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

ORDER MO-1258

Appeals MA-990100-1 and MA-990170-1

Town of Halton Hills

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NATURE OF THE APPEAL:

The appellant wrote to the Town of Halton Hills (the Town) seeking access under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to records relating to three condominium developments.

The appellant then attended the Town offices to review the files relating to the developments. At this time, the appellant indicated which of the responsive records he was most interested in receiving.
Prior to this meeting, the Town removed 13 records which it believed were subject to solicitor-client privilege, and replaced them with sheets identifying the record and indicating that the record was being withheld based on solicitor-client privilege.

The Town then issued a decision with respect to the records identified by the appellant. The Town granted access to the majority of these records, but denied access to the remaining 13 records pursuant to section 11 (economic interests) and 12 (solicitor-client privilege) of the Act. The appellant appealed the Town's decision to this office. This office then opened Appeal Number MA-990100-1 (the first appeal).

During the mediation stage of the first appeal, the Town decided to disclose Record 10 to the appellant. As a result, only Records 1-9 and 11-13 are at issue in the first appeal. In addition, the Town indicated that it was no longer relying on section 11 to deny access to the records at issue in the first appeal.

Subsequently, the appellant again attended the Town offices to review the Town's files relating to the development matters. At this time, the appellant indicated which additional records he was interested in receiving. The Town then issued a second decision with respect to these records. In this decision, the Town granted access to the majority of requested records, but denied access to 24 records pursuant to the exemptions at sections 6(1)(b) (closed meeting), 11 and 12 of the Act. The appellant appealed this decision, and this office opened Appeal Number MA-990170-1 (the second appeal).

During the mediation stage of the second appeal, the Town issued a revised decision in which it indicated that it was specifically relying on sections 6(1)(b) and 11(c), (d) and (e), and 12 to withhold the 24 records. Also during the mediation stage of the second appeal, the appellant agreed not to seek access to Record 24. Since in the second appeal Record 21 is a duplicate of Record 10, and Record 23 is a duplicate of Record 13, I will not consider the application of the Act to Records 21 and 23. As a result, 21 records are at issue in the second appeal.

I sent Notices of Inquiry setting out the issues in these appeals to the appellant and the Town. I received representations from both parties.

RECORDS:

The 12 records at issue in the first appeal are described as follows:

Record A1 Letter to the Town from a law firm dated May 7, 1987

Record A2 Town internal memorandum dated June 17, 1988

Record A3 Letter to the Town from a law firm dated June 20, 1988

Record A4 Letter to the Town from a law firm dated October 26, 1998

Record A5 Letter to the Town from a law firm dated December 1, 1998

Record A6 Town internal memorandum dated January 7, 1999

Record A7 Memorandum to a law firm from a Town dated January 13, 1999

Record A8 Letter to a law firm from the Town dated January 26, 1999

Record A9 Handwritten notes dated January 27, 1999

Record A11 Letter to the Town from a law firm dated February 25, 1999

Record A12 Letter to the Town from a law firm dated March 11, 1999

Record A13 Town internal memoranda dated March 19, 1999

The 21 records at issue in the second appeal are described as follows:

Record B1 Letter to the Town from a law firm dated December 1, 1998, with attachment

Record B2 Letter to the Town from a law firm dated October 6, 1998, with three attachments

Record B3 Letter to the Town from a law firm dated October 1, 1998

Record B4 Parkland Dedication, undated

Record B5 Letter to the Town from appraiser dated January 22, 1997

Record B6 Town internal e-mail dated January 17, 1997

Record B7 Town internal memorandum dated January 16, 1997

Record B8 Handwritten notes dated January 13, 1997

Record B9 Handwritten notes dated January 13, 1997

Record B10 Town internal e-mail dated November 12, 1996

Record B11 Handwritten notes dated November 12, 1996
Record B12 Facts Statement for Parkland and Open Space Valuation dated September 18, 1996

Record B13 Town internal memorandum dated October 17, 1996

Record B14 Facts Statement for Parkland and Open Space Valuation dated July 17, 1996

Record B15 Fact Statement for Parkland and Open Space Valuation dated June 13, 1996

Record B16 Letter to the Town dated June 13, 1996

Record B17 Parkland Dedication, undated

Record B18 Town internal memorandum dated February 6, 1996

Record B19 Letter to a law firm from the Town, undated

Record B20 Handwritten notes, undated

Record B22 Town internal e-mail dated November 5, 1996

DISCUSSION:

CLOSED MEETING

Section 6(1)(b) of the Act 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.

In order to qualify for exemption under section 6(1)(b), the Town 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.

[Order M-64]

The Town submits that this exemption applies to Records B6, B7 and B18. The Town states:

> Y Section 55 of the Municipal Act provides Councils with the authority to convene in closed session provided the subject matter is authorized by the Act to be discussed in closed session, and that a resolution is enacted prior to Council convening in closed session. The subject of these records are covered by the "proposed or pending acquisition of land for municipal purposes" ...

The Town provided me with excerpts from minutes of two Town Council meetings indicating that resolutions were passed for Council to discuss property matters. Based on these minutes and my review of Records B6, B7 and B18, I am satisfied that disclosure of Record B7 would reveal the substance of deliberations of Council in the first closed meeting, which took place pursuant to section 55(5) of the Municipal Act. However, based on the material before me, I find that disclosure of Records B6 and B18 would not reveal the actual substance of the deliberations of either closed meeting. While these records have some connection to the property matter and the meetings in question, they are procedural in nature and do not contain the type of information which can reasonably be characterized as "substance". Since the Town has claimed no other exemptions for Record B18, I do not uphold the Town's decision to deny access to this record.

SOLICITOR-CLIENT PRIVILEGE

Section 12 of the Act reads:

> 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 an institution with 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).

In order for a record to be subject to the common law solicitor-client privilege (Branch 1), the institution must provide evidence that the record satisfies either of the following tests:

1. (a) there is a written or oral communication, and

   (b) the communication must be of a confidential nature, and
   (c) the communication must be between a client (or his agent) and a legal advisor, and

   (d) the communication must be directly related to seeking, formulating or giving legal advice;

   OR

2. the record was created or obtained especially for the lawyer's brief for existing or contemplated litigation [Orders 49, M-2, M-19].

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 [Order 210].

Although the wording of the two branches is different, the Commissioner's orders have held that their scope is essentially the same:

> In essence, then, the second branch of section 19 was intended to avoid any problems that might otherwise arise in determining, for purposes of solicitor-client privilege, who the "client" is. It provides an exemption for all materials prepared for the purpose of obtaining legal advice whether in contemplation of litigation or not, as well as for all documents prepared in contemplation of or for use in litigation. In my view, Branch 2 of section 19 is not intended to enable government lawyers to assert a privilege which is more expansive or durable than that which is available at common law to other solicitor-client relationships [Order P-1342; upheld on judicial review in Ontario (Attorney General) v. Big Canoe, [1997] O.J. No. 4495 (Div. Ct.)].

The Town has claimed that both solicitor-client communication privilege and litigation privilege apply to all of the records at issue in this appeal. I will consider the application of solicitor-client communication privilege, and then (if necessary) litigation privilege, to the records. In my analysis I will apply common law principles of solicitor-client privilege, without differentiating between the two branches, for the reasons set out above.

Solicitor-client communication privilege

General principles

At common law, solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining professional legal advice. The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation [Order P-1551].

This privilege has been described by the Supreme Court of Canada as follows:

> ... all information which a person must provide in order to obtain legal advice and which is given in confidence for that purpose enjoys the privileges attaching to confidentiality. This confidentiality attaches to all communications made within the framework of the solicitor-client relationship ...[Descôteaux v. Mierzwinski (1982), 141 D.L.R. (3d) 590 at 618, cited in Order P-1409]

The privilege has been found to apply to "a continuum of communications" between a solicitor and client:

> ... the test is whether the communication or document was made confidentially for the purposes of legal advice. Those purposes have to be construed broadly. Privilege obviously attaches to a document conveying legal advice from solicitor to client and to a specific request from the client for such advice. But it does not follow that all other communications between them lack privilege. In most solicitor and client relationships, especially where a transaction involves protracted dealings, advice may be required or appropriate on matters great or small at various stages. There will be a continuum of communications and meetings between the solicitor and client ... Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach. A letter from the client containing information may end with such words as "please advise me what I should do." But, even if it does not, there will usually be implied in the relationship an overall expectation that the solicitor will at each stage, whether asked specifically or not, tender appropriate advice. Moreover, legal advice is not confined to telling the client the law; it must include advice as to what should prudently and sensibly be done in the relevant legal context.
>
> [Balabel v. Air India, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.), cited in Order P-1409]

Solicitor-client communication privilege has been found to apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice [Susan Hosiery Ltd. v. Minister of National Revenue, [1969] 2 Ex. C.R. 27, cited in Order M-729].

Representations

The Town submits that all of the records in the first appeal, and Records B1, B2, B3, B8, B9, B11, B12, B13, B14, B15, B17, B19, B20 and B22 in the second appeal, are subject to solicitor-client privilege under section 12:

> The records ... detail strategy recommended by our Solicitor for arguments before the Ontario Municipal Board.
>
> The Town's Solicitors are retained to represent the Town at hearings. It is therefore important that they are involved in discussions and be provided with copies of correspondence to ensure that they are up-to-date on the file. This [ensures] that the Solicitor is current on all aspects of the file.
>
> . . . . .
>
> Order No. M-162 states that no distinction should be made between court actions and matters heard before administrative tribunals, such as the Ontario Municipal Board.
>
> The records above detail strategy recommended by our Solicitor for arguments before the Ontario Municipal Board.

The appellant submits:

> Records 6, 7, 9 and 13 [in the first appeal] are not letters to a solicitor or from a solicitor. Therefore, I do not understand why they are covered by privilege. The communication must be between a client and a legal advisor.

Discussion

Records A1, A3, A4, A5, A11, A12, B1, B2, B3, are clearly, on their face, confidential communications from a lawyer to a client (the Town) for the purpose of providing legal advice on development matters. Record B19 is clearly, on its face, a confidential communication from a client (the Town) to a lawyer for the purpose of obtaining legal advice on development matters. On this basis, I find that they are subject to solicitor-client communication privilege.

In my Notice of Inquiry, I erroneously described Record A7 as a Town internal memorandum. In fact, this record is a memorandum to the Town from its lawyer attaching a draft letter. Record A8 is a letter to the lawyer from the Town, attaching a draft memorandum. Both records clearly are confidential communications made for the purpose of giving or obtaining legal advice on development matters. In both cases, the sender is asking the recipient to review and provide comments on a draft document. As such, both records fall within the Balabel "continuum of communications" and therefore are subject to solicitor-client communication privilege.

Records A2, A6, A13 and B13 are Town internal memoranda concerning development matters. Although they are not themselves communications between a lawyer and a client, this does not necessarily preclude the application of solicitor-client communication privilege. In Order MO-1205, in the context of a request for records relating to the drafting of a by-law, I stated:

The City submits with respect to page 33:

> ... [This] record is an e-mail communication and is a memorandum to file prepared by a solicitor in the legal department summarizing a telephone conversation between the solicitor and her client ... Record 33 is a written record of a confidential conversation between the solicitor and her client. It is a communication, written in confidence, summarizing the client's instructions to the solicitor and is directly related to the client seeking legal advice from a solicitor.

The City submits that page 48 consists of handwritten notes of a City solicitor in a memorandum to file. The City states that "the notes identify legal issues relating to a draft by-law and are directly related to the formulation and provision of legal advice to the solicitor's client."

These records are not in themselves communications to or from a lawyer and a client. However, these records fall within the "continuum of communications" as described in Balabel, and could be described as part of the solicitor's "working papers" [Susan Hosiery Ltd.]. Further, I am satisfied that these records were prepared with an intention to keep them confidential. Therefore, I find that these records qualify for exemption under the section 12 solicitor-client communication privilege.

I am satisfied that Records A2, A6, A13 and B13 are confidential communications made for the dominant purpose of giving or receiving legal advice. In Records A2 and B13, the author is informing other Town representatives of the legal advice the author received from the Town's lawyer. In Record A6, the author is informing three other Town representatives of advice received from and instructions given to the lawyer. As well, the author is recommending further instructions to the lawyer, and seeking feedback on this recommendation. In Record A13, the author is suggesting what instructions should be given to the lawyer. In my view, these records are an integral part of the process of giving and receiving legal advice and instructions on a legal matter. On this basis, I find that these communications are subject to solicitor-client privilege.

Records B9 and B20 consist of notes of a meeting among client representatives and the Town's solicitor. I am satisfied that disclosure of these records would reveal confidential communications between a lawyer and client made for the purpose of obtaining legal advice. Therefore, these records are subject to solicitor-client communication privilege.

The final record at issue in the first appeal, Record A9, consists of handwritten notes made by the Town's lawyer at a meeting with Town representatives. I am satisfied that these notes are part of the lawyer's working papers, as described in Susan Hosiery Ltd., relating to the giving of legal advice on development issues. Therefore, I conclude that Record A9 is subject to solicitor-client communication privilege.

Records B8 and B11 are sets of notes taken at meetings among Town representatives. Record B22 is a Town internal e-mail setting up a meeting and describing in general terms the agenda for the meeting. The Town submits

> [Record B8] contains information gathered for use during the OMB Hearing and also addresses a matter to be discussed with Council during an In Camera session.
> [Record B11] relates information leading up to ... an In Camera session with Council, and relates to the Town's financial position.
>
> [Record B22 is a] memo regarding strategy for negotiations.

There is nothing in the material before me to indicate that these records are confidential communications made for the purpose of obtaining or providing legal advice, or that the records otherwise fall within the Balabel continuum of privileged communications. As a result, I find that Records B8, B11 and B22 are not subject to solicitor-client communication privilege.

Records B12, B14 and B15 are all similar documents with different dates entitled "Facts Statement for Parkland and Open Space Dedication". Record 17 is a document containing property dimension calculations entitled "Parkland Dedication - Troisville". The Town submits:

> [Records B12, B14, B15 and B17 contain] information related to the appraisal. Information used in OMB hearing.

Similar to my findings above, there is nothing in the material before me to indicate that these records are confidential communications made for the purpose of obtaining or providing legal advice, or that the records otherwise fall within the Balabel continuum of privileged communications. As a result, I find that Records B12, B14, B15 and B17 are not subject to solicitor-client communication privilege.

To conclude, I find that each of the 12 records at issue in the first appeal is subject to solicitor-client communication privilege. Of the 14 records at issue in the second appeal for which solicitor-client communication privilege was claimed, only Records B1, B2, B3, B9, B13, B19 and B20 fall within the scope of this privilege. These records are exempt under section 12, subject to any finding I may make later in this order with respect to waiver.

Waiver

Even if solicitor-client communication privilege applies to a communication at the time it is made, that privilege may be lost through waiver. Waiver of common law solicitor-client privilege is ordinarily established where it is shown that the possessor of the privilege (1) knows of the existence of the privilege, and (2) voluntarily evinces an intention to waive the privilege [(S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd. (1983), 35 C.P.C. 146 (B.C. S.C.); Order P-1342].

In Order M-260, former Inquiry Officer Anita Fineberg considered the issue of waiver of solicitor-client privilege:

> Only the client may waive the solicitor-client privilege. Waiver of the solicitor-client privilege may be express or implied. As the appellant has not specifically stated whether she claims the waiver was express or implied, I shall examine both issues.
>
> In the recent text Solicitor-Client Privilege in Canadian Law, R.D. Manes and M.P. Silver, (Butterworth's, 1993) at pp. 189 and 191, the authors distinguish between the two types of waiver:
>
> > Express waiver occurs where the client voluntarily discloses confidential communications with his or her solicitor.
> >
> > Generally waiver can be implied where the court finds that an objective consideration of the client's conduct demonstrates an intention to waive privilege. Fairness is the touchstone of such an inquiry.
>
> . . . . .
>
> In S. & K. Processors Ltd....McLachlin J. noted:
>
> > However, waiver may also occur in the absence of an intention to waive, where fairness and consistency so require ...
> >
> > In the cases where fairness has been held to require implied waiver, there is always some manifestation of a voluntary intention to waive privilege at least to a limited extent. The law then says that in fairness and consistency it must be entirely waived. (pp. 148-149)
>
> The following passage from Wigmore on Evidence, vol. 8 (McNaughton rev. 1961), as set out in The Law of Evidence in Canada (Markham: Butterworth's, 1992), by Sopinka, Lederman and Bryant at p. 666, was quoted with approval by the Ontario Court (General Division) in the recent case of Piché v. Lecours Lumber Co. (1993), 13 O.R. (3d) 193 at 196:
>
> > A privileged person would seldom be held to waive, if his intention not to abandon could alone control the situation. There is always also the objective consideration that when his conduct touches a certain point of disclosure, fairness requires that his privilege shall cease whether he intended that result or not.

The appellant submits:

> ... even if subject to solicitor-client privilege, the Town waived its privilege in regard to some of the records when in fact they were produced to me ... at a meeting at the Town in June, 1999 [the second attendance].
>
> . . . . .
>
> [Records A4, A5 and A8] were produced to me at a meeting at the Town offices in June, 1999 [the second attendance]. Therefore, the Town must be considered to have waived its privilege, if any. Please refer to General Accident Assurance Co. vs. O.I.P.C. March 1994.

The appellant later submitted that he had seen not only Records A4, A5 and A8, but all of the records at issue dated between June, 1998 and January, 1999 during his second attendance at the Town offices, although he conceded that he has no notes or other documentary evidence to support his position.

The appellant provided, to the best of his recollection, some detail about the contents of several records he stated he had seen but to which he was later denied access.

The Town submits that all of the requested records were removed prior to the initial meeting with the appellant, on the basis that they were subject to solicitor-client privilege. The Town states that at the time the records were removed, it replaced these records with sheets describing the record generally and stating that they had been removed because they were privileged. The Town provided me with samples of those replacement sheets. However, the Town concedes that prior to the appellant's second visit to its offices, it mistakenly included some records in the file which the Town now claims are exempt. The Town was unable to indicate precisely which of the records at issue were viewed by the appellant, but states that none of the records at issue in the first appeal, and not all of the records at issue in the second appeal, were viewed by the appellant.

In the circumstances, based on the submissions of the appellant and the Town, I am persuaded that the Town did permit the appellant to view Record B1 during his second visit. The appellant's description is sufficiently accurate to persuade me that he must have viewed this record. However, the appellant's description of other records is not sufficiently accurate for me to conclude that he viewed other records.

Because the Town permitted the appellant to view Record B1, I find that the Town has implicitly waived privilege with respect to this document, despite the fact that the Town characterizes its inclusion of records claimed to be exempt in the file as a mistake. This is consistent with Order P-341, in which the Ministry of the Attorney General was found to have waived privilege in a document by providing access to it under the Act, although the Ministry later claimed that access was provided by mistake. Order P-341 was upheld by the Divisional Court in General Accident Assurance Co. v. Ontario (Information and Privacy Commissioner) (March 8, 1994), Toronto Doc. 557/92. As a result, I find that Record B1 is not exempt under section 12. Since the Town claimed no other exemptions with respect to this record, I do not uphold the Town's decision to deny access to this record.

Conclusion

I find that Records A1, A2, A3, A4, A5, A6, A7, A8, A9, A11, A12, A13, B2, B3, B9, B13, B19 and B20 are subject to solicitor-client communication privilege. Because of my findings below under the "economic interests" exemption at section 11, it is not necessary for me to consider the application of litigation privilege to the remaining records for which section 12 was claimed.

ECONOMIC INTERESTS

The Town claims that paragraphs (c), (d) and (e) of section 11 apply to the 12 remaining records at issue, Records B4, B5, B6, B8, B10, B11, B12, B14, B15, B16, B17 and B22. These provisions read:

> A head may refuse to disclose a record that contains,
>
> (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
>
> (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;
>
> (e) 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;

The Town submits:

> For [these records], Section 11 – "Economic Interests" has been relied upon. Again, since this matter is before the Ontario Municipal Board, a number of the records relate to strategy which if released could have an impact on the Town's financial position, and its ability to further its objectives.

Regarding the 12 specific records, the Town submits:

> Record B4 details of calculations of payment for cash-in-lieu of parkland. If released, the Town may be impacted financially. The information was also provided to our solicitor for use in the OMB hearing and associated negotiations
>
> Record B5 correspondence from an appraiser hired by the Town to determine the value of cash-in-lieu of parkland figures. Information was used in the OMB hearing during negotiations
>
> Record B6 the e-mail outlines the purpose of the discussions held during an In Camera meeting

Record B8	the record contains information gathered for use during the OMB Hearing and also addresses a matter to be discussed with Council during an In Camera session
Record 10	the e-mail outlines our proceeding with negotiations and discusses matters to be placed before Council as part of an In Camera session
Record 11	the [document] relates to information leading up to ... an In Camera session with Council, and relates to the Town's financial position
Records 12	information related to the appraisal. Information used in the OMB hearing
Record 14	information related to the appraisal. Information used in the OMB hearing
Record 15	information related to the appraisal. Information used in the OMB hearing
Record 16	information related to the appraisal. Information used in the OMB hearing
Record 17	information related to the appraisal. Information used in the OMB hearing
Record 22	memo regarding strategy for negotiations

The Town's submissions on this issue lacked detail, and were of limited assistance to me. However, based on the face of the records themselves, as well as all of the surrounding circumstances, I am satisfied that disclosure of the bulk of the above-listed records would reveal information which could reasonably be expected to prejudice the economic interests of the Town. These records reveal financial information which is relevant to on-going and possible future negotiations concerning the development matters, and the related pending litigation before the Ontario Municipal Board. Until these matters are fully resolved, I am satisfied that premature disclosure of this information would adversely affect the Town's position in the negotiations, as well as in the hearings before the OMB. As a result, I find that these records are exempt under sections 11(a) and (c). I also find support for these findings in Order MO-1228, a decision of Adjudicator Holly Big Canoe, in which she stated:

> The City submits that section 11(d) applies to Record 3 (the Report). To establish a valid exemption claim under section 11(d), the City must demonstrate a reasonable expectation of injury to its financial interests.
>
> The City indicates:
>
> > In February, 1997 Ottawa City Council approved a unique partnering process for the Revitalization of Lansdowne Park. The City sought a partner to provide innovative business ideas which would maximize the financial benefits to the City while respecting the character and needs of the Park and the surrounding area.

> The City of Ottawa elected to obtain the services of a Real Estate Appraiser and Consultant to carry out a comprehensive appraisal of the Lansdowne Park site to determine an appropriate market value per unit of development based on the development proposals being considered for the site.
> The purpose of the appraisal in question was in short to establish a benchmark for the City to assess its contribution and/or return from the potential redevelopment of the site.

The City also indicates that the Report was requisitioned specifically with the intent that it would form the basis for instructions to City staff in negotiating the final agreement should Council decide to proceed to that stage with the recommended developer.

The City submits that the recommended proposal and developer for the Revitalization Project has not yet been approved by Council nor has a decision yet been made to sell any portion of the Park at a particular price. The City submits that until Council has met and approved the sale of the property and the sale has been closed, disclosure of the Report could be expected to prejudice the financial interest of the City in attempting to obtain a fair return for the sale of the Park property. Disclosure at this time could also reasonably be expected to adversely affect the negotiations with the developer, according to the City.

The Report contains specific information relating to existing and proposed income generating strategies, various pricing scenarios as they pertain to the recommended and potential uses, and information which reveals potential profit and loss data in relation to the various options for redevelopment. The report also contains specific information on lease rates, lease and sales negotiations strategies and makes reference to potential overhead and operating expenses related to the development proposals which are currently under review by Council. In my view, disclosure of this detailed information at this stage in the process could weaken the City's negotiating position and interfere with its ability to obtain a fair return on its property. Accordingly, I am satisfied that disclosure of Record 3 could reasonably be expected to be injurious to the financial interests of the City, and section 11(d) applies.

My findings apply to all of the above-listed records, except for Record B6. This record does not contain the type of information described above; rather, it contains information of a procedural nature, the disclosure of which could not reasonably be expected to cause any of the harms outlined in section 11(c), (d) or (e) of the Act.

ORDER:

1. I order the Town to disclose Records B1, B6 and B18 to the appellant no later than **December 31, 1999.**

2. I uphold the Town's decision to deny access to the remaining records.

Original signed by: December 9, 1999
David Goodis
Senior Adjudicator