



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

ORDER M-690

Appeal M_9500471

City of Orillia



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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 City of Orillia (the City) received a request for the following information:

the total cost to Orillia taxpayers for the “mutually satisfactory agreement with respect to [the Fire Chief’s] departure from the fire department”.

The City located two records responsive to this request and denied access to them based on the following exemptions in the Act:

- closed meeting - section 6(1)(b)
- economic and other interests - section 11(c)
- invasion of privacy - section 14(1).

The requester appealed the City’s decision. In her letter of appeal, the requester (now the appellant) indicates that the ex-Fire Chief (the Chief) held a high profile position within the community, and that people in the community were concerned about the reasons for his “dismissal” as well as the associated costs to the taxpayers.

A Notice of Inquiry was sent to the City, the appellant and the Chief (as an affected party in this appeal). Representations were received from the appellant personally, and were submitted on behalf of the City and the Chief by their respective legal counsel.

The records at issue consist of a six-page handwritten agreement between the Chief and the City, signed by the Chief and the Chief Administrative Officer for the City, and a two-page typed version of the same agreement, which has not been signed. As the information in the two versions of the agreement is identical, I will refer to them collectively as “the agreement”.

DISCUSSION:

CLOSED MEETING

The City claims that section 6(1)(b) applies to the agreement in its entirety.

Section 6(1)(b) states:

A head may refuse to disclose a record,

that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

To qualify for exemption under section 6(1)(b), the City must establish that:

1. a meeting of a council, board, commission or other body or a committee of one of them took place; **and**
2. that a statute authorizes the holding of this meeting in the absence of the public; **and**
3. that disclosure of the record at issue would reveal the actual substance of the deliberations of this meeting.

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Based on the evidence before me, I am satisfied that four meetings of the Committee of the Whole Council took place on May 8, May 29, June 12 and June 26, 1995 and that the public was excluded from these meetings.

The City submits that the Municipal Act authorizes the holding of these meetings in the absence of the public. Section 55(5) of the Municipal Act, R.S.O. 1990 c. M.45, as amended, reads, in part:

A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

- (b) personal matters about an identifiable individual, including municipal or local board employees;
- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;

For in camera meetings held after January 1, 1995, the City is required to show that this was authorized by a resolution of the Council (section 55(7) of the Municipal Act). The City has provided evidence that a resolution to close each meeting to the public was passed by Council for the purpose of discussing a personal and/or personnel matter. The second part of the test has been met.

The third part of the test requires the City to show that the disclosure of the agreement would reveal the actual substance of the deliberations of the meetings. In reviewing the City's representations and the information in the record, I am satisfied that the record came before and was approved by the Committee sitting in camera. On this basis, I find that disclosure of the agreement would reveal the actual substance of the discussions conducted by the Committee of the Whole Council and hence, its deliberations. Therefore, the third part of the test has been met and section 6(1)(b) applies.

PUBLIC INTEREST IN DISCLOSURE

As I indicated above, the appellant states that because the Fire Chief is a high profile public position, this information should be open to the public. The appellant indicates further that there has been considerable media attention regarding this matter. In support of her position, the appellant has provided this office with a number of newspaper articles regarding the Chief. In my view, she has implicitly raised the possible application of the so-called "public interest override" found in section 16 of the Act. This section states that:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

However, section 6 is not subject to the public interest override provided by section 16 of the Act and a record which is exempt from disclosure under section 6 is not subject to the override provided by section 16 of the Act.

Since I have found that section 6(1)(b) of the Act applies to exempt the agreement from disclosure, I do not need to consider the application of the other exemptions claimed by the City.

ORDER:

I uphold the decision of the City.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ January 16, 1996