

F10-09-MS City withholds Minutes of Council Meeting, Including *In Camera* Motion

A city denied an applicant's request for minutes from a public council meeting that had taken place in the absence of the public, including the particulars of the motion that was voted on and the voting record. At this meeting, the city renewed the City Manager's contract. In withholding the records, the city applied s. 12(3) of the *Freedom of Information and Protection of Privacy Act* (FIPPA), which permits a discretionary refusal to withhold records related to local public body confidences.

Section 12(3)(b) creates a three-part test, all of which must be satisfied before the section applies. The test can be summarized as follows:

1. The local public body must establish that it has legal authority to meet *in camera*;
2. The local public body must establish that an authorized *in camera* meeting was, in fact, properly held; and
3. The local public body must establish that disclosure of the disputed records or information would reveal the substance of deliberations of the meeting.

Section 90(1)(a) of the *Community Charter* provides authority for part of a council meeting to be closed to the public if the subject matter relates to, among other things, "personal information about an identifiable individual who holds or is being considered for a position as an officer, employee or agent of the municipality ...".

The renewal of the City Manager's contract at the public council meeting fit within the s. 90(1)(a) criteria and satisfied the first part of the test.

The notice provided by the city was headed "Notice of Closed Meeting" and stated that the meeting would be closed pursuant to ss 90.1(k) and 90.1(l) of the *Community Charter*. While the city should have cited section 90(1)(a) as justification for closing the meeting, this oversight was a technicality that could be treated in a similar manner as was done by Commissioner Loukidelis in Order 02-22. As a result, an *in camera* meeting was still properly held and the second part of the test is satisfied.

Order 03-09 makes it clear that revealing the particulars of the motion and the voting record would reveal the substance of deliberations. As a result, the third part of the test is satisfied.

As the city met the three-part test set out in s. 12(3)(b) of FIPPA, we concluded it was entitled to withhold the requested records.