



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-318

Appeals M-9300450, M-9300451 and M-9300452

Township of Temagami



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ORDER

BACKGROUND:

The Township of Temagami (the Township) received three separate requests from the same individual under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester sought copies of all agendas and minutes of the meetings of the Council of the Township Committee of the Whole held between January and September 1993, with the exception of the agenda for the August 1993 meeting.

The Township located a number of records which were responsive to the requests but denied access to each of them under sections 12, 15, 18 and 19 of the Act. The requester appealed the Township's decisions to the Commissioner's office.

During the mediation stage of these appeals, the Township raised the application of section 6 of the Act to the withheld records and withdrew its reliance on sections 12, 15, 18 and 19 as cited in its decision letter. The Township also indicated that the records might contain the "personal information" of individuals other than the appellant. Further mediation was not successful, and notice that an inquiry was being conducted to review the Township's decision was sent to the appellant and the Township. Representations were received from both parties.

ISSUES:

- A. Whether the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, and the information relates to individuals other than the appellant, whether the mandatory exemption provided by section 14 of the Act applies to the personal information contained in the records.
- C. Whether the discretionary exemption provided by section 6(1)(b) of the Act applies to the records.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.

Section 2(1) of the Act provides, in part, that:

"personal information" means recorded information about an identifiable individual, including,

- information relating to financial transactions in which the individual has been involved;
- the address of the individual;
- correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature and replies to that correspondence that would reveal the contents of the original correspondence;
- the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

I have reviewed the records at issue in these appeals and I find that, with one exception, none contain information which falls within the definition of "personal information" in the Act.

However, I find that the minutes for the meeting held on August 5, 1993 contain the personal information of an identifiable individual. The personal information relates to an application made to the Township for a water rate abatement from a private individual.

ISSUE B: If the answer to Issue A is yes, and the information relates to individuals other than the appellant, whether the mandatory exemption provided by section 14 of the Act applies to the personal information contained in the records.

Under Issue A, I found that the minutes of the August 5, 1993 meeting contain the personal information of an identifiable individual other than the appellant. Once it has been determined that a record contains the personal information of an individual other than the person who is seeking access to it, section 14(1) of the Act prohibits the disclosure of this information, except in certain circumstances. One exception to this rule is found in section 14(1)(f) of the Act which reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy of the individual to whom the
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information relates. Section 14(3) identifies the types of personal information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

Included in the minutes of the August 5, 1993 meeting is a summary of a deputation by an individual to the Committee relating to that individual's request for a water rate abatement. In my view, the personal information contained in the August 5, 1993 minutes describes that individual's finances, assets and financial activities as contemplated by section 14(3)(f) of the Act. Its disclosure is, therefore, presumed to constitute an unjustified invasion of that individual's personal privacy.

Once a presumption under section 14(3) has been established, it may only be rebutted by the considerations contained in section 14(4) or by the public interest "override" set out in section 16 of the Act (Order M-170). I find that the personal information contained in the August 5, 1993 minutes does not fall within the ambit of section 14(4) of the Act. In addition, the appellant has not argued that the public interest override set out in section 16 of the Act applies to the facts of this case.

Accordingly, I am of the view that the presumption contained in section 14(3)(f) applies to the personal information contained in the August 5, 1993 minutes and that this information qualifies for exemption under section 14 of the Act. I have provided the Township's Freedom of Information and Protection of Privacy Co-ordinator with a highlighted copy of the August 5, 1993 minutes indicating that portion of the record which is **not** to be disclosed.

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

The Township has claimed the application of section 6(1)(b) of the Act to the records at issue. This provision 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.

To qualify for exemption under section 6(1)(b), the Township must establish that:

1. a meeting of a council, board, commission or other body or a committee of one of them took place; **and**

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2. that a statute authorizes the holding of this meeting in the absence of the public; **and**
3. that disclosure of the record at issue would reveal the actual substance of the deliberations of this meeting.

[Orders M-64, M-98, M-184]

The first part of the test for exemption under section 6(1)(b) requires that the Township establish that meetings of the Committee of the Whole of the Council were in fact held. There is no doubt that Committee of the Whole meetings took place during the periods specified in the appellant's request.

The second part of the section 6(1)(b) test requires that the meetings in question be held in camera **and** that there be a statute authorizing the holding of meetings in the absence of the public.

In its representations, the Township indicates that, when the present Council took office, it decided to allow the public to be present at meetings where the Council sat as a Committee of the Whole. Despite this fact, the Township maintains that:

"... just because a member of the public may be in attendance from time to time throughout this meeting it does not necessarily mean that it is an open meeting under the Municipal Act."

I disagree with this proposition.

In Order M-102, Commissioner Tom Wright held that:

Since meetings in the absence of the public are such a departure from the norm, in my opinion, there must be clear and tangible evidence that the meeting or parts of it were actually held in camera. For example, evidence could consist of a notation in the minutes of a meeting that a decision was made that the public be excluded from the meeting while a particular agenda item was discussed.

In that case, Commissioner Wright went on to find that the fact that some records were stamped "in camera" was not, in itself, sufficient to establish that any part of the meeting was held in camera.

In these appeals, the Township admits that Committee of the Whole meetings are open to the public. In addition, both the minutes and agenda for the meeting held on September 2, 1993 contain two items relating to the purchase of land which "should be referred onto an In Camera session". In my view, this

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demonstrates that a distinction existed in the minds of the Committee members between those matters which could be discussed at open Committee of the Whole meetings and those subjects which needed to be canvassed in some other "in camera" session.

The appellant has made extensive representations with respect to the open nature of the Committee of the Whole meetings. In addition, he has submitted with his representations copies of community calendars which advertise the date, time and place of the Committee of the Whole meetings, inviting members of the public to attend. I find, therefore, that the second part of the test has not been met and, therefore, the records do not qualify for exemption under section 6(1)(b) of the Act.

ORDER:

1. I order the Township to disclose to the appellant the information contained in the minutes and agendas for the January 7, February 4, March 4, April 1, May 6, June 3, June 29, July 8, August 5 (except as described in Provision 2) and September 2, 1993 meetings of the Committee of the Whole of Council within fifteen (15) days of the date of this order.
2. I uphold the Township's decision not to disclose those portions of the August 5, 1993 minutes which are highlighted in the copy of the record provided to the Township's Freedom of Information and Protection of Privacy Co-ordinator with a copy of this order.
2. In order to verify compliance with this order, I order the Township to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1, **only** upon request.

Original signed by: _____
 Donald Hale
 Inquiry Officer

_____ May 16, 1994