

Balancing the Right to Know with Government's Need for Discretion



Current Legislative Framework

- Legislated responsibility under Part XX of the MGA; 1999.
- Provides the public with the right to request a copy of any record within the custody or control of the municipality; a **limited** number of exemptions can be applied to withhold the release of records.



Right to Know

- The legislation **provides** the “right to know” – the right to access.
- Good governance **supports** the “right to know” - one could argue even in the absence of the legislated provision.
- With this support comes the freedom and the ability to review the records from the perspective of providing access – not denying access.



Discretion

- A number of definitions:
 - Ability to make responsible decisions
 - The ability to make wise choices or decisions
 - Freedom to exercise one's own judgment
 - Power of free decision or latitude of choice within certain legal bounds



Balance

- How do we balance these two fundamental concepts – right to know and discretion.
- It is the last definition of discretion that I believe **provides** this balance.
 - Power of free decision or latitude of choice within certain legal bounds
- The guideline for providing this balance can be found in the exemptions contained in the MGA – mandatory exemptions - “shall refuse to disclose;” it is the discretionary exemptions though that I believe carry more weight or power or influence in determining the balance.



Discretionary Exemptions

“ May refuse to disclose ... ”

- MGA, Part XX has several:
 - Sec. 473 – Private or in-camera minutes
 - Sec. 474 – Advice/recommendation for Council
 - Sec. 475 - Law enforcement
 - Sec. 476 – Solicitor/client privilege
 - Sec. 477 – Financial/economic interests
 - Sec. 478 – Health/safety
 - Sec. 479 – Conservation



In HRM ...

- Consultation with the Business Unit (BU) who holds the records is key.
- If the BU is successful in arguing that discretion should be applied, then we consider the exemptions.
- Influence and negotiation skills are often critical at this point if the purpose of the legislation – right to access - is to be achieved.



In HRM....

- 2006
 - 34 access applications processed
 - 30% access was granted in full
 - 60% access was partially granted
 - 80 % mandatory exemption applied
 - 20% discretionary exemptions applied
 - 0.3% denied
 - 9.7% other
- 2007
 - 43 access applications processed
 - 35% access was granted in full
 - 60% access was partially granted
 - 75 % mandatory exemption applied
 - 25% discretionary exemptions applied
 - 0% denied
 - 5 % other



Severing

- Is the primary means of how we strive to achieve the balance when exemptions are being considered
- In HRM:
 - the discretionary exemptions that are most often used to sever are:
 - Sec. 475 - Law enforcement
 - Sec. 476 – Solicitor/client privilege
 - Sec. 477 – Financial/economic interests
 - The two mandatory exemptions most often cited are:
 - » Sec. 480 – Personal information
 - » Sec. 481 – Confidential information



- The requests that receive partial access are the prime example of “balance” – HRM has balanced the applicant’s right to know with the organization’s need for discretion.
- The requests that are granted in full or denied are also evidence of the “balance” but perhaps more of a necessary, weighted balance.



Information Resource Management IRM

- **Responsible for:**
 - Access & Privacy
 - Long term preservation of municipal records
 - Municipal Archives which is open to the public three days a week
 - Active Records & Electronic Document Management
 - Inactive Records Storage
 - Corporate Records Centre which stores 25,000+ boxes of records
 - Two separate, climate controlled vaults which store paper and electronic medium
 - Corporate Library
- **Facility located at 81 Ilsley Avenue, Unit #9**

