



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

# **ORDER M-600**

**Appeal M\_9500201**

**Municipality of the Township of Tiny**



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## **NATURE OF THE APPEAL:**

The Municipality of the Township of Tiny (the Township) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to 34 pages of records which were originally included in the agenda for a meeting of its Planning Committee but were removed prior to the meeting. The records related to a property owned by two individuals who were named in the appellant's request. The Township provided the requester with copies of some pages, indicated that others had previously been disclosed to her, confirmed that her request for one page had been transferred to another institution and denied access to nine pages in their entirety under the following exemptions:

- draft by-law or private bill - section 6(1)(a)
- law enforcement - section 8(1)(a)
- solicitor-client privilege - section 12
- invasion of privacy - section 14

The requester appealed the Township's decision to deny access to the records. A Notice of Inquiry was sent to the appellant, the Township and the two individuals named in the request. Representations were received from all parties. In its representations, the Township indicated that it had decided to disclose an additional page to the appellant. Accordingly, there are eight pages of records at issue in this appeal: Pages 107, 109, 110, 121, 122, 265, 270 and 271.

## **DISCUSSION:**

### **DRAFT BY-LAW OR PRIVATE BILL**

The Township submits that section 6(1)(a) applies to Page 107 as it was a draft resolution which was never passed by Council. This record is a motion regarding the directions which should be given to the Township solicitor in the context of a specific appeal before the Ontario Municipal Board.

Section 6(1)(a) reads:

A head may refuse to disclose a record,

that contains a draft of a by-law or a draft of a private bill.

The language in this section of the Act is clear and unambiguous. The record does not contain a draft by-law or a draft private bill and, accordingly, I find that section 6(1)(a) does not apply.

### **LAW ENFORCEMENT**

The Township submits that section 8(1)(a) applies to Pages 109 and 110, which are a two-page letter from a lawyer to the Township's Planning Director regarding the property referred to in the appellant's request. Section 8(1)(a) of the Act states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

interfere with a law enforcement matter.

The Township asserts that disclosure of Pages 109 and 110 would interfere with ongoing litigation. Due to the lack of detail in the Town's representations, I can only assume from my review of the record that the law enforcement matter it is referring to involves an Ontario Municipal Board hearing and the provisions of the Planning Act. Other than asserting that the exemption applies, the Township has not indicated how disclosure of this record would interfere with the matter. Accordingly, in my view, the Township has not discharged the burden of proof with respect to this exemption and I find that section 8(1)(a) does not apply.

### **SOLICITOR-CLIENT PRIVILEGE**

Although the Township's representations appear to suggest that section 12 of the Act applies to Pages 109 and 110, this exemption claim was not made in its decision letter or within 35 days of the date of confirmation of the appeal, and it is not open to the Township to claim it at this point in the appeal. Accordingly, I will not consider the application of section 12 to Pages 109 and 110.

The Township claims section 12 applies to Pages 265, 270 and 271. Section 12 states:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that 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.

This section 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).

A record can be exempt under Branch 2 of section 12 regardless of whether the common law criteria relating to Branch 1 are satisfied. Two criteria must be satisfied in order for a record to qualify for exemption under Branch 2:

1. the record must have been prepared by or for counsel employed or retained by an institution; **and**
2. the record must have been prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation.

Page 265 is a letter from the Township's solicitor to the Simcoe County District Health Unit and Pages 270 and 271 are a two-page letter replying to that correspondence. These records describe the Township's preparation for a pending hearing before the Ontario Municipal Board. Having considered the contents of the records, I am satisfied that both parts of the above test have been met, and these records are exempt under section 12 of the Act.

## INVASION OF PRIVACY

The Township claims that disclosure of Pages 121 and 122, which are internal memoranda, would constitute an unjustified invasion of personal privacy.

Under section 2(1) of the Act, "personal information" is defined, in part, as recorded information about an identifiable individual. I have reviewed these records, and I find that they do contain the personal information of the two individuals named in the request.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits disclosure of this information except in certain circumstances. Sections 14(2), (3) and (4) provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy.

The Township submits that section 14(3)(b) of the Act applies. This section states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

Having reviewed the records, I am not satisfied that they were compiled or are identifiable **as part of** an investigation. The records simply recount the results of an investigation to an official within the Township. Accordingly, I find that the presumption found in section 14(3)(b) does not apply.

If none of the presumptions in section 14(3) apply, the Township must consider the application of the factors listed in section 14(2) of the Act, as well as all other factors which are relevant in the circumstances of the case.

In the circumstances of this particular case, the property location and name of the property owner are known to the appellant, and have been disclosed to her by the Township in other records identified as responsive to her request. In my view, disclosing this information from Pages 121 and 122 would not, therefore, result in an unjustified invasion of personal privacy.

However, while I am not convinced that the remaining information is an actual part of an investigation into a possible violation of law, it does relate to a possible violation of law (namely the Building Code Act and the Provincial Offences Act). In my view, this information could be

considered highly sensitive (section 14(2)(f)), and this factor weighs in favour of privacy protection.

Having balanced the competing interests of access to information and protection of personal privacy, I find that disclosure of those parts of Pages 121 and 122 which indicate who the memos are to and from, the dates of the memos and the titles of the memos would not result in an unjustified invasion of privacy, and section 14 does not apply. In my view, only the remaining parts of the records are exempt under section 14.

## **PUBLIC INTEREST IN DISCLOSURE**

There are two requirements contained in section 16 which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

The appellant alleges that the Township is bending the rules to the benefit of the affected person who she suggests may be a friend of the mayor.

One of the principal purposes of the Act is to open a window into government. The Act is intended to enable an informed public to better participate in the decision-making process of government and ensure the accountability of those who govern. Accordingly, in my view, there is a basic public interest in knowing more about the operations of government.

"Compelling" is defined as "rousing strong interest or attention" (Oxford). In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information which the public has and can use to effectively express public opinion or make political choices.

While I agree with the appellant that the Township must be accountable to the public, I am not satisfied that disclosure of the information I have found to be exempt from disclosure under section 14 in the records at issue here will contribute in any meaningful way to the public's understanding of the activities of government. Accordingly, I find that there is no compelling public interest in disclosure, and section 16 does not apply.

## **ORDER:**

1. I order the Township to disclose to the appellant Pages 107, 109 and 110 and those parts of Pages 121 and 122 which indicate who the memos are to and from, their dates and titles, within thirty-five (35) days after the date of this order but not earlier than the thirtieth (30th) day after the date of this order.
2. I uphold the Township's decision to deny access to Pages 265, 270 and 271, and the remaining portions of Pages 121 and 122.

3. In order to verify compliance with this order, I reserve the right to require the Township to provide me with a copy of the information which is disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_

Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ September 22, 1995