings dated March 2, 2017, May 4, 2017, June 15, 2017, and January 3, 2019 *in camera*.

Part 3: Disclosure of the records would reveal the actual substance of the deliberations of the meetings

[52] With respect to the third requirement set out above, the wording of the provision and previous IPC decisions establish 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 records would reveal the actual *substance of deliberations* which took place at the county's closed meetings, not only the *subject* of the deliberations.²⁰

[53] The county submits that part 3 of the test is met in the case of each record because the disclosure of the records would reveal the substance of the deliberations of the meetings, which included the land in question, discussions of the negotiations between the owner of the land and county representatives and a discussion of the purchase price. The county submits the information in the records were discussed by the county's Museum Committee with a view towards making a decision with respect to the proposed acquisition of land and/or determination of structure on the land.

[54] The county states that the *subject* of the closed meeting minutes and reports was the acquisition of a specific property by the county and the direct and private negotiations with the landowner regarding the purchase. The county submits the records form the *crux* of the Museum Committee's deliberations to achieve that result. Specifically, the county provides the following descriptions of the meetings in question:

- *March 2, 2017*: Disclosure of the closed minutes and report would reveal the subject of the deliberations, and the substance, as there was more than one possible property proposed for consideration. This is the first meeting at which discussions took place regarding the potential purchase of this property, as staff were directed to work with the purchasing department to investigate the process and potential purchase of this particular property.
- *May 4, 2017*: Disclosure of the closed minutes would reveal the substance²¹ of the deliberations, being the process to negotiate the acquisition with the abutting landowner and direction to prepare an Expression of Interest regarding the acquisition of the property.

²⁰ Orders MO-1344, MO-2389 and MO-2499-I.

²¹ In its representations, the county states *subject* rather than *substance*. However, given the county's arguments regarding the application of section 6(1)(b), it appears this was a typographical error.

- *June 15, 2017*: For clarity, the report presented at this meeting was deferred and the same report was presented at the July 6, 2017 closed meeting. Disclosure of the minutes would reveal the substance of the deliberations because the actual property was identified and identifies the deliberations that were held on May 4, 2017 as well as sensitive information relating to the negotiations of the property purchase.
- *January 3, 2019*: Disclosure of the records would reveal the substance of deliberations as the report was the basis of the Council's decision on the direction to proceed in relation to the property.

[55] The appellant takes the position that part 3 of the test for the application of section 6(1)(b) is not satisfied because the *substance* and *deliberations* of the meetings at issue have been disclosed to the public in open public meetings and considered in the media. Given the public nature of the discussions about this property, the appellant submits that the closed-meeting exemption should not apply to the records. The appellant refers to a number of articles that relate to the property in question and the commercial details considered by the county in relation to the property.

[56] With regard to the January 2019 meeting, the appellant submits that the substance of the meeting was present to the public in the open meetings which followed. Specifically, the appellant submits the public was informed "in detail about the substance of the deliberations in other ways, including through the details itemized in the RFP (for removal or demolition of the house)." The appellant submits that any concerns relating to public pressure to preserve the historic home at the property in question have been voice publicly in a "wide variety of media sources." Similarly, the plans relating to demolishing the building are known. Given these circumstances, the appellant submits that the county has failed to satisfy part 3 of the section 6(1)(b) test.

[57] I have reviewed the records at issue and find they contain information relating to the proposed or pending acquisition or disposition of land by the municipality. I find the records contain the *substance of deliberations* relating to the purchase of the property in question. Further, I find the information contained in the records contain more than the mere subject of the deliberations, but contain detailed information regarding the direction the Museum Committee intended to go in regarding the purchase of the property, the discussions between the involved parties regarding the purchase of the property, and the plans regarding the purchase of the property. All the information at issue would, if disclosed, reveal information the Museum Committee considered and discussed with a view towards making a decision regarding the purchase of the property at issue. Based on my review of the records, I find their disclosure would reveal the substance of deliberations at the closed meetings on March 2, 2017, May 4, 2017, and January 3, 2019.

[58] With regard to the June 15, 2017 minutes and report, I find that the disclosure of these records would reveal the substance of deliberations that took place on May 4, 2017. I note the county states that the report was presented at the July 6, 2017 closed meeting. There is no evidence before me that the July 6, 2017 meeting was held *in*

camera improperly. Furthermore, the minutes relating to the July 6, 2017 meeting clearly relate to the purchase of the property in question, thereby satisfying the section 239(2)(c) of the *Municipal Act, 2001* requirement for a closed meeting. Given these circumstances, I am satisfied the June 15, 2017 minutes and report would, if disclosed, reveal the substance of the deliberations of closed meetings held by the Museum Committee.

[59] Therefore, I find that all three parts of the section 6(1)(b) test have been met and the records at issue are exempt from disclosure under section 6(1)(b) of the *Act*.

[60] However, in her representations, the appellant raised the application of the section 6(2)(b) exceptions. Therefore, I will now consider whether it applies in this case.

Section 6(2)(b) exception

[61] Section 6(2) of the *Act* sets out exceptions to section 6(1)(b). In this case, the appellant claims that section 6(2)(b) applies to the records at issue. This section states,

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.

[62] With regard to section 6(2)(b), the county states that county Council passed By-law #2018-017 on March 1, 2019 at an open council meeting authorizing the purchase of the property that was the subject of the closed meeting discussions in 2017. The decision regarding the house on the property purchased was brought forward to an open Museum Committee meeting on January 3, 2019, immediately following the closed meeting discussions on the same date.

[63] As summarized above, the appellant makes a number of representations regarding what she believes constitutes the substance of the deliberations of the closed meetings at issue that were later discussed publicly. For example, the appellant submits that the expression of interest and the sale offers that were discussed in the 2017 closed meetings were presented publicly to the United Church congregation. The appellant submits that By-law #2018-017 does not refer to an estate of an individual that she alleges was used to purchase the property. The appellant submits that the discussion regarding this estate and the use of the funds should have been conducted in a public meeting, rather than an improperly closed meeting.

[64] In addition, the appellant submits that the county's decision at the closed meeting on January 3, 2019 to demolish the former rectory on the property in question was immediately brought forward as a resolution at the open meeting on the same day. The appellant also states that the purchase of the property and its proposed uses were announced on March 1, 2018 and presented at three other public "drop in" meetings in

2018. Given these circumstances, the appellant takes the position that the exception in section 6(2)(b) applies to the records.

[65] In Order M-241, the adjudicator found that an Executive Committee Report was exempt from disclosure under section 6(1)(b) as its disclosure would reveal the substance of deliberations at a closed meeting. The report had subsequently been adopted by a vote of council in a public meeting.

[66] The adjudicator then went on to consider whether the subject matter of the deliberations at the closed meeting had been considered in an open meeting for the purposes of section 6(2)(b). In finding that it had not, the adjudicator stated,

On May 29, 1991, in a public meeting, a recorded vote was taken in which the City Council adopted the Executive Committee Report, as amended, without further discussion. In my view, the Council's *adoption* of a report, without discussion in a public meeting, cannot be characterized as the consideration of the subject matter of the in camera deliberations as contemplated by section 6(2)(b) of the Act. (emphasis in original)

This reasoning was adopted in Order MO-3462, in which the adjudicator considered whether the confidential terms of a draft agreement were considered in a meeting that was open to the public. In that case, the adjudicator found that "council's passing of a resolution to approve the confidential recommendations made during an *in-camera* meeting does not amount to 'consideration' of the subject matter of council's deliberations of the purposes of section 6(2)(b)."²²

[67] I agree with this reasoning and adopt it for the purposes of this appeal. The county passed a by-law in 2019 that authorized the purchase of the property that was the subject of the closed meetings in 2017. The county also voted on the disposal/sale/removal of the house located on the purchased property at an open meeting which immediately followed the closed meeting of January 3, 2019. Based on my review of the circumstances, I find that the vote and passing of the by-law do not amount to *consideration* of the subject matter of council's deliberations for the purposes of section 6(2)(b). The appellant claims to be aware of the substance of the deliberations at the closed meetings at issue; she makes a number of representations regarding what the meetings had to have discussed given subsequent events and media coverage. However, I cannot confirm the substance of the deliberations in these closed meetings with the appellant. I have reviewed the appellant's representations and the information at issue and find that while the subject matter of the deliberations is clear (i.e. the purchase of the property at issue), I find that this does not amount to the *consideration* of the subject matter of the deliberations in a public meeting as contemplated by the exception in section 6(2)(b) of the *Act*.

[68] Therefore, I find that the section 6(2)(b) exception does not apply to the records. Accordingly, I find that the section 6(1)(b) exemption applies to the records,

²² Order MO-3462 at para 39.

subject to my finding on the county's exercise of discretion below.

Issue C: Did the county exercise its discretion under section 6(1)(b)? If so, should the IPC uphold the exercise of discretion?

[69] The section 6(1)(b) exemption is discretionary (the institution *may* refuse to disclose), meaning that the county can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so. The IPC may find 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, or it fails to take into account relevant considerations. In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.²³ However, the IPC cannot substitute its own discretion for that of the institution.²⁴

[70] The county submits it exercised its discretion to withhold records under section 6(1)(b) properly. The county submits the records were provided to the Museum Committee during the course of meetings closed to the public. The county submits the records do not contain personal information relating to the appellant or any other individual; rather, they contain commercial information relating to the proposed acquisition of land by the county and sensitive information related to the negotiations between the parties to reach the end result and also confidential information discussed on the house in question and use of the land. The county states it considered the nature of the records, the wording of the exemption and the interests section 6(1)(b) seeks to protect in exercising its discretion.

[71] In addition, the county submits it did not exercise its discretion in bad faith or for an improper purpose. The county also submits it considered all relevant factors and did not take into account any irrelevant factors.

[72] The appellant takes the position that the county did not exercise its discretion properly. The appellant submits the county failed to take into account the age of the information and the public knowledge of the decisions and deliberations that transpired during the meetings. In this case, the meetings were held in 2017 and early 2019 and the decisions that followed are "now historical and well known throughout the community."

[73] I reviewed the parties' representations and find that the county did not err in its exercise of discretion to withhold the records under section 6(1)(b) of the *Act*. The appellant urges me to consider the age of the records and the fact that there is knowledge of the decisions that followed the meetings. However, the records at issue are five years old or less and while the decisions were publicized in the community, the appellant has not demonstrated that the substance of the deliberations at issue were

²³ Order MO-1573.

²⁴ Section 43(2) of the *Act*.

publicly disclosed. In any case, the appellant has not provided me with sufficient evidence to demonstrate that the county has withheld the records for an improper purpose and in bad faith.

[74] Upon review of the county's representations, I am satisfied the county did not withhold the records for an improper purpose or in bad faith. I am also satisfied the county took into account relevant factors, such as the purpose of the exemption, the interests the exemption seeks to protect, and the nature of the information, and did not take into account irrelevant factors.

[75] Accordingly, I uphold the county's exercise of discretion to withhold the records under section 6(1)(b) of the *Act*.

ORDER:

I uphold the county's decision and dismiss the appeal.

Original Signed by: _____

Justine Wai
Adjudicator

March 29, 2022 _____