



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

2003 CanLII 53817 (ON I.P.C.)

ORDER MO-1719

Appeal MA-030163-1

City of Toronto



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NATURE OF THE APPEAL:

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for access to records relating to the construction of and additions made to a specified synagogue and school. The City located the requested records and denied access to them, in full, on the basis that they were exempt under the following exemption contained in the Act:

- danger to the security of a building – section 8(1)(i)

The requester, now the appellant, appealed the City's decision. During the mediation stage of the appeal, the City contacted the synagogue's President seeking her views on the disclosure of the requested documents. On behalf of the synagogue, the President objected to the disclosure of the records. The appellant advised the Mediator that she has already obtained copies of the building plans for the proposed expansion and copies of the plans showing the building as it exists today from the local Committee of Adjustment. As a result, the appellant indicates that she is now seeking only the site plans for the original construction of the synagogue in 1969, the additions made to the school in 1985 and the erection of portable classrooms in 1993.

Further mediation was not successful and the appeal was moved to the adjudication stage of the process. I decided to seek the representations of the City and the synagogue and school (the affected parties). I received representations from the City and the affected parties. The non-confidential portions of these submissions were then shared with the appellant. The appellant also made representations, which were shared in their entirety with the City and the affected parties, who then made additional submissions by way of reply.

RECORDS:

The records at issue consist of three site plans relating to the original construction of the building, the addition of the school and the erection of portable classrooms.

DISCUSSION:

The City and the affected parties take the position that the requested site plans are exempt from disclosure under section 8(1)(i), which reads:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

In this context, where concerns have been raised about the prospect of violent attacks against the facilities, section 8(1)(i) may be considered a “health and safety” related exemption. Accordingly, the City and the affected parties must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, it must be demonstrated that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

Representations of the parties

The City submits that the events of September 11, 2001 in the United States changed the way in which the risk of a terrorist attack against specific targets ought to be perceived. It suggests that prior to those events, the threat of attack was remote. Today, however, fears of similar attacks cannot be perceived as “fanciful, imaginary or contrived” but may now be “viewed as reasonable and prudent.” The City indicates that the building plans relate to a specific place of worship and school operated by a community that is the object of these threats, and that with the kind of communications tools available over the internet, disclosure of the information could result in these building plans falling into the hands of terrorist organizations.

The City points out that area synagogues have been and continue to be the object of hate crimes and vandalism. The site plans requested describe in detail the location of playgrounds, entrances, driveways and the location of telephone lines. The City also suggests that disclosure to the appellant means disclosure to the world at large and on that basis, there is a reasonable expectation of the type of harm contemplated by section 8(1)(i).

The affected parties submit that the requested floor plans include the location of offices containing “sensitive personal financial records” of both the synagogue and its congregation as well as the location of religious items within the building. The drawings also contain information about the mechanical systems within the building itself and the portable classrooms used by the school. The affected parties conclude their initial submissions as follows:

We formally request that the access be denied to limit the opportunity for someone to obtain a ‘roadmap’ which may assist in any harm or destruction to the building or its inhabitants.

The appellant points out that she obtained access to detailed building and site plans respecting the subject property from the Committee of Adjustment at the time two applications for bylaw variances were made by the synagogue. The appellant provided me with copies of these documents to assist in comparing them to the requested records. The appellant indicates that she is seeking access to the records in order to “make appropriate analysis of the history and facts related to [the synagogue’s] present operations and future applications for changes to their property.” The appellant expresses concerns that the existing use of the lands in question may not be in conformity with the original site plans and that their disclosure will allow her to verify this fact.

The appellant submits that the synagogue has provided the Committee of Adjustment, and thereby made public, its current site plans and ought not to be able to “hide behind excuses of security risks in order to prevent disclosure of the old site plans.” She goes on to state that:

To deny the application is to negate the legitimate use of the legislation enabling this request. To suggest that ‘9/11’ and the continuing disputes in the Middle East are valid reasons with any reasonable applicability to this information request is absurd, unreasonable and dismissive of the democratic rights of the citizens residing near [the synagogue and school].

In its reply submissions, the City argues that the access to information regime established by the *Act* is not the appropriate forum for the appellant to pursue her opposition to the land use variance applications by the synagogue. Rather, it suggests that the appellant does not require the records in order to ensure the synagogue’s compliance with the applicable zoning bylaws as the City is responsible for the enforcement of its own bylaws. The City also submits that although the site plans at issue are not current, “the changes to the actual site over the years have not been substantial enough to remove the security risk.”

The affected parties submit that the application for a variance brought by the synagogue was denied by the Committee of Adjustment in June of this year and that it does not intend to appeal that decision to the Ontario Municipal Board. Accordingly, the proposed building project will not be proceeded with. A second application for a severance of certain adjoining lands remains outstanding but is unrelated to the records that are the subject of this appeal. The affected parties also state that the building as it now stands represents a legal non-conforming use of the lands, though the current configuration of the property would not be in compliance with today’s more restrictive requirements if it were being constructed today.

The affected parties also outline the security concerns that have arisen over the years including bomb threats and racist graffiti on its exterior sign which have required the synagogue to take security measures beyond those required for other public buildings. The security concerns raised by the affected parties reflect the recent changes in our world and are summarized by the affected parties as follows:

With all these restrictions and security measures, we continue to have a great deal of traffic in our building and we do not wish to expose ourselves further with the release of sensitive information.

Findings

In my view, the City and the affected parties have provided me with sufficient evidence to establish a reasonable basis for their belief that endangerment to the synagogue and school facility will result from the disclosure of the building plans. I find that the City and the affected parties have demonstrated that their reasons for resisting disclosure are not frivolous or exaggerated. I reach this conclusion for the following reasons:

- while the appellant has been given access by the Committee of Adjustment to certain site plans which describe the subject property as it exists today, those records do not include the type of detailed information that is contained in the records which are the subject of the request and appeal;
- the appellant and the affected parties are embroiled in a land use dispute that has lead to an intractable situation between them. Although the appellant's right of access to the records is a legitimate one and I have been provided with no evidence whatsoever to indicate that the appellant intends to use the records to encourage or create a security problem for the synagogue, disclosure to the appellant may be equated with disclosure to the world in these circumstances [Orders P-169 and PO-2197]; and
- the synagogue facility has been the subject of other threats and vandalism in the past and is now subject to certain restrictive security measures. The concerns expressed by the affected parties concerning the security of the facility should disclosure of the requested information be ordered are not, in my view, frivolous or exaggerated.

As a result, I uphold the City's decision to deny access to the requested records on the basis that they are exempt from disclosure under section 8(1)(i).

ORDER:

I uphold the City's decision not to disclose the records to the appellant.

Original signed by: _____
Donald Hale
Adjudicator

_____ December 1, 2003