



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

FINAL ORDER M-507

Appeal M-9400340

City of Toronto



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BACKGROUND AND DISPOSITION:

In Interim Order M-457, I considered an access request made to the City of Toronto (the City) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester, who is a City Councillor, asked the City to provide him with the following categories of information:

- (1) A copy of a letter, dated February 4, 1994, from a named solicitor to the former Mayor of Toronto regarding the subject of overtime pay for City of Toronto Commissioners.
- (2) Any other documentation relating to this topic for the period commencing July 1, 1993 to the date of the request (April 6, 1994).
- (3) Information about any meetings and/or telephone calls involving the former Mayor and City Commissioners or Department Heads and/or their representatives on this subject for the same time period. (Such information was to include the dates that these sessions took place including the names of the persons who attended.)
- (4) Any documentation which was derived from these sessions.

In its decision letter, the City identified a total of 33 records that were responsive to the request. The City decided, however, not to release 23 of these documents to the requester, either in whole or in part, based on a number of exemptions found in the Act. The decision letter was authored by the City Clerk who was the delegated head of the City for the purpose of responding to the request. The City Councillor subsequently appealed this decision to the Commissioner's office.

In Interim Order M-457, I dealt with the substantive issues raised in the appeal. I found that 14 of the records at issue qualified for exemption, in whole or in part, under either section 6(1)(b), 7(1) or 12 of the Act. These discretionary exemptions relate, respectively, to closed meetings, advice or recommendations, and the solicitor-client privilege.

I also determined that the City Clerk and her senior colleagues had a personal interest in the records which were the subject of the appeal. On this basis, I found that a perception could arise that the City Clerk had been placed in a conflict of interest position when she signed the decision letter which withheld a number of records from disclosure. I also concluded that, because of her personal interest in these documents, the City Clerk could not exercise her discretion to withhold the 14 records in accordance with established legal principles.

To resolve this appeal, I ordered the City's Executive Committee, as head of the institution, to review the City Clerk's exercise of discretion to withhold the 14 records not previously disclosed to the requester. I further directed that the Executive Committee provide the Commissioner's

office with representations concerning the factors which it considered in determining whether to apply the discretionary exemptions to the records in question. These submissions were provided to me on March

10, 1995.

In its representations, the Executive Committee confirmed that it had reconsidered the City Clerk's exercise of discretion to rely on certain exemptions found in the Act to withhold Records 2, 3, 4, 5, 6, 21, 23, 24, 30, 31 and 32 from disclosure in full and Records 8, 10 and 11 in part.

The Executive Committee then stated that it would not assert any claim for exemption with respect to Records 3, 21, 23, 24, 31 and 32 in their entirety and to the highlighted parts of Records 8, 10 and 11. On this basis, these records should be released to the appellant.

With regards to Records 2, 4, 5, 6 and 30, the Executive Committee has indicated that it wishes to rely on the discretionary exemptions found in sections 6(1)(b), 7(1) or 12 of the Act to withhold access to these documents. In its representations, the Executive Committee has provided me with its rationale for deciding to claim these particular provisions of the Act.

Since I have previously found that Record 4 qualifies for exemption under section 6 (1)(b), Record 6 under section 7(1) and Records 2, 5 and 30 under section 12, the sole issue before me is whether the Executive Committee has exercised its discretion to rely on these exemptions in accordance with established legal principles.

I have carefully reviewed the City's representations with respect to its decision to apply the relevant discretionary exemption to withhold each of the five records at issue. Based on the decision making scheme of the Act, I find nothing improper in the determination which the City has made. The result is that the City may rely on these discretionary exemptions to withhold Records 2, 4, 5, 6 and 30 from disclosure.

ORDER:

1. I uphold the City's decision to withhold Records 2, 4, 5, 6 and 30 from disclosure.
2. I order the City to disclose Records 3, 21, 23, 24, 31 and 32 and the highlighted portions of Records 8, 10 and 11 which I have previously provided to the City's Freedom of Information and Privacy Co-ordinator to the appellant within fourteen (14) days of the date of this final order.
3. In order to verify compliance with the provisions of this order, I reserve the right to require that the City provide me with a copy of the records provided to the appellant pursuant to provision 2.

Original signed by:
Irwin Glasberg
Assistant Commissioner

April 13, 1995