



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1198

Appeal MA-980293-1

Lindsay Police Services Board



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NATURE OF THE APPEAL:

The Town of Lindsay (the Town) received a request under the Municipal Freedom of Information and Protection of Privacy (the Act) for a copy of the operational budget, the general ledger and the line-by-line budget figures for the Town. The Town transferred the portion of the request pertaining to the 1998 Police Services Budget to the Lindsay Police Services Board (the Police), pursuant to section 18 of the Act,

The Police identified two responsive records: (1) the 1998 Approved Budget Summary; and (2) an eleven-page document titled “Lindsay Police Service 1998 Budget”, which contains the line-by-line budget figures. The Police granted access to the first record, and denied access to the second one pursuant to section 6(1)(b) of the Act.

The requester, now the appellant, appealed the decision of the Police.

During mediation, the appellant removed all information relating to civilian and police employee salary and benefits information from the scope of her request. This information appears on the bottom of page 1, the top of page 2, the first half of page 3, all of page 4 and the top of page 5 of the record. These portions of the record are no longer at issue in this appeal.

A Notice of Inquiry was sent to the Police and the appellant. Representations were received from the Police only.

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 Police 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.

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The first and second parts of the test for exemption under section 6(1)(b) require the Police to establish that a meeting was held **and** that a statute authorizes the holding of this meeting in camera.

The Police state:

These matters [the budget discussions] were dealt with at in camera meetings as authorized by the Police Services Act and the Lindsay Police Services Board By-Law #002-97, and therefore fall under the exemption as outlined in 6(1)(b) of the Municipal Freedom of Information and Protection of Privacy Act.

The agendas and minutes provided by the Police during the mediation stage establish that the Lindsay Police Services Board met and discussed the Police budget on January 6, 1998, January 20, 1998 and February 17, 1998. Accordingly, I find that the first part of the section 6(1)(b) test has been satisfied.

These same documents also indicate that the budget discussions occurred during in camera portions of these meetings. However, this fact alone is not sufficient to satisfy the second part of the section 6(1)(b) test. The Police must establish that “a statute authorizes” the holding of these in camera sessions.

The Police submit that the provisions of section 35(4) of the Police Services Act (the PSA) and section 8.8 of Municipal By-Law No. 002-97 (the By-Law) of the Board provides this statutory authority.

Section 35(4) of the PSA states:

The board may exclude the public from all or part of a meeting or hearing if it is of the opinion that,

- (a) matters involving public security may be disclosed and, having regard to the circumstances, the desirability of avoiding their disclosure in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public; or
- (b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.

Section 8.8 of the By-Law provides:

The following subjects may be discussed at properly constituted closed meetings of the Board upon agreement by the majority of the Board members present, unless otherwise prohibited by law:

- (a) intimate financial and/or personnel matters, where a named employee or prospective employee is involved, or where employee relations or reputations could be damaged, unless the employee or employees involved have requested that the matter be discussed in a meeting open to the public and the majority of the Board concurs;
- (b) negotiations on salaries or working conditions of employees and matters arising out of the administration of collective agreements;
- (c) property matters, in which premature public disclosure could cost the public money or be prejudicial to the interests of a property owner or the Municipality, when the acquisition of or sale of property is being investigated or negotiated;
- (d) matters in which public discussion could prejudice the Board's legal position or be detrimental to the Board in proceedings before any Court Civil litigation or administrative tribunal;
- (e) matters in which public discussion could prejudice the Town's legal position or deemed to be detrimental to the Town in proceedings before any Court or Administrative Tribunal;
- (f) consideration of awards, commendations or other outstanding achievements;
- (g) matters that are specifically restricted by legislation regarding the protections of privacy;
- (h) matters, the revelation of which would endanger the security of Municipal property, or the operations of the police services.

I find that section 35(4)(a) of the PSA and section 8.8(b) through (h) have no application in the circumstances of this appeal.

The Police state that the budget discussions which took place at these in camera meetings pertained to “intimate financial matters”, a phrase which appears in section 35(4)(b) of the PSA and section 8.8(a) of the By-Law. However, the Police do not elaborate on this statement in their representations or other documents submitted during the course of the appeal.

In my view, the Police have failed to establish the requirements of the second part of the section 6(1)(b) test. Sections 35(4)(b) of the PSA and 8.8(a) of the By-law are both discretionary, and both require a Police Services Board to consider factors beyond the mere subject matter of the discussions. I am not persuaded that the discussion of the line-by-line Police budget qualifies as an **intimate** financial matter. However, even if I were, this finding would be insufficient to bring this matter within the scope of section 35(4)(b). To do so, in my view, the Police would have to “have regard to the circumstances” of the particular situation, and conclude that “the desirability of avoiding their disclosure ... in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public”. As far as section 8.8(a) of the By-law is concerned, in my view, this section has no application in circumstances which do not involve named employees or employee relations. Although the introductory wording of the section includes the words “intimate financial and/or personnel matters”, the rest of the section goes on to restrict these matters to circumstances “where a named employee or prospective employee is involved, or where employee relations or reputations could be damaged”. These circumstances are clearly not present in this appeal. The records do not name an employee or prospective employee and, absent any evidence or representations from the Police, I am unable to conclude from the contents of the records themselves how their disclosure could damage employee relations or reputations.

Accordingly, I find that the Police have failed to establish the existence of a statute that authorizes holding of the meetings relevant to the record in the absence of the public. Therefore, the second requirement of the test for exemption under section 6(1)(b) has not been satisfied, and I find that the record does not qualify for exemption under this section of the Act, and should be disclosed to the appellant.

ORDER:

1. I order the Police to disclose the record to the appellant by **April 15, 1999**, with the exception of the information that was removed from the scope of the appeal during mediation. I have attached a highlighted copy of the record with the copy of this order provided to the Freedom of Information and Privacy Co-ordinator for the Police which indicates the portions of the record which should **not** be disclosed.
2. In order to verify compliance with the provisions of this order, I reserve the right to require the Police to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: _____

_____ March 23, 1999

Tom Mitchinson
Assistant Commissioner