

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER MO-4548

Appeal MA22-00420

The Regional Municipality of York

July 15, 2024

**Summary:** The municipality received a request under the *Act* for records relating to its mandatory vaccination policy. This appeal deals with part 3 of the request for access to meeting dates and documents of closed door meetings of its Council that discussed the mandatory vaccination policy. Ultimately, the municipality claimed the responsive record was excluded from the *Act* by section 52(3)3 (labour relations and employment-related information) and, in the alternative, it claimed the record was exempt by section 6(1)(b) (closed meeting). At mediation, the appellant also raised the issue of scope and the municipality's search for responsive records. In this order, the adjudicator finds that the record is not excluded from the *Act* by section 52(3)3 but finds that the exemption at section 6(1)(b) applies to the information. He also finds that the municipality's search for responsive records was reasonable and dismisses the appeal.

**Statutes Considered:** *Statutes Municipal Freedom of Information and Protection of Privacy Act*, RSO, 1990, c. M.56, section 6(1)(b), 17, 52(3)3.

**Orders and Investigation Reports Considered:** Order MO-2726.

### OVERVIEW:

[1] The Regional Municipality of York (the municipality) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to its mandatory vaccination policy. The request, which the municipality divided into three parts, stated:

In accordance with Section 5 of MFIPPA, please provide the web links (or copy) to public records that were issued by York Region to notify of the grave health or safety due to COVID-19, leading to the York Region Mandatory COVID-19 Vaccine Policy (YRMVP).

In accordance with Section 6(1)(b) of MFIPPA, please provide the meeting dates of the York Regional Council (and its committees) that discussed the YRMVP and the web links (or copy) to meeting documentation.

In accordance with Section 6(2)(b) of MFIPPA and in relation to section 6(1)(b), please provide the meeting dates and documents of the closed door Regional Council meetings (and its committees) that discussed the YRMVP.

[2] The municipality issued a decision granting partial access to the records. With respect to part 1 of the request, the municipality advised that there were no responsive records. With respect to part 2 of the request, the municipality denied access based on section 15(a) (information publicly available) of the *Act*.<sup>1</sup> With respect to part 3 of the request, the municipality denied access based on section 6(1)(b) (closed meeting) of the *Act*.

[3] The requester appealed the municipality's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC).

[4] During mediation, the mediator had discussions with the parties about the issues on appeal. The mediator confirmed with the appellant that parts 1 and 2 of the request are resolved. As a result, section 15(a) is not at issue in this appeal. With respect to part 3 of the request, the municipality advised the mediator that it was relying on the exclusion in section 52(3)3 (labour relations or employment-related information) of the *Act* and, alternatively, the exemption at section 6(1)(b).

[5] The appellant advised the mediator that he wished to proceed to adjudication in order to obtain access to the record withheld by the municipality.

[6] In his appeal submission and during mediation, the appellant contended that he believes the municipality has additional records that fall within the scope of his request that have not been disclosed to him. The appellant advised the mediator that he wished to proceed to adjudication on the issues of scope of request and whether the municipality conducted a reasonable search. As a result, section 17 has been added as an issue on appeal.

[7] As no further mediation was possible, the file was transferred to the adjudication stage of the appeals process in which an adjudicator may conduct an inquiry under the

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<sup>1</sup> In its decision, the municipality included that this information was publicly available and provided the following link: <https://www.york.ca/york-reg1on/council-and-committee/agendas-minutes-and-reports>

*Act*. I decided to conduct an inquiry and I sought and received representations from the parties.

[8] In this order, I find that the record at issue is not excluded by section 52(3)3 of the *Act*. However, I also find that the exemption at section 6(1)(b) applies to the withheld information. Finally, I find that the municipality's search was reasonable. The appeal is dismissed.

## **RECORD:**

[9] The information at issue is the withheld portion of the Committee of the Whole Meeting Minutes: September 9, 2021.

## **ISSUES:**

- A. Does the section 52(3)3 exclusion for records relating to labour relations or employment matters apply to the record?
- B. Does the discretionary exemption at section 6(1)(b) relating to closed meetings apply to the record?
- C. Did the institution exercise its discretion under section 6(1)(b)? If so, should the IPC uphold the exercise of discretion?
- D. What is the scope of the request for records? Which records are responsive to the request? Did the institution conduct a reasonable search for records?

## **DISCUSSION:**

### **Issue A: Does the section 52(3)3 exclusion for records relating to labour relations or employment matters apply to the record?**

[10] Section 52(3) of the *Act* excludes certain records held by an institution that relate to labour relations or employment matters. If the exclusion applies, the record is not subject to the access scheme in the *Act*, although the institution may choose to disclose it outside of the *Act's* access scheme.<sup>2</sup>

[11] The purpose of this exclusion is to protect some confidential aspects of labour relations and employment-related matters.<sup>3</sup>

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<sup>2</sup> Order PO-2639.

<sup>3</sup> *Ontario (Ministry of Community and Social Services) v. John Doe*, 2015 ONCA 107 (CanLII).

Section 52(3)3 states: Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

...

3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[12] If section 52(3)3 applies to the records, and none of the exceptions found in section 52(4) applies, the records are excluded from the scope of the *Act*.

[13] If section 52(3)3 applied at the time the record was collected, prepared, maintained or used, it does not stop applying at a later date.<sup>4</sup>

For section 52(3)3 to apply, the institution must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;
2. this collection, preparation, maintenance or use was in relation to meetings, consultations, discussions or communications; and
3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

### ***Representations***

[14] The municipality submits that the exclusion at section 52(3)3 applies to the information at issue for the following reasons:

- It was prepared by municipality staff and maintained by it as the official minutes of a private session meeting
- The record concerns the municipality's vaccination policy that the municipality implemented for its employees, consistent with the municipality's obligations under the *Occupational Health and Safety Act*
- The private session meeting was the first meeting of Council since the policy took effect and the update was given by the head of HR on a matter relating to all employees of the municipality.

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<sup>4</sup> *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 509.

[15] The municipality refers to Order MO-4029 where the adjudicator found that the types of records excluded by section 52(3)3 are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. The municipality states that it was acting as an employer by implementing the mandatory vaccination policy. It also submits that this policy directly impacted the terms and conditions of employment at the municipality.

[16] The municipality submits that the record does not meet the criteria for any of the listed exceptions set out in section 52(4).

### ***Analysis and finding***

[17] For the following reasons, I find that the record is not excluded from the *Act* by section 52(3)3.

[18] Previous decisions issued by the IPC have held that section 52(3) (and its provincial equivalent section 65(6)) requires a record-specific and fact-specific analysis.<sup>5</sup> In addition, when determining whether the exclusion applies, the record is examined as a whole rather than by individual pages, paragraphs, sentences or words. This whole record method of analysis has also been described as the "record by record approach".<sup>6</sup> In that regard, the IPC has emphasized that in addressing the possible application of the 52(3) exclusion, the whole record is considered.<sup>7</sup>

[19] The question before me, therefore, is whether the record (as a whole) relates to employment-related matters in which the municipality has an interest. However, the municipality has not provided an unredacted copy of the entire minutes, claiming that large portions are not responsive to the request. With regard to the portion it is claiming the exclusion applies to, the municipality acknowledges that the exclusion applies to the record examined as a whole but suggests that it is clear that the exclusion applies to only the part discussing the mandatory vaccination policy and not to the entire minutes. In any event, given my analysis below, I find that the withheld information is not excluded under the *Act*.

[20] As set out in Order MO-4029, the type of records excluded from the *Act* by section 52(3) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees' actions for which an institution may be vicariously liable.<sup>8</sup>

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<sup>5</sup> Orders P-1242 and MO-3163.

<sup>6</sup> See, for example, Orders M -352, MO-3798-I, MO-3927, MO-3947, MO-4071, PO-3572, PO-3642 and PO-3893-I.

<sup>7</sup> See Orders PO-3572 and PO-3642, for example.

<sup>8</sup> *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct).

[21] For section 52(3)3 to apply, the institution must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;
2. this collection, preparation, maintenance or use was in relation to meetings, consultations, discussions or communications; and
3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

[22] The phrase "labour relations or employment-related matters" has been found to apply to information in the context of:

- a job competition;<sup>9</sup>
- an employee's dismissal;<sup>10</sup>
- a grievance under a collective agreement;<sup>11</sup>
- disciplinary proceedings under the *Police Services Act*;<sup>12</sup>
- a "voluntary exit program";<sup>13</sup>
- a review of "workload and working relationships";<sup>14</sup> and
- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act*.<sup>15</sup>

[23] The phrase "labour relations or employment-related matters" has been found **not** to apply in the context of:

- an organizational or operational review;<sup>16</sup> or
- litigation in which the institution may be found vicariously liable for the actions of its employee.<sup>17</sup>

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<sup>9</sup> Orders M-830 and PO-2123.

<sup>10</sup> Order MO-1654-I.

<sup>11</sup> Orders M-832 and PO-1769.

<sup>12</sup> Order MO-1433-F.

<sup>13</sup> Order M-1074.

<sup>14</sup> Order PO-2057.

<sup>15</sup> *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

<sup>16</sup> Orders M-941 and P-1369.

<sup>17</sup> Orders PO-1722, PO-1905 and *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.

[24] The phrase “in which the institution has an interest” means more than a “mere curiosity or concern,” and refers to matters involving the institution’s own workforce.<sup>18</sup>

[25] Even if the first 2 parts of the test were met, based on the information in the withheld record, part 3 would not be met and the exclusion does not apply. In my view, the information in the record at issue, is information about the possible application of the mandatory vaccine policy. The withheld information does not contain the type of information that would be excluded by section 52(3)3. In my view, the information at issue consists of generic statements about the policy and does not involve discussions about labour relations or employment-related matters in which the municipality has an interest.

[26] As a result, I find that the exclusion does not apply. I will now consider if the exemption at section 6(1)(b) applies to the same information.

**Issue B: Does the discretionary exemption at section 6(1)(b) relating to closed meetings apply to the record?**

[27] Section 6(1)(b) protects certain records relating to the closed meetings of a council, board, commission or other body.

It reads:

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.

[28] For this exemption to apply, the institution must show that:

1. a council, board, commission or other body, or a committee of one of them, held a meeting,
2. a statute authorizes the holding of the meeting in the absence of the public, and
3. disclosure of the record would reveal the actual substance of the deliberations of the meeting.<sup>19</sup>

[29] The institution must show that it held a meeting, and that it was authorized by law to hold the meeting *in camera*.<sup>20</sup> For the meeting to be authorized to be held *in camera*, its purpose must have been to deal with a matter for which a closed meeting is authorized

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<sup>18</sup> *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

<sup>19</sup> Orders M-64, M-102 and MO-1248.

<sup>20</sup> Order M-102.

by statute.<sup>21</sup>

[30] For section 6(1)(b) to apply, it must be established that disclosure of the record would reveal the actual substance of deliberations that took place at the *in camera* meeting, and not just the subject of the meeting or the deliberations.<sup>22</sup> “Deliberations” refer to discussions conducted with a view towards making a decision.<sup>23</sup>

[31] Section 6(1)(b) does not protect records merely because they refer to matters discussed at a closed meeting, and it does not protect the names of individuals attending meetings, and the dates, times and locations of meetings.<sup>24</sup>

[32] Section 6(2)(b) of the *Act* sets out the exception to section 6(1)(b) and reads::

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;  
or

### ***Representations***

[33] The municipality explains that on August 30, 2021, it announced its intention to require all of its staff to receive COVID-19 vaccination. On September 8, 2021, the Committee of the Whole passed a motion and resolved into private (closed) session to discuss matters falling under the provisions section 239 of the *Municipal Act, 2001* and in accordance with its Procedure By-law 2018-59, as amended. The municipality notes that these matters ranged from items related to the disposition and acquisition of lands, labour relations and negotiations, all of which are permissible justifications for closing part of a meeting to the public as outlined in the *Municipal Act*.

[34] The municipality submits that the meeting minutes of this private session was the first opportunity for Council to have a discussion with HR staff on a policy that had significant labour relations implications. The municipality notes that subsequently there have been a number of grievances filed against the policy and it also led to the eventual dismissal of 78 employees. The municipality notes that the minutes also show that upon resuming to the public session portion, the committee of the whole passed a motion to receive the confidential verbal update provided in relation to this item.

[35] The municipality acknowledges that at a regional Council meeting, Council was

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<sup>21</sup> *St. Catharines (City) v. IPCO*, 2011 ONSC 2346 (Div. Ct.).

<sup>22</sup> Orders MO-703, MO-1344, MO-2389 and MO-2499-I.

<sup>23</sup> Order M-184.

<sup>24</sup> Order MO-1344.



presented with Corporate Update #6 – York Region Response to COVID-19, which highlighted that the municipality had made vaccines mandatory for all municipal staff. The municipality notes that the withheld information provides more detail than merely the stated subject matter. It submits that the information details the questions that arose during the deliberative process and provides insight into what was deliberated. The municipality notes that the IPC has found in the past that the substance of deliberations should not be limited to records which permit accurate inferences to be drawn regarding discussions of the pros and cons of a course of action. Instead, the words of the exemption may extend more generally to include decision maker's views, opinions, thoughts, ideas and concerns expressed within the course of the deliberative process. It notes that the minute is the record that captures the deliberation, as required by section 238(7) of the *Municipal Act*.

[36] The municipality notes that at a subsequent council meeting, council adopted the recommendations in the minutes of the Committee of the Whole meeting.

[37] In his representations, the appellant indicates that other municipalities have made publicly available some of the information that he has requested in this appeal which is evidence that the information is not confidential. He also refers to his earlier submissions. In his appeal form, the appellant addressed the section 6(1)(b) exemption claim indicating that the records should be made public. He submits that the exception in section 6(2)(b) applies to the information because the municipality's mandatory vaccination policy was referenced and reported on in a public forum several times. Specifically, he states that the policy was considered in four specific public meetings and references the details of those public discussions. The appellant submits that the vaccination policy was clearly part of a public meeting agenda and discussed in a public forum. Therefore, he states that the municipality's rationale for denying the requested information is unjustified.

[38] The appellant notes that in one open meeting, the vaccination policy is discussed with a councillor questioning the different municipal policies and how they can protect public health and safety as such.

### ***Analysis and finding***

#### *Part 1: the municipality's Committee of the Whole held a meeting*

[39] The first part of the test for exemption under section 6(1)(b) requires the municipality to establish that a meeting was held.

[40] The record supports the municipality's position that the Committee of the Whole held a meeting on September 9, 2021. Therefore, I find that the first part of the three-part test under section 6(1)(b) has been met.

#### *Part 2: the Municipal Act, 2001 authorizes the holding in the absence of the public*

[41] The second part of the test requires the municipality to establish that the meeting

was properly held in camera (in the absence of the public) by identifying the relevant statutory authority to support it. In determining whether there was statutory authority to hold a meeting in camera under part two of the test, I must consider whether the purpose of the meeting was to deal with the specific subject matter identified in the statute authorizing the holding of a closed meeting.

[42] Under section 239(1) of the *Municipal Act, 2001*, all meetings must be open to the public unless they fall within the prescribed exceptions. Section 239(2) of the *Municipal Act, 2001*, sets out the exceptions that authorize the convening of a meeting in the absence of the public.

[43] The municipality submits that section 239(2)(d) of the *Municipal Act, 2001* as well as its Procedure By-law 2018-59, authorizes its Committee of the Whole to hold closed meetings if the subject matter being considered relates to labour relations. In this case, the municipality states the subject matter under consideration at the meetings of September 9, 2021, was the labour relations implications of its staff mandatory vaccination policy.

[44] The municipality submits the *Municipal Act, 2001* authorized the holding of the meeting in question in the absence of the public.

[45] I have reviewed the parties' representations and the record itself. Based on this review, I find the municipality was authorized to hold this meeting in camera under section 239 of the *Municipal Act, 2001*. Specifically, section 239(2)(d) of the *Municipal Act, 2001* provided the municipality with the statutory authority to hold the meeting in camera. Section 239(2)(d) of the *Municipal Act, 2001* states:

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

(d) labour relations or employee negotiations;

[46] In conclusion, I find that the municipality was authorized under section 239(2)(d) of the *Municipal Act, 2001* to hold the meeting of September 9, 2021, in camera.

*Part 3: Disclosure of the records would reveal the actual substance of the deliberations of the meetings*

[47] With respect to the third requirement set out above, the wording of the provision and previous IPC decisions establish that in order to qualify for exemption under section 6(1)(b), there must be more than merely the authority to hold a meeting in the absence of the public. Section 6(1)(b) of the *Act* specifically requires that disclosure of the records would reveal the actual substance of deliberations which took place at the municipality's closed meeting, not only the subject of the deliberations.

[48] The municipality submits that part 3 of the test is met because disclosure of the

record would reveal the substance of the deliberations of the meeting, which was the first opportunity for members of Council to have a discussion with staff on a policy that had significant labour relations implications. The municipality submits that the information in the record details the questions that arose during the deliberative process and provides insight into what was deliberated.

[49] The appellant suggests that part 3 of the test for the application of section 6(1)(b) is not satisfied because the substance and deliberations of the meeting, the mandatory vaccination policy, has been referenced and reported on in a public forum several times. Given the public nature of the discussions about this policy, the appellant submits that the closed-meeting exemption should not apply to the record.

[50] I have reviewed the record at issue and find that disclosure of it would reveal the substance of deliberations relating to the mandatory staff vaccination policy. Further, I find the information in the record contains more than a discussion of the mere subject of the deliberations but contains detailed information and provides insight into what was deliberated. All the information at issue would, if disclosed, reveal information the Committee of the Whole considered and discussed with a view towards making a decision regarding the implementation of the policy. Based on my review of the record, I find its disclosure would reveal the substance of deliberations at the closed meeting on September 9, 2021.

[51] Therefore, I find that all three parts of the section 6(1)(b) test have been met and the records at issue are exempt from disclosure under section 6(1)(b) of the *Act*.

[52] However, in his representations, the appellant also raised the application of the section 6(2)(b) exceptions. Therefore, I will now consider whether it applies in this case.

*Section 6(2)(b) exception*

[53] Section 6(2)(b) of the *Act* sets out exceptions to section 6(1)(b). In this case, the appellant claims that section 6(2)(b) applies to the records at issue. This section states,

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.

[54] Regarding section 6(2)(b), the municipality states that with the exception of a motion to receive the confidential verbal update, as per the public minutes from September 9, 2021, Council has never passed a motion with regards to the discussion of labour relations matters that is addressed in the withheld record.

[55] As summarized above, the appellant submits that since the mandatory vaccination policy was referenced and reported on in a public forum several times that the exception

applies because he believes that the substance of the deliberations of the closed meeting at issue was later discussed publicly. The appellant refers to four Council meetings (October 28, 2021, November 25, 2021, December 2, 2021, and February 24, 2022) where the vaccination policy was discussed, including updates, discussion about public inquires on the policy, discussion concerning different municipal policies, and on staff compliance with the policy.

[56] With regard to the appellant's submission, I have considered whether the open public meetings where the vaccination policy was considered establishes that the "subject matter" of the closed meeting's deliberations was "considered in a meeting open to the public" within the meaning of section 6(2). After my review of the record, I agree with the municipality that release of the information in question would expose the deliberations of the substance of the discussions. I agree with the reasoning in Order MO-2726 where the adjudicator found that the exception in section 6(2)(b) did not apply in similar circumstances. In that decision, the adjudicator stated:

Although I accept the appellant's position that the public was generally aware of the nature of some of the matters which resulted in the discussion at the November 15th meeting, and that specific questions about a particular action the township council ought to take were dealt with at an earlier open meeting, I am not satisfied that these meetings or disclosures satisfy the requirement that the subject matter of the deliberations has been considered in a meeting open to the public.

[57] I find that in this appeal, although the vaccination policy was discussed in an open Council meeting and specific questions were asked, after reviewing the record, I am not convinced that the open meetings satisfy the requirement that "the subject matter of the deliberations has been considered in a meeting open to the public."

[58] Therefore, I find that the section 6(2)(b) exception does not apply to the records. Accordingly, I find that the section 6(1)(b) exemption applies to the records. I will next consider the municipality's exercise of discretion.

**Issue C: Did the institution exercise its discretion under section 6(1)(b)? If so, should the IPC uphold the exercise of discretion?**

[59] The section 6(1)(b) exemption is discretionary, meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[60] In addition, the IPC may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;

- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[61] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>25</sup> The IPC cannot, however, substitute its own discretion for that of the institution.<sup>26</sup>

### ***Representations***

[62] The municipality maintains that the private minutes of the Committee of the Whole are confidential documents that are subject to Council privilege. It submits that these private minutes are maintained in a secure records repository with appropriate access and control settings applied. It notes that they are not available to the public, nor are they broadly available within York Region.

[63] The municipality submits that it is essential that Councillors be able to have full and frank exchanges between and among themselves, and to have the assurance that these exchanges will be protected. It notes that as a municipal institution, the privacy of these deliberations is protected by the privilege associated with the Cabinet confidentiality that applies to the Government of Ontario. It notes that Councillors are bound by the Council Member Code of Conduct, which is required by the *Municipal Act*, which states "No Member shall disclose the content of any such matter, or the substance of deliberations, of a closed meeting and the Member has a duty to hold information received at closed meetings in strict confidence for as long and as broadly as the confidence applies."

[64] The municipality submits that the Code of Conduct requirement to maintain the secrecy of the matters they discuss is a clear indication of the high importance attached to this principle. It notes that the importance of Cabinet confidentiality for the inner workings of government has been widely recognized by Parliament and the courts, including the Supreme Court of Canada in *Babcock v. Canada (Attorney General)* where it referred to Cabinet confidentiality as "essential" to good government.<sup>27</sup>

[65] The appellant did not comment specifically on the municipality's exercise of discretion with regard to the record at issue. He suggests that the vaccination policy is of great public health and safety interest and the municipality should therefore be fully transparent in how their decisions were justified.

### ***Finding***

[66] Based on the information I have found exempt under this discretionary exemption

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<sup>25</sup> Order MO-1573.

<sup>26</sup> Section 43(2).

<sup>27</sup> [2002] 3 SCR 3.

and the municipality's representations, I am satisfied that it exercised its discretion in choosing to withhold the record under section 6(1)(b). The municipality's representations demonstrate that it took relevant factors into account when exercising its discretion and did not consider irrelevant factors. In particular, I am satisfied that when the municipality considered applying the section 6(1)(b) exemption to the record, it properly considered the purpose of the exemption and the interests sought to be protected. Considering the information in the record, I find that the municipality has not exercised its discretion in bad faith. I uphold its exercise of discretion.

**Issue D: What is the scope of the request for records? Which records are responsive to the request? Did the institution conduct a reasonable search for records?**

[67] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
  - (a) make a request in writing to the institution that the person believes has custody or control of the record, and specify that the request is being made under this Act;
  - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
- ...
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[68] To be considered responsive to the request, records must "reasonably relate" to the request.<sup>28</sup> Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, this should be resolved in the requester's favour.<sup>29</sup>

[69] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.<sup>30</sup> If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision.

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<sup>28</sup> Orders P-880 and PO-2661.

<sup>29</sup> Orders P-134 and P-880.

<sup>30</sup> Orders P-85, P-221 and PO-1954-I.

Otherwise, it may order the institution to conduct another search for records.

[70] As noted, during mediation, the appellant raised the issue of scope of his request and questioned if the municipality located all responsive records. As a result, these issues were part of the appeal and were set out in the Notice of Inquiry sent to the parties. The appellant was provided with the municipality's representations and invited to respond to these issues, however, he does not address the issue of scope or search in his representations.

[71] The municipality notes that the third part of the request is all that remains at issue. The municipality indicated that its search for records of private session Council meetings that discussed the vaccination policy resulted in the already identified Private Minutes from the Committee of the Whole Meetings on September 9, 2021 (the record at issue in this appeal). The municipality notes that this search was conducted by the deputy clerk, who has expert knowledge of private Council sessions and where those records reside.

### ***Finding***

[72] Despite the appellant not providing representations on scope of the request, the municipality explains in its representations that during mediation (confirmed in the non-confidential portions of the mediator's notes) the appellant claimed that a Committee of the Whole meeting discussing York Region's *police* vaccination policy was also responsive to the request.

[73] As noted by the mediator, the remaining part of the request that was not resolved was the third part of the request which states:

In accordance with Section 6(2)(b) of MFIPPA and in relation to section 6(1)(b), please provide the meeting dates and documents of the closed door Regional Council meetings (and its committees) that discussed the YRMVP.

[74] The request is clear and specific. It seeks the meeting dates and documents from the closed regional Council meetings that discuss the *municipality's* mandatory vaccination policy (referred to by the appellant as the "YRMVP") and is not for information relating to the York Regional Police's vaccination policy. Although the appellant did not address this issue, I find that records relating to the vaccination policy of the police is not within the scope of the request and do not reasonably relate to the request, and as a result the municipality is not required to search for same.

[75] As mentioned, if I am satisfied that the municipality's search for responsive records was reasonable in the circumstances, the municipality's search will be upheld. If I am not satisfied, I may order that further searches be conducted.

[76] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding

that such records exist.<sup>31</sup> As noted, the appellant's representations do not address the municipality's search despite his suggestion at mediation that further responsive records should exist.

[77] The municipality set out in its representations that the search was conducted by the deputy clerk who has expert knowledge of the private Council sessions and where those records reside. It submits that the search relating to this part of the request resulted in identifying responsive records, the record at issue in this appeal.

[78] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;<sup>32</sup> that is, records that are "reasonably related" to the request.<sup>33</sup>

[79] In my view, the municipality has provided sufficient evidence to show that it has made a reasonable effort to identify responsive records. The appellant has not provided reasons that support that further responsive records would be located if the municipality was ordered to conduct a further search. The appellant has also not explained how other records are within the scope of his request and should have been subject to the municipality's search for records.

[80] As a result, I find that the municipality's search for responsive records was reasonable.

**ORDER:**

The appeal is dismissed.

Original signed by: \_\_\_\_\_  
Alec Fadel  
Adjudicator

\_\_\_\_\_ July 15, 2024

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<sup>31</sup> Order MO-2246.

<sup>32</sup> Orders P-624 and PO-2559.

<sup>33</sup> Order PO-2554.