



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-208

Appeal M-9200312

Corporation of the Townships of Belmont and Methuen



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ORDER

On September 20, 1993, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

BACKGROUND:

The Corporation of the Townships of Belmont and Methuen (the Corporation) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the following:

1. A list of all the Corporation's job descriptions.
2. A list of the Corporation's employees.
3. The names of two employees who replaced Corporation employees whose employment had been terminated.
4. A copy of the Corporation's 1992 budget.

The requester was provided access to Items 1 and 2 above. With respect to Item 3, the Corporation advised the requester that no records existed which were responsive to the request because the Corporation had not hired any replacement employees. For Item 4, the Corporation provided the requester with a copy of its 1992 consolidated budget.

The requester then clarified his original request by asking for the actual 1992 budget rather than the 1992 consolidated budget provided. The Corporation responded to this clarified request by providing the requester with further information derived from its 1992 draft "line item" budget. The Corporation, in its revised decision, claimed the exemption provided by section 6(1)(b) of the Act to the 1992 draft "line item" budget. The Corporation further claimed the mandatory exemption provided by section 14(1) of the Act in relation to portions of the 1992 draft "line item" budget and also claimed exemption for other portions of the same document pursuant to sections 11(c) and 11(d) of the Act.

The requester appealed the Corporation's decision to deny access and disputed the Corporation's statement that no records existed in relation to Item 3 of the original request.

Mediation was not successful and notice that an inquiry was being conducted to review the Corporation's decision was sent to the appellant and the Corporation. Only the Corporation submitted representations.

The record at issue in this appeal is the Corporation's 1992 draft "line item" budget.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the discretionary exemption provided by section 6(1)(b) of the Act applies to the record.
- B. Whether the information contained in the record qualifies as "personal information" as defined in section 2(1) of the Act.
- C. If the answer to Issue B is yes, whether the mandatory exemption provided by section 14(1) of the Act applies to the record.
- D. Whether the discretionary exemptions provided by sections 11(c) and 11(d) of the Act apply to the record.
- E. Whether the Corporation has conducted a reasonable search for responsive records in the circumstances of this appeal.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the discretionary exemption provided by section 6(1)(b) of the Act applies to the record.

Section 6(1)(b) of the Act reads as follows:

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.

In order to qualify for exemption under section 6(1)(b), the Corporation must establish that:

- 1. a meeting of a council, board, commission or other body or a committee of one of them took place; **and**
- 2. a statute authorizes the holding of this meeting in the absence of the public; **and**

3. disclosure of the record at issue would reveal the actual substance of the deliberations of this meeting.

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The Corporation sets out in its representations that the draft "line item" budget was discussed at two in camera meetings of the Corporation's Committee of the Whole which took place on June 1 and 5, 1992. In its representations, the Corporation has provided evidence that the meetings did, in fact, take place. Therefore, I find that the first part of the test has been satisfied.

The second part of the test, that a statute authorizes the holding of a meeting in the absence of the public, can be determined by reference to section 55(1) of the Municipal Act. That section reads:

The meetings, except meetings of a committee including a committee of the whole, of every council and of every local board as defined by the Municipal Affairs Act, except police services boards and school boards, shall be open to the public, and no person shall be excluded therefrom except for improper conduct.

Section 55(1) of the Municipal Act clearly excludes meetings of a committee of the whole from the requirement that meetings be conducted in public and, therefore, authorizes the holding of the subject meetings in the absence of the public. Based on the evidence presented by the Corporation, I am satisfied that the subject meetings were in fact held in camera. Accordingly, I find that the second part of the section 6(1)(b) test has been met.

With respect to the third part of the test, the Corporation has submitted that the 1992 draft "line item" budget was "... the subject of discussion" at the two in camera meetings described above. In Order M-98, former Assistant Commissioner Tom Mitchinson, in discussing the application of section 6(1)(b) of the Act, made the distinction between a record being the **subject** of deliberations and a record containing information which would reveal the **substance** of those deliberations. In that order, he held that a record would not satisfy the third part of the test if it contained information which was merely the **subject** of deliberations. To satisfy the third aspect of the test, therefore, the record must also contain information which would reveal the **substance** of those deliberations.

Notwithstanding that the Corporation, in its representations, has used the phrase "... subject of discussion", I have reviewed the record and compared it to the consolidated budget which was originally provided to the appellant. I am satisfied that the record contains information which would reveal both the subject and the substance of the deliberations at the two in camera meetings. The consolidated budget of the Corporation is derived from the decisions made about the "line items" set out in the record and, in effect, is evidence that deliberations took place concerning those items. If the record were to be disclosed, a comparison of this document with the consolidated budget would reveal the substance of those deliberations. Thus, the record satisfies the third part of the section 6(1)(b) test.

Having determined that the record satisfies all three parts of the test under section 6(1)(b) of the Act, I must now determine whether the information contained in the record qualifies under one or more of the exceptions to the exemption described in section 6(2)(b) of the Act. Section 6(2)(b) states:

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

The Corporation has stated in its representations that:

There is no information which would indicate that the subject matter of the deliberations of the Committee of the Whole were considered in a meeting [June 18, 1992] open to the public.

From the Corporation's representations it is clear that the final or consolidated budget was formally adopted by Council at a public meeting on June 18, 1992. Since the consolidated budget is the **product** of the deliberations which took place at the two in camera meetings one is tempted to say that, as a result, the subject-matter of the deliberations **was** considered at the June 18th meeting which was open to the public. However, I do not think that one can consider the **product** of deliberations to be synonymous with the **subject-matter** of deliberations. In order for the exception set out in section 6(2)(b) to apply in the circumstances of this appeal, I believe that the "subject matter of the deliberations" considered at the public meeting would have had to be the "line items" which were deliberated in the earlier in camera meetings. That cannot be inferred from the fact that the consolidated budget was passed at the public meeting of June 18th. In my view, the "line item" budget does not fall within the exception set out in section 6(2)(b) of the Act and, therefore, the record qualifies for exemption under section 6(1)(b).

Section 6(1)(b) is a discretionary exemption which allows the Corporation to deny a requester access to a record which qualifies for that exemption. The Corporation has provided representations regarding its decision to exercise its discretion in favour of denying access in the circumstances of this appeal. I have reviewed those representations and I find nothing improper in the Corporation's exercise of discretion and would not alter this determination on appeal.

Having held that the record is exempt under section 6(1)(b) of the Act, it is not necessary for me to consider Issues B, C, or D.

ISSUE E: Whether the Corporation has conducted a reasonable search for responsive records in the circumstances of this appeal.

The appellant takes issue with the response of the Corporation that no records exist with respect to Item 3 of the original request. The Corporation has submitted an affidavit of the Clerk-Treasurer of the Corporation which states that the Corporation has not hired new employees to replace the former employees mentioned in the original request. Accordingly, the Corporation maintains that there is no need to search for records relating to new employees.

In view of the nature of the request, I agree with the position of the Corporation. When an institution's knowledge that a record does not exist is derived from the fact that the event which would result in the creation of such a record has, itself, not taken place, there is no reason for a search to be undertaken. The onus imposed by section 17 of the Act on institutions is to conduct reasonable searches for records responsive to a request. In the circumstances of this appeal, any search for the requested records would not be reasonable. In that light, I am satisfied that the Corporation has met its obligation under section 17 of the Act.

ORDER:

I uphold the decision of the Corporation.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ October 29, 1993