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

ORDER M-606

Appeal M_9500253

Municipality of Metropolitan Toronto

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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 Municipality of Metropolitan Toronto (the Municipality) received a request for access to a variety of documents relating to the requester which had been prepared between January 16, 1992 and October 7, 1993. This request was clarified as pertaining to a specific incident and all subsequent related events.

The Municipality identified a number of records and granted the requester partial access to them. The Municipality denied access to others and indicated that some of the records were not responsive to the request. The requester appealed both the denial of access and the decision that some records were not responsive to the request. Appeal Number M-9400267 was opened.

I resolved the issues in that appeal in Order M-461, which determined, in part, that certain records which the Municipality had found to be non-responsive to the appellant's request were, in fact, responsive. I ordered the Municipality to issue a new decision to the appellant with respect to the records which I found to be responsive.

The Municipality subsequently issued a new decision and granted partial access to the records. Access was denied to the home telephone number of a doctor on one record pursuant to section 14(1) (invasion of privacy) and to two letters under section 7(1) (advice or recommendations).

The appellant appealed the denial of access to the two letters only. The current appeal concerns the issues raised with respect to the second decision provided by the Municipality. The sole issue to be determined in this appeal is whether the discretionary exemption in section 7(1) applies to the records.

A Notice of Inquiry was provided to the Municipality and the appellant. Representations were received from both parties. The Municipality indicated in its representations that the records contain the personal information of the appellant, and that section 38(a) (discretion to refuse requester's own information) applied. The appellant was notified that the exemption in section 38(a) had been claimed. He indicated that he would not be submitting additional representations.

DISCUSSION:

ADVICE OR RECOMMENDATIONS/DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where 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 two draft letters at issue in this appeal and in my view, they both contain the personal information of the appellant.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Section 38(a) of the Act gives the Municipality the discretion to deny access to an individual's own personal information in circumstances where any of the exemptions listed in that section would otherwise apply to the information. The exemption mentioned in section 38(a) which is at issue in this appeal is the "advice or recommendations" exemption provided by section 7(1) of the Act. Accordingly, I will now turn to the issue of whether the records at issue qualify for exemption under that section.

Section 7(1) 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.

It has been established in a number of previous orders that advice and recommendations for the purpose of section 7(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.

Record 1 is a letter from the Commissioner of the Department of Ambulance Services to the Deputy Chief Administrative Officer (the Deputy), dated October 18, 1993, regarding a draft response to correspondence. This letter refers to Record 2, which is a draft copy of correspondence from the Deputy, dated October 5, 1993, to a named doctor.

The Municipality submits that disclosure of Record 1 would reveal the advice of a senior officer to the decision maker responsible for responding to a complaint as to how the complaint should be dealt with. The Municipality submits further that Record 2 reflects the position recommended by senior staff in Record 1, and that disclosure of Record 2 would reveal the advice provided to the Deputy which could either be accepted or declined. In this regard, the Municipality indicates that the Deputy considered the draft letter and rejected it in its entirety. Another letter was prepared which was then sent to the doctor. A copy of this letter was disclosed to the appellant.

The Municipality indicates that while the advice and recommendations provided are not explicit in either record at issue, the senior official's advice is implicit throughout both records. The Municipality submits that where advice or recommendations may be inferred from the record, it is not essential that the record itself be advisory in nature.

The Municipality relies on Commissioner's orders P-320 and M-280 in support of its arguments. I have also considered Orders P-227 and P-643 in my analysis of this issue.

I am unable to accept the Municipality's arguments regarding Record 1. In Order P-320, Assistant Commissioner Tom Mitchinson found that a "note for discussion" found at the bottom of a page of a draft order of the director contained a public servant's advice on the position the institution should take in draft orders of the director issued under the Environmental Protection

Act. He properly found that this information satisfied the requirements for exemption under section 13(1).

I have reviewed Record 1. In my view, it does not contain advice on the position the Deputy should take in responding to the complaint. The record, a covering letter to which the draft letter is attached, sets out the position that the Metropolitan Toronto Ambulance Service has already taken and provides some comments in response to comments made by the Deputy. I do not read anything in this record which relates to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.

The Municipality also argues that disclosure of Record 1 would reveal the advice or recommendations which are contained in Record 2. In Order M-280, Commissioner Tom Wright found that disclosure of certain portions of a covering letter which was attached to a report would also reveal the advice or recommendations of the public servant who drafted the report. In reaching this decision, Commissioner Wright referred to the decision in Order P-233, in which it was held that a record may be exempt under section 13(1) of the Freedom of Information and Protection of Privacy Act (the provincial Act), the equivalent of section 7(1) of the Act, if its disclosure would allow accurate inferences to be drawn about the actual advice or recommendations.

In reviewing the record, I do not find any portion of it which would reveal the advice or recommendations which are provided in the draft letter which has been attached. The record appears to be a routine piece of internal correspondence which would be expected to occur as part of the daily activities of public servants. I agree with former Assistant Commissioner Tom Wright in Order P-227, where he states that not **every** communication of this nature will qualify for exemption under section 13(1) of the provincial Act.

Accordingly, I find that Record 1 does not qualify for exemption under section 7(1) of the Act, and it is, therefore, not exempt under section 38(a). As no other exemptions have been claimed for it, Record 1 should be disclosed to the appellant in its entirety.

Record 2 is, as I indicated above, a copy of a draft letter. In Order P-643, Inquiry Officer Donald Hale found that drafts of correspondence prepared for a Deputy Minister qualified as advice and recommendations within the meaning of section 13(1) of the provincial Act, in that they suggest a course of action which may be accepted or rejected by the individual for whom they were prepared.

In my view, Record 2 similarly qualifies for exemption under section 7(1) in that it reflects a suggested course of action for the Deputy to take in responding to a letter of complaint from a doctor regarding actions taken by the Metropolitan Toronto Ambulance Service, which was ultimately considered and rejected by the Deputy, in the context of the deliberative process.

Having found that Record 2 qualifies for exemption under section 7(1), I find that this record is exempt under section 38(a) of the Act.

ORDER:

1. I uphold the Municipality's decision to deny access to Record 2 (draft letter, dated October 5, 1993).

2. I order the Municipality to disclose Record 1 (letter, dated October 18, 1993) in its entirety to the appellant within fifteen (15) days from the date of this order.

3. In order to verify compliance with this order, I reserve the right to require the Municipality to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 2.

Original signed by: September 28, 1995
Laurel Cropley
Inquiry Officer