



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

# **ORDER M-946**

**Appeal M\_9600409**

**Town of Dryden**



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## **NATURE OF THE APPEAL:**

The Town of Dryden (the Town) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to information, including correspondence, minutes of meetings and resolutions, relating to the 1996 rate increases for the Dryden Regional Airport. The Town notified a third party whose interests may be affected by the disclosure of some of the records (the affected party). The affected party objected to the disclosure of the records. The Town then granted partial access to the records. Access to the remaining records was withheld pursuant to sections 6(1)(b) (closed meeting) and 10(1) (third party information) of the Act. The requester appealed the denial of access.

During mediation, the requester, now the appellant, narrowed the scope of the request to a letter dated September 17, 1996 from the affected party to the Mayor and Council (Record 19) and minutes of an in-camera meeting dated September 18, 1996 (Record 20). The Town has withheld access to Record 20 on the basis of section 6(1)(b) (closed meeting) and to Record 19 on the basis of section 10(1) (third party information).

This office provided a Notice of Inquiry to the appellant, the affected party and the Town. The Notice of Inquiry included the possible application of section 16 (public interest) raised by the appellant. Representations were received from all parties.

## **DISCUSSION:**

### **Closed Meeting**

The Town submits that section 6(1)(b) applies to Record 20.

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 this section, the Town must establish that:

1. a meeting of the council or one of its committees 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.

The Town submits that an in-camera meeting was held for the purpose of discussing “negotiation issues”. The Town has provided a copy of the resolution and minutes of the meeting at which the Council passed the resolution to go in-camera. I am satisfied that the meeting took place and that the public was excluded from the in-camera portion of the meeting.

With respect to the second part of the test, the Town submits that the in-camera part of the meeting was held pursuant to section 55(5)(d) of the Municipal Act, which section reads as follows:

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

labour relations or employee negotiations.

The Town also relies on section 8(b) of its Procedural By-law No. 2369-95 which states:

Notwithstanding Paragraph 8(a) above, a meeting of Council or a Committee of Council may be closed to the public if the subject matter being considered relates to:

- i) the security of the property of the municipality;
- ii) personal matters about an identifiable individual, including municipal employees;
- iii) a proposed or pending acquisition of land for municipal purposes;
- iv) employee negotiations or labour relations;
- v) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality;
- vi) a matter in respect of which Council or a Committee of Council has authorized a meeting to be closed under an Act of the Legislature or an Act of Parliament;
- vii) the receiving of advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

Record 19 consists of minutes of an in-camera meeting of the Finance Committee at which the rate of increase for fuel was discussed. The Town has provided no evidence as to how the contents of this record fall within the parameters of the categories permitted by Section 55(5)(d) of the Municipal Act or section 8(b) of its Procedural By-law No. 2369-95.

I have also considered section 55(7) of the Municipal Act which requires that the Council pass a resolution authorizing the holding of the meeting or part, in-camera and the nature of the matter to be considered at the closed meeting. The Town has provided a copy of the resolution which

describes the matter to be discussed as “negotiation issues”. In my view, “negotiation issues” is not a category for which the Council is permitted to hold a meeting closed to the public. For all these reasons, I find that the Town has not established that it was authorized by statute to hold a closed meeting to consider the subject record and section 6(1)(b) does not apply. The Town has not claimed that any other discretionary exemption applies to Record 20 and I find that no mandatory exemption applies. Therefore, the record should be disclosed to the appellant.

### **THIRD PARTY INFORMATION**

For a record to qualify for exemption under section 10(1) of the Act, the parties resisting disclosure, i.e. the Town and/or the affected party, must satisfy each of the following three requirements:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the Town in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of section 10(1) will occur.

All three requirements must be met in order for the exemption to apply.

### **Type of Information**

The affected party submits that the information qualifies as financial information as the record is “a detailed statement of financial information”. The Town submits that the record contains a discussion on the impact of a rate increase and therefore, contains financial information. I accept that the record contains information that qualifies as financial and/or commercial information. I find that the first requirement has been met.

### **Supplied in Confidence**

In order to meet this requirement, the Town and/or the affected party must establish that the record was **supplied** to the Town and that it was supplied **in confidence**, either implicitly or explicitly.

Both the affected party and the Town submit that the record was supplied explicitly in confidence as it is addressed to the Mayor and Council and is marked “CONFIDENTIAL NOT FOR PUBLIC DISTRIBUTION”.

In Order M-169, former Inquiry Officer Holly Big Canoe made the following comments with respect to the issue of confidentiality in section 10(1) of the Act.

In regards to whether the information was supplied **in confidence**, part two of the test for exemption under section 10(1) requires the demonstration of a reasonable expectation of confidentiality on the part of the supplier at the time the information was provided. It is not sufficient that the business organization had an expectation of confidentiality with respect to the information supplied to the institution. Such an expectation must have been reasonable, and must have an objective basis. The expectation of confidentiality may have arisen implicitly or explicitly.

I agree with the Inquiry Officer's reasoning and approach and adopt it for the purposes of this appeal.

In the circumstances of this appeal, I note that the record was entered as an agenda item at an open meeting of the Town Council on September 16, 1996 and the minutes of this meeting, provided to this office by the Town, indicate that the record was discussed at this meeting. While I note and accept that the final decision was referred to the Finance Committee, in my view, it is not reasonable to expect a record that is an agenda item and has been discussed at an open meeting, to be held in confidence under the Act. I find that, in the circumstances of this case, the affected party's expectation of confidentiality was not reasonable and did not have an objective basis. I find therefore that the second requirement has not been met.

As I have indicated previously, all three requirements must be established in order for the exemption to apply. I find therefore, that the exemption provided by section 10(1) of the Act does not apply to the record. The Town has not claimed that any discretionary exemption applies to Record 19 and it should therefore be disclosed to the appellant.

Because I am ordering the records to be disclosed, it is not necessary for me to address the application of section 16 of the Act.

## **ORDER:**

1. I order the Town to disclose the records to the appellant by sending a copy to him by **July 4, 1997** but not before **June 30, 1997**.
2. In order to verify compliance with the provisions of this order, I reserve the right to require the Town to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ May 30, 1997