



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

# **ORDER M-685**

**Appeal M-9500397**

**City of North York**



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## **BACKGROUND:**

On December 12, 1994 a fire occurred at a property in the City of North York (the City). The City fire department was called to the scene, but unfortunately the fire consumed the house on the property. The next day, reports of the fire appeared in the local press. Firefighters were reported as indicating that water problems caused them to “lose precious minutes” in fighting the blaze.

The City states that a Fire Marshall’s investigation was conducted and a preliminary report was completed on February 8, 1995. The final report was issued on December 19, 1995.

On December 16, 1994, the City received a notice of claim from the adjusters representing the property owner’s insurers. The City subsequently received several other notices of claim from other adjusters, insurance companies and solicitors representing various parties who suffered losses in the fire.

## **NATURE OF THE APPEAL:**

The solicitor for the property owner submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to certain records concerning the property on which the fire occurred. He requested 13 categories of information or documentation related to a watermain which runs in front of the property (the Watermain Records). He also sought access to nine categories of information from the City’s fire department (the Fire Department Records).

Because of the complexity of this matter, I have set out the details of the request with the corresponding responses from the City in Appendix “A” to this order.

The solicitor appealed the City’s decision as set out in Appendix “A”. A Notice of Inquiry was sent to the City and the solicitor (now the appellant). Representations were received from both parties.

At this time, the following issues remain to be resolved in this order:

- (1) Whether the City conducted a reasonable search for records responsive to the request.
- (2) Whether Records 1, 2a, 2b, 3a, 3b, 3c, 3d, 4, 6, 7, 8a, 8b, 8c, 8d, 8f, 8g and 8h are properly exempt from disclosure under section 12 of the Act (solicitor-client privilege).
- (3) Whether Records 9a and 9b are properly exempt from disclosure under section 14 of the Act (invasion of privacy).

## **DISCUSSION:**

## **REASONABLENESS OF THE SEARCH**

### **The Watermain Records**

The City's decision was that no records existed in response to items 1, 2, 3, 5, 9, 10 and 12 of the Watermain Records.

In its submissions, the City indicated that it had conducted another search for responsive records. As a result of this search, it located an agreement dated January 8, 1946 with respect to the supply of water by the City of Toronto to certain areas in the then Township of North York, including that in which the property is located. The City disclosed this agreement to the appellant. In addition, the City located an operating policy with respect to responses to emergency calls adjacent to municipal boundaries. This was also disclosed to the appellant. The City indicates that these documents are responsive to items 2 and 3 of the Watermain Records. The adequacy of the City's search for records responsive to these items is no longer at issue.

With respect to the balance of the Watermain Records, the City has provided an affidavit of the Works Engineer in the City's Public Works Department (the Engineer), who has held this position since 1987.

The Engineer states that the watermain construction files were searched. These files include the history card index, plans and profiles and design files. No information was located with respect to the design or construction of the watermain.

As indicated, a search of the agreement file in the Clerk's Department located the 1946 agreement. The Engineer states that no other agreements which are responsive to the request were located.

Finally, the Engineer states that he searched the low water pressure and the rusty water complaints files. There were no complaints on record for water pressure or quality for the past ten years with respect to the street.

In summary, the position of the City at this time is that records responsive to items 1, 5, 9, 10 and 12 of the Watermain Records do not exist.

The appellant contends that records responsive to item 1 of the Watermain Records (construction or replacement) must exist as the watermain is within the jurisdiction of the City. The appellant also questions whether it is the position of the City that such documents do not exist or that the City is not in possession of them.

In cases where a requester provides sufficient details about the records which he is seeking and the City indicates that records do not exist, it is my responsibility to ensure that the City has made a reasonable search to identify any records which are responsive to the request. The Act does not require the City to prove with absolute certainty that records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the City must provide me

with sufficient evidence to show that it has made a **reasonable** effort to identify and locate responsive records.

Based on the affidavit of the Engineer, I am satisfied that the efforts made by the City to determine whether records responsive to item 1 of the Watermain Records exist were reasonable in the circumstances. On the same basis, I am also satisfied with the City's search with respect to the item 12 records (the complaints). The appellant has provided no information to support his claim that any records should exist with respect to this item.

I will now consider the matter of the City's search with respect to item 5, test results relating to water pressure or quality.

The appellant submits that the City's statement that no records exist is inaccurate. In support of this position, the appellant has provided a copy of the minutes of the City council meeting held on July 12, 1995. The appellant points out that the minutes refer to the following tests:

- a flow test conducted on the City distribution system by City staff on December 15, 1994;
- a flow test conducted by an engineering consultant on January 13, 1995;
- another flow test conducted by a different consulting firm on May 1, 1995; and
- tests conducted by the City of Toronto on its distribution system.

Based on the description of these tests, I am of the view that, in fact two of the records already identified by the City as responsive to the request contain the test results referred to in the council minutes.

Record 1 contains the consultant's test results from January 13, 1995; Record 2b contains the City staff test results of December 15, 1994. Access to both of these records was denied under section 12. I will address this issue in my discussion of solicitor-client privilege which follows.

As of the date of the council meeting, July 12, 1995, the City had not yet received copies of the reports of the tests conducted by the City of Toronto. Accordingly, at that time, the City did not have custody of these records and could not make an access decision on them. The appellant should therefore submit another request to the City for these documents or file a request with the City of Toronto if he is still interested in these documents.

Because of some of the inconsistencies noted above, I am not satisfied with the adequacy of the search conducted by the City with respect to request item 5 of the Watermain Records. I will order the City to conduct a further search for copies of any test results relating to water pressure or quality in the watermain, and in particular for the results of the flow test conducted by the consulting firm on May 1, 1995.

There leaves the matter of the City's search with respect to items 9 and 10 (memoranda dealing with the issue of the adequacy of the water pressure and emergency response planning arising out of this concern). The appellant's position is that, given the nature of the test results referred

to above, it is difficult to imagine that no internal memoranda exist which deal with the adequacy of water pressure and emergency response plans.

Based on the submissions of the City, I am satisfied that they have conducted a reasonable search to locate responsive records. I note, however, that it is possible that such records were created after the date of the appellant's request and the City's response.

In summary, I am satisfied with the reasonableness of the City's search with respect to items 1, 2, 3, 9, 10 and 12 of the Watermain Records. I will order the City to conduct a further search with respect to item 5.

### **The Fire Department Records**

The City indicated that no records exist which respond to item 3 of this part of the request, which relates to any agreements or documentation relating to the co-ordination of services for emergency response to a fire on the street.

The City's representations include the affidavit of the Chief of the fire department's Administration Division (the Chief). The Chief has held this position since 1994.

When the request was received, the Chief searched the fire department files with respect to the co-ordination of services for emergency responses on the street. He also states that when the appeal was filed, he again reviewed the files with respect to item 3. The only document that might be considered to be responsive to the request was an operating policy with respect to responses to emergency calls adjacent to municipal boundaries, known as border calls. This policy has been disclosed to the appellant.

The appellant's position is the same as that held with respect to items 9 and 10 of the Watermain Records. As was the case with those items, I am satisfied with the City's search to locate responsive records. I again note that it is possible that such records were created after the date of the appellant's request and the City's decision.

### **SOLICITOR-CLIENT PRIVILEGE**

The Watermain Records at issue consist of a consultant's report with respect to watermain flow tests, two memoranda respecting watermain pressure correspondence with both the City of Toronto and the Municipality of Metropolitan Toronto concerning watermain tests and a handwritten memorandum dealing with the watermain and repairs to a fire hydrant. All of these documents were created after the December 12, 1994 fire.

The Fire Department records consist of the witness statement portions of the Emergency Call Reports, statements provided by all of the officers and firefighters, memoranda regarding a claim against the City, document preparation for potential or future legal action, some test results and a letter to the City of Toronto.

The City claims that all of these records are exempt under section 12 of the Act which states:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

Section 12 consists of two branches, which provide an institution with the discretion to refuse to disclose:

1. a record that is subject to the common law solicitor-client privilege (Branch 1); and
2. a record which was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

In order for a record to be subject to the common law solicitor-client privilege the institution must provide evidence that the record satisfies either of the following tests:

1. (a) There is a written or oral communication, **and**  
(b) The communication must be of a confidential nature, **and**  
(c) The communication must be between a client (or his agent) and a legal adviser, **and**  
(d) The communication must be directly related to seeking, formulating or giving legal advice;

**OR**

2. The record was created or obtained especially for the lawyer's brief for existing or contemplated litigation.

The City's position is that the records were created or obtained especially for a lawyer's brief for either existing or contemplated litigation (part 2 of Branch 1). The City also submits that the records were prepared for counsel who are City employees, as well as outside counsel retained by the City, in contemplation of litigation (Branch 2).

## **BRANCH ONE**

As far as part 2 of Branch 1 is concerned, the City states:

... it is submitted that the records in issue were created or obtained especially for a lawyer's brief for existing or contemplated litigation.

However, the submissions do not provide any evidence that the records were created or obtained **especially** for the lawyer's brief. In fact, given the City's submissions on some of the records (as set out below), it appears that this was, in fact, not the case. Accordingly, I am not satisfied that

the City has met the criteria for exemption of the records under part 2 of Branch 1 of section 12 of the Act.

## **BRANCH TWO**

Two criteria must be satisfied in order for a record to qualify for exemption under Branch 2:

- (1) the record must have been prepared by or for counsel employed or retained by an institution; and
- (2) the record must have been prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation.

### **Records Prepared by or for Counsel Employed or Retained by the City**

The City indicates that all of the records for which it claims section 12 were prepared **for** counsel who are City employees as well as for outside counsel retained by the City. The City states that it has retained a law firm to act on its behalf with respect to the notices of claim related to the damages resulting from the fire. In addition, the City's legal department is maintaining a watching brief on these actions. Based on these submissions, I am satisfied that the first requirement of the second branch of the exemption has been satisfied, with one exception.

The exception is that portion of Record 7 which consists of the Office of the Ontario Fire Marshall - Witness Statements (the FMO statements).

The City submits that such statements are not provided in the case of a routine fire or occurrence call. Nor does the Fire Marshall's Office attend at every fire occurrence. The City indicates that the Fire Marshall's Office attends at the request of the fire department. There are guidelines with respect to when a fire department **should** and when a fire department **must** request that the Fire Marshall's Office attend at the scene of a fire or occurrence. The City states that where there is a large loss fire and the cause of the fire is unable to be determined, a fire department is **required** to request that the Fire Marshall's Office attend at the scene.

In this case, an investigator from the Fire Marshall's Office attended at the scene of the fire on December 12, 1994.

With respect to the FMO statements the City submits:

**In this case, the investigator from the Fire Marshall's Office was immediately unable to come up with the exact cause of the fire and therefore requested that all of the fire crews in attendance provide witness statements to the Fire Marshall's Office. It should be noted that the request for the Fire Marshall's Office - Witness Statements is a matter that is at the discretion of the Fire Marshall's Office investigator.**

**In response to the request of the investigator from the Fire Marshall's Office,** the members of the fire crews started completing the witness statements commencing on December 12, 1994. (my emphases)

In my view, this description of the creation of the FMO statements indicates that these records were prepared for the Fire Marshal for his use ascertaining the cause of the fire. Apart from the very general statement concerning all the records, which is in contradiction to the explanation provided above, the City does not submit that any of these witness statements were prepared by or for counsel employed or retained by the City. Nor is there any indication in the City's submissions or on the face of these documents that they were ever provided to counsel.

In these circumstances, I cannot conclude that the portion of Record 7 consisting of the FMO statements was prepared for counsel employed or retained by the City in contemplation of litigation. Accordingly, the FMO statements are not exempt under section 12 of the Act. The City has not claimed that any other exemptions apply to them, nor do any mandatory exemptions apply. They should therefore be disclosed to the appellant.

### **Records Prepared in Contemplation of Litigation**

In order for a record to qualify as being prepared in contemplation of litigation, it must be established that:

- (a) the dominant purpose for the preparation of the record must be contemplation of litigation; and
- (b) there must be a reasonable prospect of such litigation at the time of preparation of the record; litigation must be more than just a vague or theoretical possibility.

For the purposes of this analysis, the City suggests that the records fall into three distinct categories:

- (1) Records dealing with the water flow issue: Watermain Records 1, 2a, 2b, 3a, 3b, 3c and 3d; and Fire Department Records 8f and 8g;
- (2) Records generated as a result of the owner/insurer claims: Fire Department Records 8a (including the attachment), 8b, 8c and 8d; and
- (3) Records relating to the date of the occurrence: Watermain Record 4, and Fire Department Records 6 and 7 (only the balance of the Record 7 statements and memoranda are still at issue).

### **Reasonable Prospect of Litigation**

I will first consider the second part of the test, that is whether there was a reasonable prospect of litigation at the time of the preparation of the records.



It is the position of the City that with respect to the records produced on or after December 20, 1994 (those in categories 1 and 2), it is clear that litigation was contemplated and was more than a possibility. As of that date, the City had received several notices of claim with respect to the fire.

The records in category 3 were created immediately following the fire on December 12, 1994. The City states that, although it received the first notice of claim dated December 14, 1994 on December 16, there was a clear contemplation of litigation which was more than a mere possibility even prior to that time. The City appears to suggest that the events which transpired at the fire scene, as reported in the press the next day after the fire (that is on December 13, 1994) lead one to the conclusion that there was a reasonable prospect of litigation at that time.

Based on the submissions of the City, I am satisfied that, at the time of the creation of the records in all three categories, litigation was more than a vague or theoretical possibility. Given the events that transpired when the firefighters attended at the fire scene as recorded in some of the records and reported in the press the following day, I accept the City's position that there was a reasonable prospect of litigation at the time of the creation of the records in categories 1, 2 and 3.

#### **The Dominant Purpose for the Preparation of the Records**

I will now consider the first part of the test, whether the dominant purpose for the preparation of the records was in contemplation of litigation.

The City submits that the dominant purpose for the creation of the records was litigation. The City states that the records in category 2 related to the claims and document preparation, clearly have as their dominant purpose the contemplation of litigation. I agree. They all relate to the documentation the City was compiling as a result of the notices of claim it had received. Accordingly, I find that Fire Department Records 8a (including the attachment), 8b, 8c and 8d qualify for exemption under section 12 of the Act.

I will now consider the category 1 records, those dealing with the water flow issues. The City submits that, having regard to the newspaper reports of the fire, it is clear that the issue of the watermain pressure would be one of the major issues in any litigation. The notice of claim dated December 16, 1994 filed by counsel for the owners of the home specifically raises the water supply issue. Therefore, the City submits that all matters relating to watermain pressure tests are in response to the issue raised in the notice of claim.

The City admits, however, that the watermain pressure documents were also created with a view to deal with any general concerns relating to the pressure and a desire to find a solution to any problems which may have existed. It also indicates that litigation was not the only purpose for the creation of the records in category 3, the fire department witness statements etc. However, it is the City's position that if the dominant purpose for the creation of the records is litigation, then it must be contemplated that records could also be created for a secondary purpose. Thus the City submits that, by the use of the word "dominant" in Order P-236, the Commissioner's office must have considered other uses to which records could be put and yet, they would still qualify for the exemption under Branch 2 as long as the dominant purpose was for litigation.

The appellant's position is that many of the records are routine reports and documents which are compiled after every incident involving the fire department. For example, he submits that a general occurrence report is filed for every fire involving of the City fire department. He also states his view that many of the other records were prepared for the City in dealing with the problem of water pressure. Thus, he submits that the dominant purpose for the creation of the category 1 and 3 records is not litigation.

I accept the submissions of the City that when one determines whether the dominant purpose for the creation of the records may be said to be litigation, it is clearly contemplated that the records could also be created for a secondary purpose. In my view, in assessing whether or not a record was created with the dominant purpose of contemplated litigation, each case must be analysed on its own facts, requiring an inquiry into the purposes for which the documents were created. One must ask why this record was made. Was it in the ordinary course of events, or due to some regulatory obligation? Or was it made to assist counsel in making or, as in this case, resisting a claim?

I will first consider the category 1 records related to the water flow issues. In reviewing these records, I note that they contain a number of references to those documents in category 2, those related to the claims and document preparation, which I have previously found to be exempt under section 12. In some instances, the water flow records indicate that they have been created in response to the requests for information and documentation set out in the claims records. In other cases, they make reference to the "potential legal action" and the issues related to the watermain pressure which must be clarified in preparation for this action. Given this nexus between the records in categories 1 and 2, I am satisfied that the dominant purpose for the creation of the category 1 records was to assist counsel in contemplation of litigation. Therefore, I find that Watermain Records 1, 2a, 2b, 3a, 3b, 3c and 3d, and Fire Department Records 8f and 8g are exempt under section 12 of the Act.

I will now consider the category 3 records.

Watermain Record 4 is a handwritten memorandum dated December 15, 1994 from the Superintendent of Special Services to the director of Water and Sewer Operations. It contains a description of certain events related to the watermain pressure which occurred at the time of the fire. However, it also contains numerous references to subsequent testing of the watermain, the subject of the category 1 records. In my view, this record was created in contemplation of litigation and is exempt under section 12.

Record 6 consists of the back pages of the City's fire department Emergency Call Reports. The front pages have been previously disclosed to the appellant. The City states that:

... All of the reports are completed by the officer in charge of the unit at a fire or occurrence. These reports are **required** to be completed and submitted for **every** fire or occurrence where the Fire Department has been in attendance. The back page of each Emergency Call Report contains a section entitled "Officer's Report" which the officer in charge is **required** to complete and in essence, which

section contains the officer's observations and statements with respect to the attendance at the fire or occurrence. (emphasis added)

With respect to contemplated litigation, the City merely states that:

... The records in the third category would also be records for which litigation was not the only purpose, but it is suggested that the contemplation of litigation would be the dominant purpose for which the records were produced.

Based on these submissions, I conclude that the reports comprising Record 6 are routine reports the completion of which is mandatory after attendance at every fire, including the one involved in the present appeal. I find that these records were created in the ordinary course of events and that the dominant purpose for their creation was **not** contemplation of litigation. Accordingly, they do not qualify for exemption under section 12 of the Act and, with the exception of one reference on page 30 which I will consider in my discussion of Invasion of Privacy which follows, should be disclosed to the appellant.

The final record for which the City claims section 12 is Record 7. The portion of this record remaining at issue consists of a series of handwritten and typed statements and memoranda.

The City submits that in a routine fire or occurrence call, only the Emergency Call Reports (Record 6) are required to be completed and submitted. The City indicates that in the usual case, witness statements or notes relating to the occurrence are not required from the fire crew or anyone other than the officer in charge of the unit. However, in cases where the fire department has attended at a fire or an occurrence and there is the potential for civil or criminal proceedings, the fire crews are required to produce notes relating to the occurrence.

The City has explained that this was the case with respect to the statements and memoranda which form part of Record 7. The City states that the Incident Commander of the City's fire department advised the captains to arrange for all of the fire crews to make notes related to the fire which occurred on December 12, 1994 and to submit these notes to the Administration Division of the fire department for filing and future reference. The City submits that, as a result, the statements by the various members of the fire crews were created in response to the Incident Commander's request and in contemplation of litigation.

I agree. These documents were clearly created outside the ordinary course of documenting the involvement of the fire department with a fire. I am satisfied that, given the circumstances under which these records were requested and created and the amount of detail they contain when compared to the Record 6 Emergency Call Reports, the dominant purpose for preparing these statements was the contemplation of litigation.

In summary, I find that Watermain Records 1, 2a, 2b, 3a, 3b, 3c, 3d and 4 and Fire Department Records 8a (including the attachment), 8b, 8c, 8d, 8f and 8g are exempt in their entirety under section 12. The portion of Record 7 consisting of the handwritten and typed statements and memoranda requested by the Incident Commander are also exempt. Record 6 (with the

exception described below) and the FMO statements do not satisfy the requirements for exemption under section 12 and should be disclosed to the appellant.

## **INVASION OF PRIVACY**

Record 9a is a completed preprinted form entitled "Casualty Report"; Record 9b is a handwritten document entitled "Sick & Hurt". The City submits that to disclose these records would be an unjustified invasion of the personal privacy of the individuals referred to in these documents. The reference on page 30 of Record 6 is to the hospitalization of a firefighter.

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

I have reviewed the records at issue and find that they contain the personal information of three identifiable individuals.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions in section 14(3) apply, the City must consider the application of the factors listed in section 14(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

The City submits that the presumptions in sections 14(3)(a) and (d) apply to these records. These sections state:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (d) relates to employment or educational history;

In my view, Record 9a contains personal information which relates both to a medical condition of an individual as well as to this individual's employment history. Record 9b contains personal information related to the medical conditions of the two individuals named therein. Thus, I find that the presumptions in sections 14(3)(a) and (d) apply to Record 9a and that section 14(3)(a) applies to Record 9b and to part of page 30 of Record 6.

None of this information falls within section 14(4) of the Act. The appellant has not claimed that there exists a compelling public interest in disclosure of this information under section 16 of the Act. Accordingly, I find that to disclose Records 9a, 9b and a portion of page 30 of Record 6 to the appellant would result in an unjustified invasion of the personal privacy of the three individuals named in the records.

The appellant suggests that these records could be severed in order to disclose some of the information. I find that, given the nature of the records and the information contained in them, it is not possible to remove the personal information so as to render the information anonymous. I have highlighted that portion of page 30 of Record 6 which should not be disclosed to the appellant on the copy of this page which is being sent to the Freedom of Information and Privacy Co-ordinator of the City with this order.

## **ORDER:**

1. I uphold the City's decision to deny access to Records 1, 2a, 2b, 3a, 3b, 3c, 3d, 4, 8a, 8b, 8c, 8d, 8f, 8g, 8h, 9a and 9b in their entirety, and to the portion of Record 7 consisting of the handwritten and typed statements and memoranda requested by the Incident Commander, and the highlighted portion of page 30 of Record 6.
2. I order the City to disclose Record 6 (with the exception of the highlighted portion on page 30) and the "Office of the Ontario Fire Marshall - Witness Statements" portion of Record 7 to the appellant by **January 25, 1996**.
3. I uphold the reasonableness of the City's search with respect to all the requested items except for Watermain item 5.
4. I order the City to conduct a further search for records responsive to Watermain item 5, and in particular for the results of the flow test conducted by a consulting firm on May 1, 1995, and to advise the appellant of the results of the search by **January 30, 1996**.
5. If, as a result of this further search, the City locates any responsive records, I order the City to provide a decision letter regarding access to these records in accordance with sections 19 and 22 of the Act, considering the date of this order as the date of the request and without recourse to a time extension.
6. In order to verify compliance with this order, I order the City to provide me with a copy of the letter referred to in Provision 4 and a copy of the decision referred to in Provision 5 (if applicable) by **February 14, 1996**. These copies should be forwarded to my attention,

c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700,  
Toronto, Ontario, M5S 2V1.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ January 10, 1996

## APPENDIX "A"

### DETAILS OF THE REQUEST AND THE CITY'S RESPONSE

#### The Watermain Records

- (1) Documentation relating to the construction or most recent replacement of the watermain - no records exist.
- (2) A copy of any agreement between the City and the City of Toronto (Toronto) relating to the supply of water to the street where the house was located - no records exist. 1946 agreement subsequently disclosed.
- (3) A copy of any agreement between the City and Toronto relating to the maintenance of the watermain and the monitoring of water pressure along the street where the house was located - no records exist. Policy regarding emergency calls adjacent to municipal boundaries subsequently disclosed.
- (4) A copy of any report prepared either internally or externally for the City or Toronto with a copy to the City relating to the sufficiency or insufficiency of water pressure in the watermain along the street either for firefighting or other purposes.  
  
Record 1: Report from consulting engineers dated January 18, 1995 - access denied under section 12, solicitor-client privilege
- (5) A copy of any test results relating to water pressure or quality in the watermain along the street within the last ten years - no records exist.
- (6) Copies of any internal City memoranda dealing with the adequacy of the water pressure along the street.  
  
Record 2a: Memorandum dated December 20, 1994 from the Fire Chief to the Commissioner, Public Works Department - access denied under section 12  
  
Record 2b: Memorandum dated February 7, 1995 from the Commissioner, Public Works to the Fire Chief in response to Record 2a - access denied under section 12
- (7) Copies of the minutes of any City Council or Committee meetings dealing with the adequacy of the water in the watermain along the street - available from the Clerk's office. Copies of these were subsequently sent to the appellant on September 19, 1995. The City subsequently confirmed that there are no Council

or Committee minutes prior to or following July 12, 1995. This item is no longer at issue.

- (8) Copies of any City memoranda dealing with water pressure along the street and the need for colour coding of fire hydrants - responsive records are those listed under request item #6.
- (9) Copies of any City memoranda dealing with the issue of the adequacy of the water pressure along the street and the need or lack of the need for an emergency response plan arising out of any water pressure problems on the street - no records exist.
- (10) A copy of any emergency response plan developed to respond to water pressure problems along the street - no records exist.
- (11) A copy of any correspondence with Toronto dealing with the adequacy of the water pressure along the street and the co-ordination of an emergency response plan for the street.

Record 3a: Letter dated March 16, 1995 from the City Director of Sewer and Water Operations to the Toronto Department of Works & Environment - access denied under section 12

Record 3b: Letter dated January 23, 1995 from the City Director of Sewer and Water Operations to the Metropolitan Works Department - access denied under section 12

Record 3c: Letter dated January 3, 1995 from the City Director of Sewer and Water Operations to the Metropolitan Works Department - access denied under section 12

Record 3d: Letter dated January 12, 1995 from the City Director of Sewer and Water Operations to the Toronto Department of Works & Environment - access denied under section 12

- (12) A copy of any complaints from residents relating to the quality of the water supply or the adequacy of the water pressure along the street within the last ten years - no records exist.
- (13) A copy of the City memoranda and records relating to the removal of the fire hydrant adjacent to the street on either December 12th, 13th or 14th, 1994 as well as copies of any memoranda or reports prepared relating to any investigations or repairs to the fire hydrant following its removal.

Record 4: Handwritten memorandum dated December 15, 1994 from the City Superintendent of Special Services to the City



Director of Water and Sewer Operations - access denied  
under section 12

### **The Fire Department Records**

- (1) A copy of the radio tape (both the original and transcribed version) including all responses from the original call in reporting the fire on December 12, 1994 to the calling off of the last fire call on the site - the City cannot transcribe the tape as it has no facilities to do so. The appellant was advised that he could make the arrangements and pay the costs of the transcription. On October 27, 1995 the City advised the appellant that it was preparing a transcription of the tape and it would be provided shortly. On November 23, 1995, the City advised the appellant that it would make the tape available at the Fire Department Communications Office once the appellant had retained an individual to transcribe the tape. This item is no longer at issue in the appeal.
- (2) A copy of the City's Fire Department training and procedures manual - certain portions of the manual are exempt under sections 8(1)(i) (security) and 13 (danger to safety or health) of the Act. The appellant was also requested to identify the specific procedures to which he sought access. The City sent the appellant the Table of Contents for the Fire Department Training Manual on September 19, 1995. On October 27, 1995, the City advised the appellant that it was in the process of copying the Manual and that it would be provided to the appellant shortly. On November 23, 1995, the City provided the appellant with a fee estimate for this document and advised him that he would receive access to the record upon payment of the fee. This item is no longer at issue in this appeal.
- (3) A copy of any agreement or other documentation relating to the co-ordination of services for emergency response to a fire on the street - no records exist.
- (4) A copy of the general occurrence report for the fire of December 12, 1994 at the property complete with any witness statements and drawing and copies of any witness statements file by individual firefighters relating to this fire.

Record 6: Thirty-two pages of Emergency Call Reports prepared by firefighters - the front pages were disclosed, the back portions were withheld under section 12

Record 7: Memorandum dated December 20, 1994 from Fire Captain to Fire chief (1 page) - access denied under section 12  
Memorandum dated December 21, 1994 from District Chief to Assistant Deputy Chief (1 page) - access denied under section 12  
Handwritten and typed versions of firefighters' notes and diagram concerning the fire (15 pages) - access denied under section 12

Office of the Ontario Fire Marshall - Witness Statements  
(typed and handwritten ) (105 pages) - access denied under  
section 12

(Record 7 is also responsive to request item #5)

- (5) Copies of the general occurrence or other reports for the December 12, 1994 fire at the property filed by each officer submitting such report - see Record #7 under request item #4.
- (6) Copies of any internal memoranda prepared by firefighters with respect to the fire.

Record 8a: Memorandum dated December 21, 1994 from City Fire Chief to City Solicitor - access denied under section 12

Record 8b: Memorandum dated December 21, 1994 from City Assistant Deputy Fire Chief to Administration Chief - access denied under section 12

Record 8c: Memorandum dated December 20, 1994 from City Fire Chief to Commissioner, Public Works Department - access denied under section 12

Record 8d: Notice dated December 16, 1994 from City Assistant Deputy Fire Chief to Platoon Chief - access denied under section 12

Record 8e: Notice dated December 19, 1994 from City Assistant Deputy Fire Chief to Platoon Chief attaching communication cards (also known as Vehicle Dispatch Records) - all disclosed to appellant so these are no longer at issue

Record 8f: Undated Memorandum from Training Division Captain to City Assistant Deputy Fire Chief - access denied under section 12

Record 8g: Memorandum dated January 3, 1995 to Assistant Deputy Fire Chief - access denied under section 12

Record 8h: Letter dated December 20, 1994 from City Assistant Deputy Fire Chief to Toronto Acting Fire Chief - access denied under section 12

Record 9a: Casualty Report on identified firefighter - access denied under section 14

- Record 9b: Handwritten notes entitled "Sick & Hurt" - access denied under section 14
- (7) A copy of the computer print-out of response for the fire - disclosed.
  - (8) Copies of any photographs taken by the City or their firefighters relating to the fire - the appellant was advised who to contact to obtain a copy of the videotape. The City advised that the slides of the fire scene were not part of the file.
  - (9) Copies of the general occurrence reports or other response records for any fire occurring on the street within the ten years prior to the incident - disclosed.