



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-77**

## **Appeal M-9200210**

### **The Corporation of the Township of Maidstone**



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# ORDER

The Corporation of the Township of Maidstone (the Township) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for a copy of a report prepared by a named consulting firm relating to the Township's staffing systems. The Township identified the record as a 15-page report entitled "Township of Maidstone Staffing Systems Review", dated March 24, 1992. The Township denied access to the record in its entirety, claiming section 11(f) of the Act. The requester appealed the Township's decision.

In the course of processing the appeal, the Appeals Officer identified that certain information contained in the record constituted the personal information of identifiable individuals. The appellant indicated to the Appeals Officer that she was not interested in such information. Therefore, the personal information contained in the record is not at issue in this appeal and should not be disclosed.

Because complete settlement of the appeal through mediation was not possible, the matter proceeded to inquiry, and a Notice of Inquiry was sent to the appellant, the Township, and the named consultant. Written representations were received from the Township only.

The sole issue arising in this appeal is whether the discretionary exemption provided by section 11(f) of the Act applies to the record. Section 11(f) of the Act states:

A head may refuse to disclose a record that contains,

plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;

Section 11(f) of the Act is identical to section 18(1)(f) of the provincial Freedom of Information and Protection of Privacy Act. In Order P-229, in discussing the requirements of this section, Commissioner Tom Wright stated:

In order to qualify for exemption under subsection 18(1)(f) of the Act, the institution must establish that a record satisfies each element of a three part test:

1. the record must contain a plan or plans, **and**
2. the plan or plans must relate to:

- i) the management of personnel or
  - ii) the administration of an institution, **and**
3. the plan or plans must not yet have been put into operation **or** made public.

I concur with Commissioner Wright and adopt the above test in this appeal. I must therefore, first determine whether the record contains a "plan or plans".

In Order P-229, Commissioner Wright adopted the definition of the word "plan" as found in the Eighth Edition of the Concise Oxford Dictionary: "a formulated and especially detailed method by which a thing is to be done; a design or scheme." I adopt this definition for the purpose of this appeal.

The entire representations of the Township consist of the following sentence: "Please be advised that the Township of Maidstone is of the very strong opinion that the information being requested meets the criteria set out by section 11(f) [of the Act], and therefore we do not wish to release same, either in whole or in part."

Section 42 of the Act states that where an institution covered by the Act denies access to a record or a part of a record, the burden of proof that the record or the part falls within one of the specified exemptions in the Act lies upon the institution. The Township has given no reasons and provided no evidence in support of its claim that the exemption applies to the record. A blanket assertion that an exemption applies to a record, without facts or arguments to support the claim, will not, in my view, be sufficient to discharge this burden of proof.

In the absence of representations setting out the facts and circumstances supporting the Township's position, the extent of my consideration of the possible application of the exemption is limited to examining any relevant information that might be contained in the record itself.

As indicated above, the record is a consultant's report of its study of the staffing systems currently in use in the Township as they relate to issues affecting the personnel of the Township. The report includes a description of the methodology of study employed by the consultant, the historical background of the issues involved, and the consultant's observations and recommendations for change. The record does not contain the sort of detailed methods, schemes or designs that are characteristic of a plan. It is evident from the review of the record that its authors did not intend it to be used as a plan, rather it appears to be a document which provides advice for developing a plan or plans to resolve the issues.

In my view, the record does not contain a plan or plans, therefore, the first requirement of the test for exception under section 11(f) has not been satisfied. Accordingly, I find that the exemption found in section 11(f) does not apply to the record in issue in this appeal.

**ORDER:**

1. I order the Township to disclose to the appellant the portions of the record which do not contain personal information within fifteen (15) days of the date of this Order. I have provided a highlighted copy of the record with the copy of this Order which is being forwarded to the Township, indicating the portions of the record which contain personal information and this information should **not** be released.
2. In order to verify compliance with the provisions of this order, I order the head to provide me with a copy of the record which is disclosed to the appellant pursuant to provision 1, **only** upon my request.

Original signed by: \_\_\_\_\_  
Asfaw Seife  
Inquiry Officer

\_\_\_\_\_ January 21, 1993