



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

ORDER M-755

Appeal M_9500679

City of Ottawa



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NATURE OF THE APPEAL:

This is an appeal brought under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The City of Ottawa (the City) received a request for access to a report prepared by the City's Fire Department relating to staffing of the fire department's aerial fire trucks over a specified time period. The requester believed that the report was in the possession of the City's Commissioner of Community Services. The City identified a nine page record entitled "F/F Daily Reports" as being responsive to the request and denied access to the record in its entirety pursuant to section 11(e) of the Act (economic & other interests).

The requester (now the appellant) appealed the City's decision to deny access.

This office sent a Notice of Inquiry to the City and the appellant. Representations were received from both parties.

DISCUSSION:

ECONOMIC & OTHER INTERESTS

Section 11(e) of the Act states:

A head may refuse to disclose a record that contains,

positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution;

For a record to qualify for exemption under section 11(e), each part of the following test must be established:

1. the record must contain positions, plans, procedures, criteria or instructions; **and**
2. the positions, plans, procedures, criteria or instructions must be intended to be applied to negotiations; **and**
3. the negotiations must be carried on currently, or will be carried on in the future; **and**
4. the negotiations must be conducted by or on behalf of an institution.

[Order P-229]

The record at issue is a statistical report that discloses the actual staffing levels of the fire department's aerial trucks over a specific five month period.

As far as the first part of the test is concerned, the appellant submits that the record contains only raw data which outlines each fire department shift over that time period and indicates how many times aerial fire trucks left their stations with less than three fire fighters aboard. It is the appellant's position that because the record consists solely of raw statistical data, it cannot be said to contain "positions, plans, procedures, criteria or instructions" intended to be applied to negotiations.

The City submits:

The record contains actual data with respect to total fire fighter staff levels, categories of leave and the number of "on-duty" positions, by day and by shift. As such, the document reflect's the city's position and procedure for staffing fire trucks ...

The City states that the report was prepared to highlight the type and frequencies of leave which affect staffing levels, with a view to using this information in the collective bargaining process as well as in an upcoming labour arbitration case. The City points out that the issue of the staffing practices of the fire department was also the subject of a 1993 labour arbitration.

Broadly speaking, section 11 is designed to protect certain economic interests of institutions covered by the Act. Sections 11(c), (d) and (g) all take into consideration the **consequences** which would result to an institution if a record was released. They may be contrasted with sections 11(a) and (e) which are concerned with the **type** of the record, rather than the consequences of disclosure.

As stated above, the first part of the section 11(e) test requires that the record contain positions, plans, procedures, criteria or instructions. As such, the first part of the test relates to the form of the record and not to its intended use.

The City may very well intend to use the information in the record in its upcoming negotiations with its employees. The City also argues that "premature" disclosure of the information in the record could adversely affect the City's interests in the upcoming arbitration case. However, neither of these arguments has any bearing on whether the record itself contains something which can be characterized as a position, plan, procedure, criteria or instruction.

Previous orders of the Commissioner's office have defined "plan" as "... a formulated and especially detailed method by which a thing is to be done; a design or scheme" (Order P-229). In my opinion, the other terms in section 11(e), that is, "positions", "procedures", "criteria" and "instructions", are similarly referable to pre-determined courses of action or ways of proceeding. In my opinion, the record at issue does not disclose any intended course of action on the part of the City. It is not sufficient for the City, as quoted above, to merely state that because the record contains statistical data concerning its current operations, it represents the "plans" or "procedures" of the City. It is evident from a review of the record, that it does not represent a plan, position, criteria or instruction to be applied by the City in its negotiations, but rather contains the necessary background information which will be utilized to develop the City's approach for resolving the staffing issues.

The City has not provided me with sufficient evidence to conclude that this record contains a position, plan, procedure, criteria or instruction. Accordingly, the first part of the section 11(e) test has not been satisfied. Therefore, I find that the record does not qualify for exemption pursuant to section 11(e) of the Act.

ORDER:

1. I order the City to disclose the record to the appellant by sending her a copy of the record by **May 3, 1996**.
2. In order to verify compliance with this order, I reserve the right to require the City to provide me with a copy of the record disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ April 18, 1996