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

ORDER MO-1485-F

Appeal MA-010096-1

City of Burlington

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NATURE OF THE APPEAL:

The City of Burlington (the City) received a request from a member of the media pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for:

> … a copy of the contract and/or agreement between the city and the [named] family and/or [named organization] and/or any member of the [named] family or business over the [named] donation to the McNichol project and the subsequent renaming of the park and mansion to [named] Lakeside Park and Mansion.
>
> I would also like copies of all correspondence between city staff or councillors and any member of the [named] organization with respect to the McNichol project.

The City provided notice to the organization identified in the request, whose interests may be affected by disclosure of any responsive records (the affected party). The affected party consented to the partial and full disclosure of certain records, and objected to the disclosure of other records. The City provided full and partial access to certain responsive records and denied access to the severed information or entire records on the basis of one or more of the following exemptions contained in the *Act*:

- section 10 – third party information
- section 11 – economic or other interests of the City
- section 14 – invasion of privacy

The requester, now the appellant, appealed the City's decision.

During mediation, the City reviewed its original decision and issued a second one, disclosing more records and revising the exemption claims. Parts of six records that had been severed under an exemption in the initial decision letter were now identified as being non-responsive to the request. An amendment to the second decision was also issued, clarifying one of the severances.

The appellant removed the non-responsive portions of Records 16 and 17 from the scope of the appeal.

Mediation was not successful in resolving all issues, and the appeal proceeded to the Adjudication Stage. I initially sent the Notice of Inquiry to the City and the affected party, setting out the facts and issues on appeal and inviting representations. I received representations from both parties. After issuing Interim Order MO-1463-I, which dealt with issues regarding the sharing of representations, I sent a copy of the Notice to the appellant, together with a copy of the non-confidential portions of the City's representations and the affected parties representations in their entirety. The appellant chose not to submit representations.

RECORDS:

The records remaining at issue are Records 3 and 7, and the undisclosed portions of Records 4, 5, 6, 9, 10, 11, 12 and 13. They are described as follows:

Record Number	Description	Withheld in full or severed	Exemption Claimed
3	3-page letter from City to affected party dated September 22, 1999 with draft donor agreement attached	withheld in full	non-responsive, or sections 14(1) and 11(c)(d)
4	2-page letter from City to affected party dated September 23, 1999	severed	1st severed paragraph on page 1: non-responsive 2nd severed paragraph on page 1: section 14(1)
5	1-page letter from City to affected party dated September 23, 1999	severed	section 14(1)
6	1-page letter from affected party to City dated November 9, 1999	severed	sections 11(a)(c)(d)
7	2-page draft agreement	withheld in full	non-responsive, or sections 11(a)(c)(d)
9	2-page letter from City to affected party dated January 5, 2000	severed	sections 11(c)(d)
10	1-page letter from affected party to City dated January 28, 2000 attached cheque from affected party to City	severed severed	sections 11(a)(c)(d) sections10(1)(a) and 11(c)(d)
11	4-page agreement between City and affected party dated January 5, 2000	severed	sections 11(c)(d)

Record Number	Description	Withheld in full or severed	Exemption Claimed
12	1-page letter from City to affected party dated February 10, 2000	severed	sections 11(c)(d)
13	1-page agenda of meeting on the McNichol project dated July 11, 2000	severed	non-responsive

PRELIMINARY MATTER:

RESPONSIVENESS OF RECORDS

The City submits that Records 3 and 7, and portions of Records 4, 7 and 13, are not responsive to the appellant's request.

As far as Records 3 and 7 are concerned, the City submits:

> With respect to Records #3 and #7, the City respectfully submits that the documents falls outside the scope of the applicant's request. The request was made for "the contract and/or agreement between" the City – [a named family]; and/or the City – [the affected party] corporation; and or the City – any member of [the named family]; and/or the City – [the affected party] business. Further the contract/agreement being referenced is specific to "the [named] donation to the McNichol Project".
>
> The applicant did not include in her request draft copies of any contract/agreement, nor did she request working papers. The applicant should have broadened her request if she wanted drafts and working papers. It should be emphasized that at no time did the City receive a donation from either [of the named individuals] (draft contained Record #3) in their personal capacities from the McNichol Project. The City maintains that the responsive record is Document #11 that was released (with severance) to the requester. [The affected party] corporation made the donation.

The City refers to Orders P-456 and M-259 in support of its position, and also relies on its argument that a draft agreement is not recognized in law as a contract or agreement.

Previous orders of the Commissioner have established that in order to be responsive, a record must be "reasonably related" to the request. Former Adjudicator Anita Fineberg canvassed the issue of responsiveness of records in detail in Order P-880, where she stated:

> In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to a request. It is an integral

> part of any decision by a head. The record itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.

In the present appeal, the City relies on what I would characterize as a narrow interpretation of the appellant's request in concluding that draft versions of the identified agreement are not responsive, despite the fact that the City identified them as responsive records at the time of issuing its decision at the request stage. There is nothing before me to suggest that the City spoke to the appellant regarding the scope of her request prior to issuing the decision, and all records not disclosed to the appellant were identified by her as falling within the scope of the appeal.

As far as Orders P-456 and M-259 are concerned, I find that neither assists the City. These cases both dealt with situations where institutions argued that they should be able to rely on the wording of a request when establishing search parameters, as long as the request was clear and adequately described the requested records. In the present appeal, the City identified the search parameters based on the wording of the appellant's request, conducted its searches, and itself identified draft versions of the final agreement as falling within the scope of the request.

As stated in Order P-880, the criteria for responsiveness is relevancy and, absent any indication that the draft versions of the agreement were not required, I find that Records 3 and 7, which are drafts of the final version of the agreement between the City and the affected party, are reasonably related to the appellant's request for the final version, and therefore responsive to the request. The wording of the request is broad enough to cover draft agreements and, in my view, the City's reasons for excluding them are overly technical and unreasonable in the circumstances. I am also of the view that the fact that these drafts may have been prepared with the assumption that the agreement would be signed by members of the identified family rather than by the affected party corporation is not sufficient to distinguish them in the circumstances. As the City acknowledges elsewhere in its representations, Records 3 and 7 were addressed to the affected party corporation, and there would appear to be no dispute that the individual family members involved in the negotiations are closely associated with the affected party corporate entity. I should also note that whether or not a draft agreement is recognized at law is not a relevant consideration in determining whether a record is responsive to a request under the *Act*.

The City submits that the first severed paragraph of Record 4 refers to an unrelated construction project, and is therefore not responsive. It also submits that the information severed from Record 13 consists of the names of other potential donors to the McNichol Project, and are non-responsive for this reason. Applying the reasoning from Order P-880, I find that the content of the first severed paragraph of Record 4 is not reasonably related to the McNicol Project, which is the subject matter of the request, and is therefore not responsive. I also find that the names severed from Record 13 are not reasonably related to the affected party or specified family

members identified in the appellant's request, and therefore these unrelated names are also not responsive.

DISCUSSION:

ECONOMIC INTERESTS

The City relies on the exemptions in sections 11(c) and (d) of the *Act* as the basis for denying access to Records 3 and 7, and the undisclosed responsive portions of Records 6, 9, 10, 11 and 12. These sections read:

> A head may refuse to disclose a record that contains,
>
> (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
>
> (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;

Broadly speaking, section 11 is designed to protect certain economic interests of institutions covered by the *Act*. Sections 11(c) and (d) both take into consideration the consequences which would impact an institution if a record were released (Order MO-1474).

In Order PO-1747, Senior Adjudicator David Goodis stated:

> The words "could reasonably be expected to" appear in the preamble of section 14(1), as well as in several other exemptions under the [provincial *Freedom of Information and Protection of Privacy*] *Act* dealing with a wide variety of anticipated "harms". In the case of most of these exemptions, in order to establish that the particular harm in question "could reasonably be expected" to result from disclosure of a record, the party with the burden of proof must provide "detailed and convincing" evidence to establish a "reasonable expectation of probable harm" [see Order P-373, two court decisions on judicial review of that order in *Ontario (Workers' Compensation Board)* v. *Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 at 40 (Div. Ct.), and *Ontario (Minister of Labour)* v. *Big Canoe*, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)].

These findings apply equally to section 11(c) or (d) of the municipal *Act*, which both include the phase "could reasonably be expected to". Accordingly, in order to establish the requirements of either of these exemptions, the City must provide "detailed and convincing" evidence to establish a "reasonable expectation of probable harm" as described in those sections.

The City submits:

> The City of Burlington, like all other municipalities in Ontario is living the adage of doing "more with less". As senior levels of government have increasingly reduced grants to municipalities for services such as roads and transit, municipalities have been forced to find alternative sources of funding for community projects. For example, in Burlington grant funding from the senior levels of government has been reduced from approximately $10 million in 1992 to $65,000 in 2001.
>
> While most if not all municipalities in Ontario have out of necessity turned to public/private partnerships and public fundraising as a means of raising essential funds to complete community-oriented projects, the City of Burlington has been a leader in the field. Successive City Councils have consistently approved strategic plans for the City that emphasize public/private partnerships and community fundraising as alternative ways in which to engage the community in meeting future needs…
>
> It is fair to say, that the City of Burlington has embraced public/private partnerships and community fundraising as an integral part of how the City does business, and in particular how we fund major community projects for which there is often little or no public funds available. In the current economic climate the pressure on City Council to find new funding sources to finance community projects will only increase as the City is faced with less and less funding from senior levels of government combined with the expectation that property tax increases will be kept to a minimum.
>
> It is also fair to say that the City of Burlington must compete with other private and public sector agencies that are actively fundraising in the community for their own projects, including local hospitals, libraries, art centers, to name a few. If a climate exists in which potential donors to fundraising campaigns for municipal projects face possibility that any of their dealings with the City in pursuit of a donation may be made public through the release of records (including drafts) and presented in the media, it will have a chilling effect on the City's ability to fundraise. Stated simply, these donors will find other more private places/causes to which they will donate their money if donating or contemplating donating to the City exposes all records to public disclosure. …Although the City cannot quantify with any certainty how much of an impact widespread disclosure may have, clearly the effect will be to place the City at a competitive disadvantage with other organizations fundraising in the large community, to the economic prejudice not just of the City but to the residents of the City at large.
>
> With specific reference to the severance contained in Record #9, clearly it outlines a fundraising strategy used by the City. If this strategy were disclosed it could have a detrimental impact on the City's ability to fundraise in future. The

> City should be able to protect from disclosure those parts of records that, if released, will harm its future economic interests.
>
> …
>
> … With respect to the restoration of the McNichol Mansion alone, the City hired a fundraising consultant to undertake a fundraising feasibility study and a Capital Campaign Fundraising Coordinator to oversee the campaign… The City invested substantial funds and staff time into ensuring that the fundraising was successful.
>
> The City submits that there is intrinsic value in the relationship that develops between the City and its donors. Call it "goodwill", call it "trust". If the City is required to disclose to the media records pertaining to potential donors, whether in the form of a list or draft donor agreements for exposition in the local media, that trust will be broken, and the City's ability to fundraise obstructed. Further, the concern is that effects will not be contained to this specific fundraising effort, but will extend to any fundraising that the City may undertake in future.
>
> As evidenced in the Affidavit of [the Manager of Recreation], the fundraising for the [McNichol] project continues today. The City is still soliciting donations to fully fund the restoration work. Further, as many of the pledges were donated over time …, the City will continue to collect pledges well into 2003. The financial injury to the City that will come as a consequence of disclosure will be in the form of donations forgone and pledges not realized.

The City also refers to Order M-67 in support of its position. In Order M-67, the Metropolitan Toronto and Regional Conservation Authority (Conservation Authority) relied on sections 11(c) and (d) to deny access to information pertaining to companies who had booked permits with the Conservation Authority. The appellant wanted the information so it could contact these organizations with a view to selling them entertainment packages. In that order, I made the following findings:

> In its representations, the Conservation Authority describes its unique nature and financial position. The Conservation Authority is a corporate body, constituted under the *Conservation Authorities Act* of Ontario. It is empowered to operate recreational and other park facilities for the benefit of the public. Funding for its recreational activities comes directly from admission charges and other revenues raised during the course of operating the facilities. Although these activities are subsidized by local municipalities, the Conservation Authority must rely increasingly on the additional revenues it generates in the various recreational areas and facilities. These revenues are derived from the Conservation Authority's food services, a gift shop and fees for various educational programs.
>
> According to the Conservation Authority, it puts significant time and effort into promoting its activities by actively soliciting individual, corporate and group bookings through direct advertising and marketing. The Conservation Authority

> submits that it would be prejudicial to its economic interests and competitive position to reveal the names of its corporate clients to competing entities. It argues that it is in competition with a large number of recreational attractions for a limited amount of money being spent on recreation, and if it were to release a list of its customers' names, a competitor could use it to win over customers and take advantage of the Conservation Authority's past advertising.
>
> …
>
> In my view, the fact that the appellant is providing different services from those offered by the Conservation Authority is not determinative. The portions of the records sought by the appellant are, in effect, a mailing list of the Conservation Authority's corporate clients, and as such, have an intrinsic value to the Conservation Authority. This information is essential to the Conservation Authority's marketing and promoting of its services, and is used to generate income. Further, as the Conservation Authority quite rightly points out, there can be no guarantee that the list, once released, would not be sold or passed on to other companies or individuals that are in direct competition with the Conservation Authority.

The City, like the Conservation Authority in Order M-67, has provided evidence of its reliance on fundraising to supplement the money it receives from senior levels of government in order to undertake community-oriented initiatives such as the McNichol Project. The City has also provided evidence that it has dedicated effort and resources to specific fundraising efforts associated with this project. I am also mindful that the City is still soliciting donations for the McNichol Project, and that many of the existing donations were pledged over time. However, in my view, there is an important factual distinction between Order M-67 and this appeal that limits the precedential value of the previous order. Unlike the situation in Order M-67, which dealt with what would in effect constitute a mailing list of its corporate clients, the records at issue in this appeal, with limited exceptions, relate to a specific donation made by a publicly-identified corporate entity to the City for a particular project.

Record 11 is the final four-page executed agreement between the City and the affected party regarding its donation to the McNichol Project. This record has been fully disclosed by the City to the appellant, with the exception of two partial sentences, each of which relates to the manner in which the agreed-upon financial donation (which has itself been disclosed to the appellant) will be made. The information severed from Records 6, 10 and 12 reflects certain specific aspects of the payment method severed from Record 11. In my view, the City has provided the required level of detailed and convincing evidence to establish that certain types of records that may relate to the fundraising efforts, if disclosed, could reasonably be expected to prejudice the City's ability to attract similar donations in future. However, in my view, Records 6, 10, 11 and 12 do not fit within this category. The appellant is aware, through disclosure of records in the context of her request and otherwise, that the affected party has made a substantial donation in support of the McNichol Project, including the overall level of this contribution. She also knows that this donation is being made over time. All that she doesn't know is the breakdown of these periodic payments and, in my view, providing this limited and specific type of information

through the disclosure of the severed information from Records 6, 10, 11 and 12, which is particular to the circumstances of this individual donation, could not reasonably be expected to prejudice the economic interests of the City in its fundraising efforts, or be injurious to the financial interest of the City. Therefore, I find that the undisclosed portions of Records 6, 10, 11 and 12 do not qualify for exemption under sections 11(c) or (d) of the *Act*.

As far as the severed sentence in Record 9 is concerned, I accept the City's position that disclosure of details concerning its capital campaign strategy for projects of this nature could reasonably be expected to prejudice future similar fundraising efforts. Accordingly, I find that the severed portion of Record 9 qualifies for exemption under section 11(c) of the *Act*.

Records 3 and 7 are draft versions of the agreement between the City and the affected party. These drafts are clearly specific to the particular donation made by the affected party, and their content closely resembles the terms of the final agreement (Record 11) that has, with limited exceptions, been disclosed to the appellant. Based on the evidence provided by the parties and my comparison of the contents of Records 3, 7, and 11, in my view, disclosure of any portions of Records 3 and 7 that differ from the information already disclosed in Record 11 could not reasonably be expected to result in any of the harms listed in section 11(c) and/or (d) of the *Act*, and I find that these two records do not qualify for exemption.

Because no other exemptions have been claimed for Record 6, 7, 11 and 12, they should be disclosed to the appellant.

THIRD PARTY INFORMATION

The City claims section 10(1)(a) of the *Act* as the basis for denying access to the undisclosed portion of the cheque from the affected party attached as the second page of Record 10. The name and address of the affected party, the date of the cheque, the "re" line notation, and the two signatures appearing on the cheque have already been disclosed to the appellant by the City. The portions that remain at issue are the cheque number, bank address, the amount of the payment, and bank account information coded on the bottom of the cheque.

For a record to qualify for exemption under section 10(1)(a), the City and/or the affected party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of subsection 10(1) will occur.

(Orders 36, P-373, M-29 and M-37)

Clearly, the cheque contains financial information, thereby satisfying the first part of the test.

It is also clear that the cheque was supplied by the affected party to the City in order to comply with the terms of the donation agreement.

The City submits that the announcement of the donation by the affected party was not made until December of 2000, approximately 15 months after the cheque was submitted to the City, and that until the time of the announcement there was an expectation of confidentiality regarding the donation itself, and the amount. The City's position is supported by an affidavit provided by the City's Manager of Recreation, who personally handled the negotiations involving the affected party's donation. I accept the City's position, and find that, given the nature of fundraising activities such as these, there was a reasonably held implicit expectation on the part of the City and the affected party that any payments made prior to a public announcement would be treated confidentially. However, in my view, this expectation of confidentiality was time limited, as is acknowledged by the Manager in her affidavit:

> … The Agreement was signed in January 2000 and a cheque received by the City. In consultation with [the affected party], the public announcement of the donation did not occur until December 9, 2000. **Until that time the gift was confidential**. … [my emphasis]

Once the announcement was made, in my view, the expectation of confidentiality disappeared, and I find that the second requirement of the section 10(1)(a) exemption claim is no longer present as it relates to the amount of the donation appearing on the cheque.

For the same reasons outlined with respect to the disclosure of the particulars of the donation in the earlier discussion of section 11(c) and (d), I also find that disclosure of the partial payment amount reflected on the cheque could not reasonably be expected to prejudice significantly the competitive position of the City or the affected party, or interfere with the City's negotiations with other donors.

Therefore, I find that both the second and third requirements of the section 10(1)(a) exemption claim have not been established for the portions of the cheque that reflect the payment made by the affected party to the City, and this information does not qualify for exemption under this section and should be disclosed.

As far as the other undisclosed details on the corporate cheque are concerned, I find that they have no bearing on the affected party's agreement with the City, and therefore fall outside the scope of the appellant's request and should not be disclosed.

PERSONAL INFORMATION/INVASION OF PRIVACY

The City claims that Records 3 and the severed portions of Records 4 and 5 qualify for exemption under section 14(1) of the *Act*.

The section 14 personal privacy exemption applies only to information that qualifies as "personal information", as defined in section 2(1) of the *Act*. "Personal information" is defined, in part, to mean recorded information about an identifiable individual, including information relating to a financial transaction in which the individual has been involved [paragraph (b)] 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 [paragraph (h)].

The City submits:

> …that when the City first made contact with the [named] family regarding the possibility of a donation, it was dealing with the [named] family and specifically [named] individuals in their personal capacities. The three records at issue were exchanged with the [named] individuals in their personal capacity.
>
> Record #3 is a draft donor agreement between the City and [named individuals] in their personal capacities as distinct from the corporate entity, [the affected party] corporation. A review of the record discloses that while the record was sent to the corporate address, it is addressed to the affected parties in their personal capacities. Further, the record clearly identifies [named] individuals as the donors under the terms of the draft agreement. Finally the record discloses that the signatories to the agreement would be [named] individuals respectively.
>
> With respect to the second severed paragraph of Record #4, and Record #5 both of which were prepared the day after Record #3, provide no evidence to suggest that there has been any change in the status of the potential donors. Although the letters were addressed to the donors at a corporate address, there is nothing in the letter to suggest that the donor(s) were any different than previously identified in Record #3.

The affidavit of the Manager of Recreation provided by the City with its representations describes her ongoing dealings with the affected party and members of the family identified in the appellant's request, which supports the City's position that early discussions regarding the McNichol Project donation were undertaken on the basis that it would be made by individual family members in a personal capacity. She states:

> … I was the key contact involved with the family with respect to the donation. I was present at the initial meeting with the [named family] when they toured the Mansion on September 16, 1999. [The names family members] were in attendance. To the best of my recollection, I believed that I was dealing with the family in a personal capacity. When I authored the letters, being Records #3, 4 and 5 I believed I addressed them in a personal manner in keeping with my understanding of who was making the donation, It was not until several months later … that it appeared that the donation may not come through the individuals but through [the affected party] corporation. By early November 1999 it was

> clear that the commitment of a donation would be made by the [affected party] corporation.

The signature lines on the Record 3 draft agreement are also consistent with this position.

The affected party also submits that Records 4 and 5 contain personal information.

The appellant did not provide representations on this or any other issue.

I accept the City's evidence on this issue. Although Records 3, 4 and 5 are addressed to the affected party's corporate address, I am persuaded that they were sent to the individual family members in their personal rather than official capacity as representatives of the corporation. Accordingly, I find that the Record 3 draft agreement and the undisclosed responsive information contained in Records 4 and 5 contain the personal information of identified family members, as that term is defined in section 2(1) of the *Act*.

Clearly, none of these records contain the personal information of the appellant.

Where a requester seeks personal information of another individual, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies. Section 14(1)(f) reads:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the institution to consider in making this determination. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 14(2) [*John Doe* v. *Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The appellant provided no representations on the issue of whether disclosure of personal information would constitute an unjustified invasion of privacy under section 14(1) of the *Act*. Section 14(1) is a mandatory exemption claim that reflects one of the purposes outlined in section 1(b) of the *Act*, specifically:

> to protect the privacy of individuals with respect to personal information about themselves held by institutions ...

In the absence of representations from the appellant addressing this issue, or other evidence supporting a finding that disclosure of this personal information would not constitute an unjustified invasion of personal privacy, I am unable to find that the section 14(1)(f) exception applies. Accordingly, the personal information contained in the records qualifies for exemption under the mandatory requirements of section 14(1) of the *Act*.

Therefore, I find that Record 3 and the undisclosed responsive portions of Records 4 and 5 qualify for exemption under section 14(1) of the *Act* and should not be disclosed.

ORDER:

1. I order the City to disclose Record 7, all undisclosed portions of Records 6, 11 and 12, the undisclosed portion of page 1 of Record 10, and the portions of page 2 of Record 10 **not** identified on the highlighted copy of this page provided to the City with this order. Disclosure is to be made to the appellant by December 19, 2001 but not before December 14, 2001

2. I uphold the City's decision to deny access to Record 3, the undisclosed portions of Records 4, 5, 9, and 13, and the portions of page 2 of Record 10 not covered by Provision 1 of this order.

3. To ensure compliance with this order, I reserve the right to require the City to provide me with a copy of the materials sent to the appellant in accordance with Provision 1.

Original signed by: November 15, 2001
Tom Mitchinson
Assistant Commissioner