



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER MO-1487**

**Appeal MA-010056-2**

**Municipality of Bayham**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The Municipality of Bayham (the Municipality) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for access to a copy of a “confidential staff report” dated August 3, 1999 and submitted to the Municipality’s Council at a meeting which took place on August 19, 1999. The Appellant also requested a copy of any other staff or Council reports concerning the tax sale of her property.

The Municipality located the requested record and confirmed that no further responsive records exist. The Municipality denied access to the record, claiming the application of section 6 of the Act and suggesting that reports appropriately considered by Council in closed session pursuant to the *Municipal Act* remain confidential. The requester, now the appellant, appealed this decision.

During the mediation stage of the appeal, the parties explained the circumstances surrounding the request. The Municipality had commenced proceedings under the *Municipal Tax Sales Act* to recoup money it alleged was owed due to tax arrears. The appellant had made a request for, and was granted, an appearance before the Municipality’s Council for the purpose of requesting tax relief. Subsequent to the Council meeting the appellant became aware that the record in issue was considered at the meeting. The appellant states that she was present at the Council Meeting and that the section 6(2)(b) exception to the section 6(1)(b) exemption therefore applies.

The Municipality argues that the portion of the meeting at which the Report was considered took place “in-camera”. The Appellant also claims she had shared her written submissions with the Tax Clerk who prepared the Report, however she was not made aware of the confidential staff report until after the meeting. From a procedural fairness point of view, the Appellant feels she should have been provided with a copy of the Report prior to the Council meeting on August 19, 1999. For the purposes of this appeal, the appellant is satisfied that the Report dated August 3, 1999 entitled “Staff Report to the Mayor and Members of Council” is the sole record that is responsive to her request.

As mediation was not successful in resolving the issues between the parties and the matter, the appeal was moved into the adjudication stage of the process.

I decided to seek the representations of the Municipality, initially. As it appeared that the record contained the personal information of the appellant, I asked the parties to address the possible application of section 6(1)(b) of the Act, together with section 38(a). The Municipality made submissions which were then shared with the appellant. The appellant also made representations, which were in turn shared with the Municipality. Along with the appellant’s submissions, I invited the Municipality to make reply submissions specifically addressing the possible application of the exception to section 6(1)(b) contained in section 6(2)(b) to the record. The Municipality made submissions by way of reply.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Section 2(1) of the *Act* defines the term “personal information”, in part, to mean “recorded information about an identifiable individual. Based on my review of the record, I find that it contains the personal information of the appellant and her husband within the meaning of section 2(1). Specifically, the record includes information relating to financial transactions in which the appellant and her husband were involved, as contemplated by section 2(1)(b).

### **CLOSED MEETING/DISCRETION TO REFUSE REQUESTER’S OWN INFORMATION**

The Municipality claims that the subject record qualifies for exemption under section 6(1)(b) and is, accordingly, exempt from disclosure under section 38(a) of the *Act*. Section 6(1)(b), and the exception to it contained in section 6(2)(b), state that:

- (1) A head may refuse to disclose a record,
  - (b) 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.
- (2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,
  - (b) in the case of a record under clause (1)(b), the subject-matter of the deliberations has been considered in a meeting open to the public;

In order to qualify for exemption under section 6(1)(b), the Municipality must establish that:

1. a meeting of 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.

[Orders M-64, M-98, M-102, M-219 and MO-1248]

The first and second parts of the test for exemption under section 6(1)(b) require the Municipality to establish that a meeting was held and that it was held in camera.

## The Municipality's Representations

The Municipality submits that the record was presented to Council on August 19, 1999 and "was received during the closed (in-camera session)." It indicates that:

Closed sessions are authorized by section 55(5)(b) of the *Municipal Act* where the matter being considered is a personal matter concerning an identifiable individual. In this case, the record pertained to financial matters specifically associated with the individuals.

The record contains the contents of these confidential matters as presented to the Council for its deliberations. These are the facts upon which the Council actually deliberated. Disclosure of the document would reveal the actual substance of the discussions conducted by Council.

The appellant concedes that Parts 1 and 2 of the test set out above have been satisfied by the Municipality. She takes issue, however, with the Municipality's assertion that the disclosure of the record would reveal the substance of Council's deliberations. She submits that:

. . . the representations of the Municipality state that the Tax Clerk's Report is a chronological account of financial transactions and exchanges concerning my property taxes, and that "these are the facts on which the Council actually deliberated." If that is so, I would respectfully ask the Municipality why my husband and I attended the meeting at all. I submit that we requested and attended the meeting in order to inform Council of our situation of financial hardship and disability and request relief, and that the actual substance of the Council's deliberations was whether or not any relief was possible given our circumstances. Information regarding our current financial and medical problems was provided in person by myself and my husband, as well as in my written presentation, while the Tax Clerk's Report dealt with "the actions of staff to deal with problems presented by the individuals". I therefore conclude that the disclosure of the Report would not reveal the actual substance of Council's deliberations regarding our request for relief. In addition, while the Tax Clerk's Report provided the Council with background information regarding payment of my taxes, and staff action to collect taxes, this information would not be revealed by disclosure of the Report, as it was previously known to me and referred to in my presentation.

In my view, based on my reading of the record, it contains information whose disclosure would reveal precisely the substance of Council's deliberations. The record addresses the circumstances surrounding the appellant's tax arrears and the steps taken by the appellant and her husband to bring them up to date. The record also addresses specifically and in detail the appellant's request for relief and the position taken by the Municipality in response. This is the substance of what Council was being asked to decide upon, how the Municipality ought to respond to the appellant's request for relief. In my view, the disclosure of the record would

reveal the substance of Council's deliberations and the record qualifies for exemption under section 6(1)(b). Because the record contains the personal information of the appellant, I find that it is exempt from disclosure under section 38(a).

With respect to the possible application of the exception in section 6(2)(b), the Municipality states that:

The record in this case was, as noted above, not considered at a meeting open to the public. The meeting was not open to the public for the reasons outlined above.

In its reply submissions, the Municipality confirms that the appellant and her husband were not present at the in camera portion of the Council meeting when Council actually discussed the subject matter of the record. The appellant and the Municipality agree that the appellant and her husband were "excused" from this portion of the Council meeting. As a result, I find that the part of the meeting at which the record at issue was discussed was not "open to the public" and that the exception in section 6(2)(b) has no application in the present circumstances.

**ORDER:**

I uphold the Municipality's decision to deny access to the record.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_  
November 20, 2001