



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-182

Appeal M-9300059

City of Toronto



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ORDER

The City of Toronto (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for a copy of the "most recent draft of the [Toronto] Food Policy Council Evaluation Report referred to in the [Toronto Food Policy Council] agenda for August 26, 1992."

The City responded to the request, citing section 15(b) of the Act and stating that it would not be releasing the record at this time, since the record would be publicly available within 90 days. The 90 days passed and the requester did not receive a copy of the record. The requester then wrote to the City reiterating his request and the City denied access to the record, citing the exemption contained in section 11(1)(g) of the Act. The requester appealed the City's decision.

Mediation efforts were unsuccessful and a notice that an inquiry was being conducted to review the City's decision was sent to the appellant and the City. Representations were received from both parties. During the inquiry, the City agreed to release some of the information in the record to the appellant.

The record at issue is a draft report respecting a review of the Toronto Food Policy Council. The last page of the report contains a list of attachments to be appended to the report. The Appeals Officer determined that the City never appended the attachments to the record and, accordingly, the attachments are not considered part of the record and are not at issue in this appeal.

The key issue arising in this appeal is whether the discretionary exemption provided by section 11(1)(g) applies.

The City relies on section 11(1)(g) to withhold access to the record. Section 11(1)(g) reads:

A head may refuse to disclose a record that contains,

information including the proposed plans, policies or projects of an institution if the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;

In Order P-229, Commissioner Tom Wright discussed the interpretation of section 18(1)(g), the equivalent of section 11(1)(g) under the provincial Freedom of Information and Protection of Privacy Act. Commissioner Wright established the following test in relation to section 18(1)(g) of the provincial Act:

In order to qualify for exemption under subsection 18(1)(g) of the Act, an institution must establish that a record:

1. contains information including proposed plans, policies or projects; and
2. that disclosure of the information could reasonably be expected to result in:
 - i) premature disclosure of a pending policy decision, or
 - ii) undue financial benefit or loss to a person.

Each element of this two-part test must be satisfied.

I agree with Commissioner Wright, and adopt this test for the purposes of this appeal.

In its representations, the City submits that the record contains information relating to the City's proposed policies with respect to the Toronto Food Policy Council, and that disclosure of the draft report could reasonably be expected to result in premature disclosure of a pending policy decision.

Turning to part two of the test, the City submits that the information in the record will help develop recommendations respecting the continued existence of the Toronto Food Policy Council (i.e. whether it will continue in its existing state, whether it will alter its form, or whether it will be discontinued). The City argues that "disclosure of ... the report would allow the requester to come to similar conclusions about the... [Toronto Food Policy Council], thereby prematurely disclosing a pending policy decision."

In my view, disclosure of the information in this record cannot be reasonably expected to reveal a pending policy decision. There is nothing in the record or in the representations of the City which indicates that a decision has been reached respecting the continued existence of the Toronto Food Policy Council. In my opinion, the term "pending policy decision" contemplates a situation where a decision has been reached, but has not as yet been announced, rather than a scenario in which a policy matter is simply before an institution for consideration. Accordingly, I conclude that part two of the test has not been met, and section 11(1)(g) does not apply.

ORDER:

1. I order the City to disclose the record to the appellant within 15 days of the date of this order.
2. In order to verify compliance with the order, I order the City to provide me with a copy of the record which was disclosed to the appellant pursuant to Provision 1, only upon request.

Original signed by: _____ September 3, 1993
Holly Big Canoe
Inquiry Officer