



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

ORDER M-1005

Appeal M-9700148

City of Vaughan



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NATURE OF THE APPEAL:

The City of Vaughan (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for all documents relating to the City's By-Law 173-96 and any other cartage by-laws which the City has considered.

The City granted access to a number of responsive records, and partial access to others. The City claimed the following exemptions as the basis for denying access to the severed portions of the remaining records:

- solicitor-client privilege - section 12
- invasion of privacy - section 14

The requester (now the appellant) appealed the City's decision on two grounds: (a) the denial of access; and (b) her belief that additional responsive records exist.

During the course of mediation, the appellant narrowed her request in a manner which eliminated the information covered by section 14, and this exemption claim is no longer at issue. The appellant also received sufficient information from the City to satisfy herself that no additional responsive records exist, thereby eliminating this issue as well.

As a result of subsequent further disclosures by the City, the scope of this appeal has been narrowed to the application of section 12 of the Act to the following records:

- three pages of handwritten notes (identified by the City as pages 1 to 3 of document 8);
- the handwritten notations on a two-page letter (identified as pages 2 and 3 of document 9). (The letter itself has been disclosed).

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

DISCUSSION:

SOLICITOR-CLIENT PRIVILEGE

Section 12 of the Act 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 the City with the discretion to refuse to disclose:

[IPC Order M-1005/September 23, 1997]

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).

The City relies on both branches of the exemption.

A record can be exempt under Branch 2 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 the City; and
2. the record must have been prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation.

The City submits that the handwritten notes and notations were made by a City Solicitor, thereby satisfying the first criteria. I agree.

The City outlines the context in which the notes and notations were made, maintaining that they were prepared for use in giving legal advice and in contemplation of litigation involving the enforcement of By-law 173-96.

The appellant simply states that there is no indication that the notes and notations were made for the purpose of seeking or giving legal advice or in contemplation of litigation, and she disputes their classification as privileged.

Having reviewed the records and the representations of both parties, I accept the City's position that the notes and notations were prepared for use in giving legal advice, and I find that the second criteria under Branch 2 has been established.

Therefore, I find that the handwritten notes and notations contained in the records which remain at issue in this appeal qualify for exemption under Branch 2 of section 12 of the Act.

ORDER:

I uphold the City's decision.

Original signed by: _____

Tom Mitchinson
Assistant Commissioner

_____ September 23, 1997