

# NEWS BRIEF



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## THE PUBLIC'S RIGHT TO KNOW

The inquiry by Pollution Probe (an ad hoc citizens' group) into the recent poisoning of several ducks on Centre Island was intended to generate public concern about the dangers of insecticides. Instead, the inquiry became a political confrontation between outraged citizens and the Metro Parks Department, raising the issue of public access to information held by civic administrators. Pollution Probe contended that there had been a misuse of insecticides on Centre Island while the Parks Commissioner insisted that a misuse had not occurred. Prior to the inquiry, the Parks Commissioner had been co-operative with the press in providing information about the use of insecticides. This co-operation extended to the point of agreeing to attend the Pollution Probe inquiry. During the inquiry, however, previous statements about the use of insecticides were retracted and indication given that no further information would be provided except at the direction of the Metro Chairman. This conflicting use of discretion in releasing information to the public has led the Bureau to question what the policies and practices are that determine citizen access to departmental information.

In the legal context:<sup>1</sup>

there is no common law right of an inhabitant or ratepayer to have disclosed to him all available information relating to the affairs of a municipality. Subject to statute, the giving of such information rests entirely in the discretion of the local authorities.

In the case of Ontario, any person has the statutory right to inspect:<sup>2</sup>

any records, books, accounts and documents in the possession or under the control of the clerk, except inter-departmental correspondence and reports of officials of any department or of solicitors for the corporation made to council, board of control or any committee of council...

Nevertheless, this right apparently does not extend to all documents in the clerk's possession.<sup>3</sup> The individual has legal access to reports, debates

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<sup>1</sup> Ian MacFee Rogers, The Law of Canadian Municipalities, Volume 1 (Toronto: The Carswell Company Limited, 1959) p. 250.

<sup>2</sup> The Municipal Act, Revised Statutes of Ontario, 1960, Chapter 249, section 216(1).

<sup>3</sup> Rogers, Op. Cit., p. 251.

and decisions which are a matter of public record but apparently no right to further information. While the legal structure of the municipality gives it the prerogative to withhold any and all information that reflects on the day to day operations of the administration, this is obviously not the practice. Information is released in accordance with basic public relations purposes, such as informing the public of government programmes and where the tax dollar is being spent. On the other hand, certain information regarding the municipality's dealings is retained within the departments to protect the public interest. The secrecy surrounding the details of development plans are an example of the attempt to protect the public interest, in this case against land speculation.

While the control of information may be seen as important in ensuring the success of some municipal programmes, administrative discretion in the release of information is also a source of concern. It is to be expected that civic administrators will use their discretionary power to withhold information in order to avoid conflict situations that are not felt to be in the best interests of their departments. Use of discretionary powers in this manner, however, has much broader implications than inconvenience to the departments. Access to information is the key to controlling public policy. In the absence of reasonable access to information, effective and constructive citizen participation in policy making is severely limited. With a reduced role for the public in the evaluation of present policies and the formulation of alternatives, these responsibilities are deferred to the municipal administration. In the case of the duck probe, administrative discretion was used to avoid committing the Parks Department about its use of Diazinon (a nerve poison) as an insecticide. One reason for the Department not co-operating with the Pollution Probe might have been the possible embarrassment to the Department about its use of insecticides. Incidents of this type, where there is room to question whether departmental interests have been served at the expense of the public interest, are difficult to justify.

In light of the present experience, it is suggested that the policy and practice on the release of information be reviewed. An alternative policy, based on the premise that information relating to a department's activities would be available unless truly confidential, should be considered. (Activities such as calling of tenders, lawsuits, etc., would remain subjects of a confidential nature.) A policy such as this would have placed the Metro Parks Department under a more binding obligation to disclose to the public how, when and when it uses its various insecticides. In short, the onus would be put on the municipal administration to show why it should not release information to the public.

The Bureau has not attempted to comment on the formal information lines that already exist between municipal councils, acting as representatives of the public, and civic administrations. What have been a concern are the informal practices that have developed to supplement the formal council-administration relationship. It is this area of direct public access to information that should be re-evaluated and formalized with specific policy guidelines set forth.