



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

# **ORDER M-534**

**Appeal M-9400625**

**Town of Richmond Hill**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The Town of Richmond Hill (the Town) received a request for a copy of the legal opinion provided by a law firm retained by the Town with respect to the reciprocal easement agreement and potential acquisition of property at 225 East Beaver Creek Road. The Town denied access to the record responsive to the request pursuant to the following discretionary exemption provided for in the Municipal Freedom of Information and Protection of Privacy Act (the Act).

- solicitor-client privilege - section 12

The requester appealed this decision. A Notice of Inquiry was sent to the appellant, the Town and the law firm. Representations were received from the appellant and the Town.

The sole issue to be decided in this appeal is whether the discretionary exemption provided for by section 12 of the Act applies to the record at issue in the appeal.

## **DISCUSSION:**

### **SOLICITOR-CLIENT PRIVILEGE**

The section 12 exemption consists of two branches, which provide a head with the discretion to refuse to disclose:

1. a record that is subject to the common law solicitor-client privilege; (Branch 1) and
2. a record which was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

The Town claims that both Branch 1 and Branch 2 apply to the four-page Memorandum dated April 10, 1991 sent by the law firm to the Town.

In order for a record to be subject to the common law solicitor-client privilege (Branch 1), the Town must provide evidence that the record satisfies either of the following tests:

1. (a) there is a written or oral communication, **and**  
(b) the communication must be of a confidential nature, **and**  
(c) the communication must be between a client (or his agent) and a legal advisor, **and**  
(d) the communication must be directly related to seeking, formulating or giving legal advice;

**OR**

2. the record was created or obtained especially for the lawyer's brief for existing or contemplated litigation.

[Order 49. See also Order M-2 and Order M-19]

The Town submits that it retained the law firm named in the request for the purpose of obtaining legal advice regarding the proposed purchase of the property at 225 East Beaver Creek Road. This advice was supplied to the Town via the record. I have reviewed the record and find that it is a confidential written communication between a solicitor and his client (the Town), and is directly related to the formulating and giving of legal advice. I therefore find that the record, in its entirety, falls squarely within the section 12 exemption.

The appellant has indicated that he wishes to receive access to any information contained in the record. Section 4(2) of the Act obliges the Town to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt.

The issue to be addressed in section 4(2) is one of reasonableness. It is not reasonable to require a head of an institution to sever information from a record if the end result is simply a matter of disconnected words or phrases with no coherent meaning or value (Order 116). A valid section 4(2) severance must provide a requester with information that is responsive to the request, while at the same time protecting the confidentiality of the parts of the record covered by the exemption (Order 24).

I have reviewed the contents of the record and, in my view, no information could be severed from this record and provided to the appellant without disclosing information properly withheld from disclosure under section 12 of the Act.

## **PUBLIC INTEREST IN DISCLOSURE**

The appellant also submits that there is a public interest underlying his request and that section 16 of the Act applies in the circumstances of this case. However, section 12 is not subject to the public interest override provided by section 16 of the Act and this provision, therefore, cannot be considered as an issue in this appeal.

## **ORDER:**

I uphold the Town's decision.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ May 24, 1995