



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-330

Appeal M_9300571

Regional Municipality of Haldimand_Norfolk



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ORDER

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested from the Regional Municipality of Haldimand-Norfolk (the Municipality) copies of two termination agreements entered into between the Municipality and two former employees. These agreements are the sole records at issue in this appeal. The Municipality relies on the following exemptions to deny access to these records:

- closed meeting - section 6(1)(b)
- invasion of privacy - section 14.

A Notice of Inquiry was provided to the appellant, the Municipality and the two individuals (the affected persons) to whom the termination agreements relate. Representations were received from the appellant, the Municipality and one of the affected persons.

DISCUSSION:

CLOSED MEETING

In order to rely on section 6(1)(b) of the Act, the Municipality 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 such a meeting in the absence of the public; **and**
3. The disclosure of the record at issue would reveal the actual substance of the deliberations of this meeting.

[Orders M-219 and M-241]

Since meetings convened in the absence of the public are such a departure from the norm, there must exist clear and tangible evidence that the meeting or parts of it were actually held in camera (Orders M-102 and M-241).

I must now consider whether each part of the section 6(1)(b) test has been established.

Part One

In its representations, the Municipality has indicated that the meetings of its Council's Committee of the Whole and Special Leadership Committee took place in 1992 and 1993 where

the substance of the two termination agreements was discussed. I find that such meetings did, in fact, take place. Accordingly, part one of the section 6(1)(b) test has been satisfied.

Part Two

The Municipality relies upon the provisions of section 55 of the Municipal Act as the statutory provision which authorizes the holding of meetings in the absence of the public. It also refers to Municipal Council's Procedural By-law 79-86 which sets out those circumstances where the public may be excluded from meetings of the Council's Committee of the Whole and other Committees, including the Special Leadership Committee.

I find that section 55 of the Municipal Act authorizes meetings of the Council's Committee of the Whole and Special Leadership Committee to occur in the absence of the public. Accordingly, part two of the section 6(1)(b) test has been met.

Part Three

In Order M-196, Assistant Commissioner Irwin Glasberg considered the meaning of the words "substance" and "deliberations" in the context of the interpretation of section 6(1)(b) of the Act. He held as follows:

The Concise Oxford Dictionary, 8th edition, defines "substance" as the "theme or subject" of a thing. Having reviewed the contents of the agreement and the representations provided to me, it is my view that the "theme or subject" of the in-camera meeting was whether the terms of the retirement agreement were appropriate and whether they should be endorsed.

In Order M-184, which involved a request for a similar type of retirement agreement, Assistant Commissioner Glasberg had occasion to interpret the term "deliberations" which is also found in section 6(1)(b) of the Act. He stated:

... In my view, deliberations, in the context of section 6(1)(b), refer to discussions which were conducted with a view towards making a decision. Having carefully reviewed the contents of the Minutes of Settlement, I am satisfied that the disclosure of this document would reveal the actual substance of the discussions conducted by the Board, hence its deliberations, or would permit the drawing of accurate inferences about the substance of those discussions ...

I adopt Assistant Commissioner Glasberg's reasoning for the purposes of this appeal. Having reviewed the representations of the parties and the contents of the termination agreements, I find that in the circumstances of this appeal, the disclosure of the records at issue would reveal the substance of deliberations of in-camera meetings, held in accordance with the Municipal Act. I find, therefore, that the third and final part of the section 6(1)(b) test has been met.

As I have found that the records qualify for exemption under section 6(1)(b), it is not necessary for me to discuss the applicability of section 14 to these documents.

ORDER:

I uphold the decision of the Municipality.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ June 8, 1994