



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-480

Appeal M_9400701

County of Bruce



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The County of Bruce (the County) received a request for a copy of the "Operational Review" regarding two nursing homes which it operates. The records at issue are a 99-page report entitled "Management & Organizational Review of Bruce County Homes for the Aged", dated October 1989, along with five pages of attachments. The County has numbered the records pages 49-153. I will refer to this numbering scheme in my discussion.

The County denied access to all of the responsive records, relying on the following exemptions contained in the Act:

- advice or recommendations - section 7(1)
- economic and other interests - sections 11(f) & (g)
- invasion of privacy - section 14

The requester appealed the County's decision to deny access. A Notice of Inquiry was sent to the appellant, the County, seven individuals who are identified in the report and the consultant retained by the County who prepared the report. Representations were received from the County and two of the individuals identified in the report.

DISCUSSION:

ADVICE OR RECOMMENDATIONS

The County claims that the records, in their entirety, are exempt from disclosure pursuant to section 7(1) of the Act, which states that:

A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

Section 7(2) of the Act sets out a number of exceptions to the exemption provided by section 7(1), including section 7(2)(e) which states:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

a report or study on the performance or efficiency of an institution;

The report and the attachments to it involve the study of a number of operating, financial and management problems which existed in two homes for seniors operated by the County. The records set out the consultant's advice and recommendations for dealing with these problems.

These corrective recommendations are aimed at assisting the County to operate the seniors homes more efficiently. In my view, the records fall within the section 7(2)(e) exception, thereby precluding the County from denying access to them under section 7(1).

ECONOMIC AND OTHER INTERESTS

The County submits that sections 11(f) and (g) of the Act apply to the information contained in the records. These sections state that:

A head may refuse to disclose a record that contains,

- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) 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;

The County submits that the records contain plans which relate to the management of personnel and the administration of the nursing homes. The County further states that these plans have not yet been put into operation or disclosed to the public and, if disclosed, could reasonably be expected to prematurely announce publicly a pending policy decision.

Section 11(f)

In order to qualify for exemption under section 11(f) of the Act, the County must establish that the records satisfy each element of a three-part test:

1. the records must contain a plan or plans, **and**
2. the plan or plans must relate to:
 - (i) the management of personnel or
 - (ii) the administration of an institution, **and**
3. the plan or plans must not yet have been put into operation **or** made public.

In Order P-229, Commissioner Tom Wright defined the word "plan" as "a formulated and especially detailed method by which a thing is to be done; a design or scheme." I adopt this definition for the purposes of this appeal. In the absence of sufficient representations setting out the facts and circumstances supporting the County's position, the extent of my consideration of

the possible application of the exemption is limited to examining any relevant information which might be contained in the records themselves.

As indicated above, the records are a consultant's report of studies of the management and day_to_day operation of the County's two nursing homes. The records include the current status of the facilities, as well as information relating to personnel and financial obligations along with observations and recommendations for improved service. In my view, the records do not contain the sort of detailed methods, schemes or designs which are characteristic of a plan. It is evident from my review of the records that the authors did not intend them to be used as a plan but rather as records which provide advice for developing a plan or plans to resolve the issues identified. Therefore, in my view, the first requirement of the test for exception under section 11(f) has not been satisfied. Accordingly, I find that section 11(f) does not apply to the records.

Section 11(g)

Section 11(g) of the Act is identical to section 18(1)(g) of the provincial Freedom of Information and Protection of Privacy Act. In Order P-229, in discussing the requirements of this section, Commissioner Tom Wright stated:

In order for a record to qualify for exemption under section 18(1)(g) [section 11(g)], the 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.

I concur with the approach articulated by Commissioner Wright and adopt it for the purposes of this appeal.

Following similar reasoning to that which I expressed in my discussion of section 11(f), in my view, the records do not contain the type of information necessary to satisfy the first part of the section 11(g) test. It is also my view that the evidence provided by the County is not sufficient to establish the harm specified in section 11(g). I find, therefore, that the records do not qualify for exemption under this section.

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined to mean recorded information about an identifiable individual.

I have carefully examined the records and find that portions of pages 57, 58, 61, 62, 63, 65, 66, 67, 68, 69, 70, 75, 77, 116, 117, 118, 123, 125, 141, 148, 150, 151 and 152 contain the personal information of identifiable individuals. Although, with one exception, no reference is made to any individuals by name, the description of individual job categories and responsibilities is sufficiently detailed to allow for the drawing of accurate inferences as to the identity of the individual to whom this information relates. Accordingly, I find this information qualifies as personal information as defined by section 2(1) of the Act. None of this information relates to the appellant.

Section 14(1) of the Act prohibits the disclosure of personal information to any person other than the individual to whom the information relates, except in certain circumstances listed under the section.

In my view, the only exception to the section 14(1) mandatory exemption which has potential application in the circumstances of this appeal is section 14(1)(f), 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.

Because section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 14(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.

The County and the two affected parties claim that the disclosure of the personal information would constitute an unjustified invasion of the personal privacy of several individuals in accordance with sections 14(3)(d), (f) and (g) and section 14(2)(h) of the Act.

Having found that portions of the records contain information which qualifies as personal information, and in the absence of any submissions weighing in favour of a finding that disclosure of this information would **not** constitute an unjustified invasion of personal privacy, I find that the exception contained in section 14(1)(f) does not apply, and that the personal information contained in pages 57, 58, 61, 62, 63, 65, 66, 67, 68, 69, 70, 75, 77, 116, 117, 118, 123, 125, 141, 148, 150, 151 and 152 is properly exempt from disclosure under section 14 of the Act. I have provided highlighted copies of these pages to the County's Freedom of Information

and Privacy Co-ordinator with a copy of this order. The highlighted portions are **not** to be disclosed.

ORDER:

1. I uphold the County's decision not to disclose those portions of pages 57, 58, 61, 62, 63, 65, 66, 67, 68, 69, 70, 75, 77, 116, 117, 118, 123, 125, 141, 148, 150, 151 and 152 which are highlighted on the copy provided to the County's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I order the County to disclose the records to the appellant in accordance with the highlighted copy which I have provided to the County's Freedom of Information and Privacy Co-ordinator within thirty-five (35) days of the date of this order and **not** earlier than the thirtieth (30th) day following the date of this order. The highlighted portions are **not** to be disclosed.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the County to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ March 7, 1995