

ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)
DIVISIONAL COURT

HART, SAUNDERS and MOLDAVER JJ.

B E T W E E N:

CORPORATION OF THE TOWN OF GRAVENHURST)
Applicant)
for the Applicant)
- and -)
INFORMATION AND PRIVACY)
COMMISSIONER/ONTARIO and WEIR)
& FOULDS)
Respondents)
Donald J.M. Brown, Q.C. and)
Gerald J. Fahey, for the respondent)
Information and Privacy Commissioner/)
Ontario)
G. Rust-D'Eye, for the respondent)
Weir & Foulds)
Heard: November 25, 1994)

SAUNDERS J. (Orally):

[1] The nature of the process under review [the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.M-56] requires the maintenance of confidentiality. There can be no hearing in the usual sense and the statute limits access to representations (s. 41(13)). In considering the procedure adopted by the Commissioner, this court should accord curial deference in light of the difficult circumstances faced by the Commissioner subject, of course, to the overriding concerns of procedural fairness.

[2] In our view, the process should not preclude the Commissioner and members of his staff from discussing submissions with the parties, including referring to earlier decisions that have been made by the Commissioner. The letter of January 28, 1992 did no more, in substance, than try to ascertain whether the requestors were going to make submissions and draw to their attention, the Town of Listowel decision by the Commissioner as a relevant case. In the end, the Commissioner followed that decision in this case by refusing to disclose the salary. In effect, he applied Listowel in favour of the applicant Municipality. If, instead, the Commissioner had considered not following

Listowel, then it would have been appropriate, in accordance with his announced policy, to have referred the decision to the Municipality for its comments.

[3] We, therefore, do not consider it to have been necessary for the Commissioner, in the interest of natural justice, to have sent a copy of the letter of January 28, 1992 to the Municipality or to have referred it to the Listowel case. Further, it was in the discretion of the Commissioner to extend the time that he had previously stipulated for making submissions by the requestors.

[4] The Municipality was specifically given an opportunity to address the claim that the document was relevant to a fair determination of the requestors' rights and, in fact, did so. In those circumstances, it is our view that the Commissioner was under no obligation, in the interest of fairness, to refer the submissions received from the requestors to the extent that he might have considered them relevant to the issue raised by s. 14(2)(d). He had already received the submissions from the Municipality on that issue. In any event, a reading of the decision of the Commissioner, indicates clearly that he, in no way, relied on s. 14(2)(d) in ordering disclosure. He reviewed s. 14(2), as he was required to do, to ascertain if there was anything in that subsection that might lead to a conclusion that there was any unjustified invasion of personal privacy. Section 14(2)(d) was irrelevant to that review as it sets out a factor in favour of disclosure.

[5] So far as the substance of the decision is concerned, we are satisfied that, in interpreting the statute and applying it to the situation before him, the Commissioner acted reasonably and there is no basis for this court to intervene.

[6] Even if we had found an irregularity in the process or an error in the application of the statute, we would have been inclined to exercise our discretion and dismiss the application because of the surrounding circumstances.

[7] The application is therefore dismissed.

HARTT J.
SAUNDERS J.
MOLDAVER J.

RELEASED: November 30, 1994

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ORAL JUDGMENT

SAUNDERS J.

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