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

ORDER MO-1684

Appeal MA-020208-2

City of Toronto

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NATURE OF THE APPEAL:

An individual submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the City of Toronto (the City) for information pertaining to the development of a property at the corner of Spadina Road and Thelma Avenue, owned by the Toronto Parking Authority (TPA). More specifically, the individual requested:

1) all agreements, correspondence, reports, memoranda and other paper and electronic documents relating to the initial plan which contemplated the construction of town house dwellings on the subject land presently used as a surface parking lot; and

2) all agreements, correspondence, reports, memoranda and other paper and electronic documents reliant to the plan for the project now under consideration for the construction of town house dwellings on the subject land presently used as a surface parking lot.

The TPA is an agency of the City.

The City identified 1,080 pages of responsive records. It granted access to a number of pages, in whole or in part, and denied access to the remainder under one or more of the following exemptions in the *Act*:

- section 6 - closed meeting
- section 7 - advice or recommendations
- section 10 - third party commercial information
- section 11 - economic and other interests of the City
- section 12 - solicitor-client privilege
- section 14 - invasion of privacy

The City also identified certain records as not responsive to the request.

The City also provided the requester with an index of records, which contains a brief description and the specific exemptions claimed for each page.

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

During mediation, the appellant decided not to pursue access to the undisclosed portions of pages 239, 316, 393, 394, 444 and 626 and to the various pages listed by the City as non-responsive. Accordingly, these pages are no longer at issue in the appeal.

The appeal was not resolved during mediation, so it was transferred to the adjudication stage of the appeal process.

I initiated my inquiry by sending a Notice of Inquiry to the City and nine parties whose interests could be affected by the outcome of the appeal. I received representations in response from the

City and one affected party, the prospective developer of the property identified in the appellant's request (the affected party). One other affected party submitted a brief letter simply objecting to the disclosure of any of its information, but providing no evidence or argument in support of the section 10 exemption claim.

In its representations, the City withdrew the section 6 and section 7 exemption claims and agreed to disclose additional records.

I then sent the Notice of Inquiry to the appellant, along with a copy of the representations provided by the City and the affected party. The appellant responded with representations, and subsequently submitted supplementary representations as well.

RECORDS:

In response to the appellant's request, the City disclosed the following pages of records:

> 63-64, 68-69, 161-165, 189, 233, 242-244, 275-282, 293-305, 308-314, 317-321, 324, 326-331, 368-369, 372-384, 392, 395-397, 407-410, 413-417, 434, 446-447, 482-483, 509, 615, 627-628, 648-649, 722, 748-749, 753, 756-763, 765-770, 784-788, 790-796, 798, 800-801, 824-825, 831, 840, 848, 850, 853, 856, 858-859, 864-865, 868, 916, 925-926, 928-931, 936-937, 942, 944, 971, 1020 and 1022-1025

During mediation, the following pages were removed from the scope of the appeal:

> 1-62, 227, 240-241, 418-426, 797, and the undisclosed portions of pages 239, 315-316, 393-394, 444 and 626

In the context of submitting representations, the City agreed to disclose the following pages:

> 73, 166, 234-238, 245, 253, 323, 325, 474, 622, 638-639 and 861

Some other pages are not addressed in the City's representations. Therefore, I have concluded that the City is no longer relying on any discretionary exemption claims for these pages. I will consider some of these pages under the mandatory exemptions in sections 10 or 14 of the *Act*, but have removed the following pages from the scope of the appeal:

> 85, 252, 288, 289-292, 385 (in part), 386, 388-391, 625, 771, 772 (in part), 773-779, 780 (in part), 781-783, 920, 922 and 924

Therefore, the following pages of records remain at issue in the appeal:

> 65-67, 70-72, 74-160, 167-188, 190-226 (page number 208 not used), 228-232, 246-251, 254-274, 283-287, 306-307, 322, 332-367, 370-371, 385 (in part), 387, 398-406, 411-412, 427-433, 435-439, 440-443, 445, 448-473, 475-481, 484-508, 510-614, 616-621, 623-624, 629-637, 640-647, 650-721, 723-747, 750-752, 754-

755, 764, 772 (in part), 780 (in part), 789, 799, 802-823, 826-830, 832-839, 841-847, 849, 851-852, 854-855, 857, 860, 862-863, 866-867, 869-915, 917-918, 919, 921, 923, 927, 932-935, 938-941, 943, 945-970, 972-1019, 1021 and 1026-1080

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

I will consider the mandatory section 14(1) invasion of privacy exemption for the following pages or partial pages of records, which were either claimed by the City or identified by me during my review of the various records:

65-67, 70-72, 143-146, 385-391, 432-433, 440-445, 772, 780, 808-818, 917-918, 919, 921 and 923

In order to qualify for exemption under section 14(1), a record must contain "personal information". Section 2(1) of the *Act* defines this term, in part, as "recorded information about an identifiable individual", including information relating to education history of an individual or financial transactions in which the individual has been involved [paragraph (b)], the address of an individual [paragraph (d)], the personal opinions or views of the individual [paragraph (e)], correspondence sent to an institution in confidence, and replies to the correspondence [paragraph (f)], and the individual's name where it appears with other personal information relating to the individual or where disclosure of the name would reveal other personal information about the individual [paragraph (h)].

Having reviewed these pages, I make the following findings:

- Pages 65-67 comprise a letter sent by a lawyer from the City to a resident in the context of a dispute regarding land ownership in the City. The land in question is in the vicinity of the property identified in the appellant's request. Pages 70-72 are an earlier draft version of the same letter. I find that these pages contain recorded information about an identifiable individual, the resident, relating to a financial transaction in which the individual has been involved, and therefore fall within the scope of paragraph (b) of the definition of "personal information".

- Pages 143-146 comprise an appendix to an appraisal report (Pages 89-142), and outline the professional qualifications and job experience of the appraiser. I find that the information on these pages is similar in nature to information typically found on an individual's resume, and that it qualifies as the "educational history" of the identified appraiser for the purposes of paragraph (b) of the definition of "personal information".

- Pages 385-391 consist of a 2-page letter from the affected party to the City, together with 5 pages of attachments. Page 385 includes a discussion concerning the resident identified in Pages 65-67, and the first attachment (Page 387) relates to this discussion. I find that Page 387 and the relevant portions of Page 385

contain information about the resident and qualify as that individual's "personal information" for the same reasons as Page 65-67. The rest of Page 385 and all of Pages 386 and 388-391 deal with a different topic and do not contain any individual's "personal information".

- Pages 432-433 comprise a letter from the affected party to the City concerning the proposed development. Portions of the letter describe two individuals involved in the project, with general reference to their backgrounds and experience. Unlike Pages 143-146, the information on Pages 432-433 is general and, in my view, not comparable to an individual's resume. Accordingly, I find that it does not fall within the scope of "educational history" or any other component of the definition of "personal information".

- Pages 440-445 consist of a 1-page letter from a resident to a City Councillor, with a 4-page petition attached, as well as a 1-page response from the Councillor. These pages contain the name and address of the resident [paragraph (d)], as well as the views and opinions of the signatories on the petition [paragraph (e)], thereby bringing Pages 440-445 within the scope of the definition of "personal information".

- Page 772 is the second page of a 2-page letter from a City Councillor to the TPA concerning the proposed development. This page contains the names and addresses of individuals who received a copy of this letter. I find that this information falls within the scope of paragraph (d), and that these portions qualify as the "personal information" of the listed individuals.

- Page 780 is a letter from a City Councillor to a number of attendees at a meeting concerning the proposed development. The attendees are not identified by name, but the letter makes reference to an individual who communicated with the Councillor on this issue. I find that disclosing this name would reveal that this individual was associated with the issue under discussion, thereby bringing it within the scope of paragraph (h) of the definition of "personal information".

- Pages 808-818 comprise a land registration document and attached conveyancing instructions from a City lawyer to a City employee. The City does not refer to these pages in its sections 2/21 representations. I find that no information on pages 808-818 is about an "identifiable individual" in a personal sense and therefore they do not contain "personal information".

- Pages 917-918 consist of an exchange of correspondence between a resident of the City and a City lawyer on an aspect of the proposed development. The resident's name and address also appear on Page 923. The information withheld from Pages 919 and 921 consists of the names and addresses of two other residents who received the same letter from the City lawyer. I find that Page 917-918 and the withheld portions of pages 919, 921 and 923 fall within the scope of

> paragraph (d), and that these portions qualify as the "personal information" of the identified individuals.

Section 14(1) is a mandatory exemption. If a record contains the personal information of an individual other than the requester, an institution is precluded from disclosing this information unless one of the exceptions in section 14(1) are present. The only exception with potential application in the context of this appeal is section 14(1)(f), which reads:

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

Section 14(2), (3) and (4) provide direction on interpreting the term "unjustified invasion of personal privacy", as outlined in the Notice of Inquiry sent by me to the parties during the course of this inquiry.

The appellant's representations do not specifically address the section 14(1) exemption.

In the absence of evidence or argument to establish that disclosing the personal information would not constitute an unjustified invasion of privacy, I find that it would. Accordingly, I find that the mandatory section 14(1) exemption applies to Pages 65-67, 70-72, 143-146, 387, 440-445, 917-918 and the portions of pages 385, 772, 780, 919, 921 and 923 that contain "personal information".

THIRD PARTY INFORMATION

The City claims section 10 of the *Act* as one basis for denying access to the following pages of records:

> 209–224, 228–232, 306–307, 427–433, 435-439, 616–624 (with the exception of Page 222), 629-637, 640-647, 685-691, 720-747 (with the exception of Page 722), 750-752, 754-755, 764, 826-830, 841-847, 851-852, 854-855, 857, 869-915 and 1021.

Section 10 reads, in part:

> (1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,
>
> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

> (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

In order to qualify for exemption under section 10(1)(a), (b) or (c), the City and/or the affected parties 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]

As mentioned earlier, I sent the Notice of Inquiry to nine parties whose interests could be affected by the outcome of this appeal. Seven affected parties did not respond to the Notice. One affected party submitted a brief letter, simply objecting to the disclosure of any information relating to it, but providing no evidence or argument in support of the section 10(1) exemption claim. I find that the contents of this letter are not sufficient to establish the requirements of section 10(1).

I will restrict my discussion of section 10(1) to those pages of records that contain information relating to the ninth affected party, the prospective developer, who did provide detailed representations. In some cases, these representations address the interests of other associated parties, such as the affected party's architect and consultants.

The City provided the following background information that is helpful in considering the section 10 exemption claims:

> In November 1999, the TPA's board authorized staff to enter into an Agreement of Purchase and Sale with [the affected party] for the development rights with respect to a municipal surface car park owned by the TPA at the corner of Spadina and Thelma Avenues. [The affected party] proposed to build a ten unit townhouse project with residential parking on the third level below grade, providing 62 to 63 spaces parking valued at approximately $30,000 per space.

> In April 2001, City Council authorized the execution of the Agreement for the proposal. However, in March of 2001, changes to [the affected party's] proposal were made in response to escalating construction costs. Its new proposal consisted of a ten-unit condominium with ground level retail but no changes to the number of parking spaces.
>
> Consequently, in November 2001, the TPA and [the affected party] entered into another Agreement that reflected the above changes. In February 2002, however, [the affected party] approached the TPA requesting new amendments to this Agreement.
>
> Originally, [the affected party] did not feel that it would be necessary to apply to the City for rezoning but it had become clear that additional density was required to make the project financially viable. [The affected party] wanted to increase the development size from 40,000 square feet up to 47,000 square feet because it believed that this would provide greater flexibility with respect to the form of the development. However, rezoning approval from the City would consequently be required.
>
> In March 2002, the TPA presented the new proposal to the City's Administration Committee. A number of residents, including the appellant, who were against the new proposal, attended the meeting. At that time, the Administration Committee and the TPA agreed to additional public consultations on the project.
>
> In May, after further consideration of the proposal, the TPA submitted confidential reports dated March 6, 2002 and June 10, 2002 to the Administrative Committee, recommending that the Agreement be amended to reflect the new terms and conditions. These reports were subsequently referred to City Council for its July 30, 31 and August 1, 2002 meeting but the matter was deferred to Council's October meeting. At the October meeting, the reports (previously considered in camera) were made public on the advice of the TPA. However, City Council once again referred the whole matter back to the Administration Committee for further consideration.
>
> As of the date of these representations, there have been no new developments on this matter, i.e., Council has not met to further deliberate on the proposal and give its final approval on an Agreement.

The affected party elaborates as follows:

> The Purchase Agreement remains conditional upon the satisfaction of various due diligence factors as well as external factors including negotiations with various parties and various Departments within the City of Toronto. All of these negotiations are required and due diligence to be completed, in order to ensure that the Proposed Development can proceed. As part of this process, further

> municipal approvals by way of site plan approval, rezoning and minor variances may be required.

Part one: Type of Information

The City and the affected party both submit that all of the identified pages contain technical, commercial and/or financial information.

Technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering and electronics. [Order P-454].

Commercial information is information which relates solely to the buying, selling or exchange of merchandise or services. [Order P-493]

Financial information refers to information relating to money and its use or distribution and must contain or refer to specific data. [Orders P-47, P-87, P-113, P-228, P-295 and P-394]

Pages 209-224, 306-307, 436, 633-637, 842-847 and 890-911 are all drawings of various aspects of the proposed development. I find that the information on these pages falls within the scope of the definition of "technical" information.

Pages 432-433, 629-632, 644-647, 685-686, 720-721, 754-755, 764, 851-852, 854, 857 and 869-889 are all documents prepared by the affected party, its law firm or one of its consultants, and address various aspects of the development. In most cases, it is clear from the content of these records that they were communicated to the City in the context of negotiations relating to the development. The relationship between the City and the affected party is clearly commercial in nature, and I find that the information on these pages qualifies as "commercial" information for the purposes of section 10(1) of the *Act*.

Pages 228-232, 616-619, 620-624, 687-691 and 826-830 are all reports from various consultants, who appear to have been retained by the City to assess either technical or financial aspects of the proposed development. I find that these pages all contain either "financial" or "technical" information for the purposes of section 10(1) of the *Act*.

Pages 427-431, 435, 437-439 and 750-752 are internal documents generated by the TPA, and relate to the development proposal. I find that these pages also contain "commercial" information.

Pages 640-643 comprise a document titled "Initial Townhouse Project Budget – January, 2001", and contain cost projections. The author of the document is unclear. I find that these pages contain "financial" information.

Pages 723-747 comprise a draft agreement between the City, the TPA and the affected party for the purchase and sale of the development site. The information on these pages clearly qualifies as "commercial" information for the purposes of section 10(1) of the *Act*.

Pages 841 and 855 are fax cover sheets; Pages 912-915 are photographs of the development site; and Page 1021 is a listing of various projects under development in Toronto and Ottawa during the fall of 2001. I find that none of these pages contain any of the types of information listed in section 10(1), and therefore they do not qualify for this exemption.

Part two: Supplied in confidence

In order to meet part two of the test, the City and/or the affected party must establish that the information was supplied in confidence to the City by the affected parties. Previous orders of this Office have found that in order to determine that a record was supplied in confidence, either explicitly or implicitly, it must be demonstrated that an expectation of confidentiality existed and that it had a reasonable basis [Orders M-169 and P-1605].

In addition, information contained in a record would "reveal" information "supplied" by the affected party if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the institution. [See, for example, Orders P-36, P-204, P-251 and P-1105]

The affected party submits:

> All commercial transactions are sensitive in nature given the competitive nature of the new home industry. The structure of the transaction, pricing and the nature of the development are all highly sensitive and release of such information would be detrimental to [the affected party's] position in the marketplace. It is implicit in all commercial transactions that information relating to the nature of the development, the background of the parties, financial or otherwise, and the commercial terms of the transaction are to be kept confidential unless both parties agree to release same.
>
> [The affected party] specifically notified TPA early in the negotiation process both verbally and in writing by way of a letter dated January 12, 1998, a copy of which is enclosed, that all communications, documentations, reports and correspondence between the parties must remain on a strictly confidential basis. [The affected party] has proceeded to negotiate and finalize the Purchase Agreement on the basis of this understanding.

The City supports the affected party on this issue, and submits:

> …the information contained in the records at issue was either directly supplied to the City by the [affected party] or would permit the drawing of accurate inferences with respect to the information actually supplied by [the affected party] in confidence. This applies to both the information of [the affected party] as well as its consultants/architects.

> [The affected party's] letter of January 12, 1998, clearly indicates that [the affected party] fully expected that any information relating to the project, including any information that it supplied to the TPA would be held in confidence and would remain "private" between the two parties. …

The January 12, 1998 letter referred to by both the affected party and the City reads, in part:

> … all documentation, including but not limited to correspondence, Letters of Intent, Purchase and Sale Agreement, architectural drawings or renderings, engineering reports, renderings or drawings, professional reports from a quantity surveyor, appraisal reports or discussion papers, economic reports or analysis, market survey reports or valuations of the property's worth, environmental reports, and any legal correspondence between our lawyer and your lawyer shall remain confidential and private between the two parties. …

In my view, this letter evidences an explicit expectation that documentation provided by the affected party to the City would be held in confidence during the negotiation process. Therefore, any pages that satisfy the first part of the section 10(1) test would also meet the requirements of part two of the test, as long as they were "supplied" by the affected party or would reveal information that was supplied by the affected party in this context.

Applying this reasoning, I find that pages 209-224, 306-307, 432-433, 629-637, 644-647, 685-686, 754-755, 764, 842-847, 854, 857 and 869-911 all of which are authored by the affected party, its architects or one of its consultants, were supplied in confidence by the affected party to the City, thereby meeting the requirements of part two of the section 10(1) test.

None of the remaining pages were supplied by the affected party to the City, and would only satisfy the requirements of part two of the test if disclosing them would reveal information originally supplied by the affected party. I find that pages 228-232 and 826-830 fall within this category.

The following pages were not supplied by the affected party, nor would disclosing them reveal any information so supplied, for the following reasons:

- Page 436 is a drawing prepared by the TPA.

- Pages 427-431, 435, 437-439, 616-619, 620-624, 687-691 and 750-752 are not authored by the affected party and, although they contain information relating to the proposed development, based on the representations of the affected party and the City and my independent review of their content, I am not persuaded that disclosing them would reveal information supplied by the affected party during the course of the development negotiations.

- I have no evidence as to the author of Pages 640-643, and therefore no basis to conclude that it was supplied by the affected party to the City.

Pages 723-747 comprise an unsigned agreement between the affected party and the City relating to the development site. There is nothing on the face of these pages to indicate how they came into the custody of the City, and I have no basis for concluding that they were supplied by the affected party for the purposes of section 10(1).

Pages 720-721 and 851-852 consist of correspondence that refers to ongoing negotiations of the development agreement, with specific reference to particular clauses in the agreement. Both documents are authored by the affected party (or its legal counsel) and sent to the City.

The issue of whether the content of a draft agreement satisfies the "supplied" component of part two of the section 10(1) test has been discussed in previous orders. For example, in Order P-1105, former Adjudicator Anita Fineberg dealt with this type of record in a case involving the equivalent provision to section 10(1) in the provincial *Freedom of Information and Protection of Privacy Act* (section 17(1)). She states:

> Previous orders have addressed the question of whether the information contained in an agreement entered into between an institution and a third party was supplied by the third party. In general, the conclusion reached in these orders is that, for such information to have been supplied to an institution, the information must be the same as that originally provided by the third party. Since the information in an agreement is typically the product of a negotiation process between the institution and the third party, that information will not qualify as originally having been "supplied" for the purposes of section 17(1) of the *Act*.
>
> The [named affected party] Corporation submits that it prepared the draft agreements, that the agreements contain the same commercial and financial information as is found in the other records and that disclosure of these agreements would permit the drawing of accurate inferences with respect to the Corporation's business strategies vis-a-vis the Ministry. In addition, the Corporation submits that the line of orders regarding information contained in negotiated agreements is not applicable to the facts of this case. The Corporation distinguishes these orders by stating that in those cases there were no longer ongoing negotiations of the documents at issue; the negotiations were complete and in their final form. The Corporation advises that the drafts of the agreements at issue in this appeal have not been finalized or signed and that the negotiations remain ongoing.
>
> I will address each of these arguments. In my view, for the purposes of determining whether information was "supplied" under section 17(1), it does not necessarily matter which party "prepared" the records - the determinative issue is whether the information contained in the agreement was supplied to an institution by a third party. Thus it does not necessarily follow that because the Corporation drafted the agreements, these records contain information the Corporation supplied to the Ministry.

> Similarly, I do not find that the status of an agreement as either a draft or a final document impacts on the determination of the "supply" issue. At any stage of the negotiations between an institution and a third party, the agreement may contain information that was supplied by the third party to the institution. For example, in Order P-807 the record at issue was a **final**, "single source" contract which contained the specific details of the terms and conditions offered by the third party to the Ministry. Both the Ministry and the third party had submitted evidence to indicate that most of the information contained in the agreement was not the result of a negotiating process. Rather, the agreement contained the information provided to the Ministry by the third party. Therefore, [Adjudicator] Mumtaz Jiwan found that the information was "supplied" to the Ministry for the purposes of section 17(1) of the *Act*.
>
> In my view, the fact that the negotiations between the Ministry and the Corporation have not yet resulted in a final agreement does not affect my decision on the supply of information contained in the draft agreements. The orders cited by the Corporation for the proposition that negotiations leading up to the consummation of agreements are confidential go to the issue of confidentiality, not to whether the information was "supplied" at first instance.

I agree with Adjudicator Fineberg's approach to this issue. In her case, Adjudicator Fineberg found that the information contained in draft agreements was not "supplied" within the meaning of section 17(1) because, in essence, they reflected various stages of a "give and take" between the institution and an affected party during the negotiation process. However, other orders have found that proposals given to an institution by third parties as part of a bidding process, and records containing information regarding the "terms and ongoing negotiations" between an institution and a third party contain information "supplied" to that institution (see, for example Orders PO-1804 and PO-1887-I).

It is clear that each case must be determined on its own facts.

In the circumstances of this appeal, it is obvious that the City and the affected party have been negotiating a development agreement for the site identified in the appellant's request over the course of several years. It would appear, based on the City's representations, that two agreements were successfully negotiated, one in 1999 and the other in 2001, but that certain matters relating to the development remain outstanding.

A number of records at issue in this appeal, including Pages 723-747, consist of various draft development agreements under discussion over the year. Several of these drafts include handwritten or electronic edits indicating proposed changes. Others, including Pages 720-721 and 851-852, consist of correspondence, which confirm that both the City and the affected party requested changes to the text of the agreements during the course of the negotiation process. Curiously, the City claimed section 10(1) for certain correspondence of this nature, but not for others (Pages 167-188, 205-207, 283-287 and 332-365 are some, but not all, examples), and I am unable to ascertain the basis for any distinctions made by the City in this regard.

The City and the affected party have been negotiating various development agreements over the past several years, and it is clear that these negotiations deal with a wide range of considerations, both technical and financial. I have carefully reviewed the draft agreements and related documents and, similar to the situation in Order P-1105, I am unable to identify information that was clearly "supplied" by the affected party in this context. Rather, in my view, these records reflect the considerable "give and take" of the process of negotiating the development agreements, and the original course of the draft text or proposed changes cannot be attributed to either party with any certainty. As was the case in Order P-1105, I find that the various drafts exchanged between the parties and the related correspondence, including Pages 720-721 and 851-852, reflect the "give and take" of the ongoing negotiation process and do not satisfy the "supplied" component of part two of the section 10(1) test.

Part three: Reasonable expectation of harm

For the section 10(1) exemption to apply, the City and/or the affected parties must demonstrate that disclosure of a record "could reasonably be expected to" lead to the specified result. To meet this test, the parties must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

The affected party makes the following submissions in support of its position that disclosing the various pages would result in the various harms identified in sections 10(1)(a), (b) and (c):

> The disclosure could reasonably be expected to prejudice significantly [the affected party's] competitive position in the marketplace if information and background to the transaction were released to third party competitors prior to the conditions in the Purchase Agreement being satisfied. Competitors could use the information to inhibit the ability of [the affected party] to satisfy the conditions in an attempt to obtain an opportunity to acquire the property for their own development purposes.
>
> The disclosure could also significantly affect the contractual and other negotiations of [the affected party] with City departments, ratepayer groups and financial institutions if the confidential information were released to third parties with a view to delaying or hindering [the affected party] from satisfying these conditions. To the extent there is to be public input in the approvals of the Proposed Development, the appropriate information will be released to the public as part of any public process involved in a rezoning or minor variance application.
>
> Disclosure of the information could also reasonably be expected to result in similar information no longer being supplied to the City and TPA. The City and TPA have various properties which are available for lease and/or sale. If the background information, draft plans, terms of negotiations and financial terms of the arrangements were to be prematurely released to third parties, this would make it much more difficult for the City to market these properties as developers

> would be reluctant to do so know that this information would not be held confidential as would be expected in the normal course.
>
> Disclosure of any information requested could result in an undue loss to [the affected party]. The transaction outlining the Proposed Development has been a lengthy and difficult one to date. Release of the information to the extent it results in delays in obtaining the necessary approvals to permit satisfaction of the conditions under the Purchase Agreement will result in losses to [the affected party] by virtue of the carrying costs of its existing investment in the project and its inability to market condominium units in a timely fashion.
>
> Delays could result in a change in the current marketplace which would make it more difficult to market units or result in lower prices being obtained. In addition, release of the information to third parties could result in the non-satisfaction of the conditions in the Purchase Agreement resulting in a loss of significant time and investment of [affected party]over the last 5 years as well as the potential for profit that it is entitled to by virtue of the Purchase and Sale Agreement.
>
> The potential damages and costs which [the affected party] could incur as a result of the release of the information cannot be measured at this time, but investments and profits potentially lost could be in the millions of dollars.
>
> Release of plans and specifications prepared by [the affected party's] architects to third parties would put [the affected party] in breach of its contractual relations with its architects and expose it to a damage claim.

The City's representations support the affected party's position.

Pages 209-224, 306-307 and 842-847 are all drawings of the proposed development prepared by the affected party's architect. I accept that disclosing these drawings before the development proposal has been finalized could reasonably be expected to prejudice the affected party's competitive position under section 10(1)(a) or result in undue loss to the affected party or its architects under section 10(1)(c).

Pages 629-637, 644-647, 685-686, 754-755, 764, 854 and 857 consist of correspondence between the affected party and TPA regarding the proposed development. I accept that disclosing this information before a final development agreement is completed could reasonably be expected to prejudice the affected party's competitive position under section 10(1)(a).

Pages 869-911 comprise the majority of an environmental evaluation of the proposed site that was prepared for the affected party by a consultant. I accept that disclosing these pages could reasonably be expected to prejudice the affected party's competitive position under section 10(1)(a) or result in undue loss to the affected party or its consultant under section 10(1)(c). I reach the same conclusion for Pages 228-232 and 826-830, which comment on this environmental evaluation, for the same reasons.

I reach a different conclusion for Pages 432-433. Although these pages contain information relating to the proposed development, on their face, the content of these pages appears to be either general in nature or too far removed from the actual content of the development to raise any of the types of harms described in section 10(1) of the *Act*. I have not been provided with the necessary detailed and convincing evidence to establish a reasonable expectation of harm through disclosure of Pages 432-433, and I find that they do not qualify for exemption under section 10(1).

Having reviewed all relevant pages of records, I find that some of them contain information that should attract the protection of the mandatory section 10(1) exemption, despite the fact that the City has not raised this exemption for these records. They are:

- Pages 449-473, 932-935 and 940-041, which comprise a report and related correspondence, similar in nature to Pages 869-911 and prepared by the same consultant for its client, the affected party. I find that these pages qualify for exemption under section 10(1) for the same reasons as Pages 869-911.

- Page 448 is a document similar in kind, content and format to Pages 854 and 857. I find that Page 448 qualifies for exemption under section 10(1) for the same reasons as these other two pages.

- Pages 475-480, 927 and 938-939 are all letters sent by the affected party or its legal counsel to the City or its counsel concerning the proposed development. They are similar in kind and content to Pages 629-637. I find that these pages qualify for exemption under section 10(1) for the same reasons as Pages 629-637.

In summary, I find that only Pages 209-224, 228-232, 306-307, 448-473, 475-480, 629-637, 644-647, 685-686, 754-755, 764, 826-830, 842-847, 854, 857, 869-911, 927, 932-935 and 938-941 qualify for exemption under section 10(1) of the Act.

SOLICITOR-CLIENT PRIVILEGE

In the revised index provided with its representations, the City identifies section 12 of the *Act* as one basis for denying access to the following pages:

> 65-67, 70-72, 225-226, 322, 332-367, 385-391, 398-402, 481, 540-614, 650-684, 692-719, 799, 802-818, 849, 860, 862-863, 866-867, 917-918, 927, 938-939, 945-970, 972-1019 and 1026-1054.

However, in its representations, the City restricts its submissions to pages:

> 65-67, 70-72, 226, 398-402, 540-684 (given the description in the City's representations, I conclude that there is a typographical error and that the page references should be 540-614 and 650-684), 692-719, 799, 802-818, 849, 945-970, 972-1019 and 1026-1044

The City also argues that Pages 832-839, which do not appear on the index, nonetheless qualify for exemption under section 12. Because these pages, which comprise a draft agreement with suggested amendments, are highly similar to other pages for which section 12 has been claimed, it is reasonable to conclude in the circumstances that they were inadvertently not included on the index, and I will address them in my section 12 discussion.

Although Page 481 is not referred to in the City's representations, because it is a duplicate of Page 803, I will consider this page in my section 12 discussion.

I have already determined that Pages 65-66 and 70-72 qualify for exemption under section 14(1), so there is no need for me to deal with them under section 12.

Because section 12 is a discretionary exemption, I conclude that the City has withdrawn this exemption claim for the following records not referenced in its representations:

225, 322, 332-367, 385-391, 860, 862-863, 866-867, 917-918, 927 and 938-939

Section 12 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.

Branch 1 applies to a record that is subject to "solicitor-client privilege" at common law. The term "solicitor-client privilege" encompasses two types of privilege:

- solicitor-client communication privilege
- litigation privilege

In this appeal, the City relies on solicitor-client communication privilege only.

Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice [*Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.)].

The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation [Order P-1551].

The privilege applies to "a continuum of communications" between a solicitor and client:

> . . . Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and

> given as required, privilege will attach [*Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.)].

The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice [*Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27].

Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication [*General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.)].

Representations

The City submits:

> The City submits that [pages 226, 252, 398-402, 540-614, 650-684, 692-719, 799, 802-818, 832-839, and 849] constitute direct communications between the TPA and its outside solicitors or the City's Legal Department for the direct purpose of seeking, formulating or providing legal advice, more specifically, with respect to the specific terms and conditions of the various draft agreements and other related issues. Therefore solicitor-client communication privilege applies to these records.
>
> The City further submits that solicitor-client communication privilege also applies to [pages 832-839, 945-970, 972-1019 and 1026 to 1054]. These records are either indirect communications or would reveal the substance of direct communications or the legal advice that has been sought or provided.
>
> It is the City's view that all of the above records would constitute the working papers of either City solicitors or the TPA's outside firm of lawyers.

The appellant acknowledges that some records may legitimately qualify for exemption on the basis of solicitor-client communication privilege, but submits:

> … That privilege, however, applies only to advice sought by a client from his solicitor. It does not apply to all communications that pass between a client and his solicitor. For example, a communication from a client to his solicitor directing the solicitor to take a particular action on behalf of the client is not protected by the privilege.

Finding

I do not accept the interpretation put forward by the appellant. In my view, solicitor-client communication privilege applies to all records of a confidential nature exchanged between a solicitor and client for the purposes of obtaining or giving professional legal advice. It also

extends to records such as a lawyer's working papers (*Susan Hosiery*) as well as records that reflect the "continuum of communication" between solicitor and client described in *Balabal*.

Pages 540-614, 650-684, 692-719, 945-969, 972-1019 and 1026-1043 all comprise draft agreements for the purchase and sale of the property identified in the appellant's request. Each draft contains amendments suggested by the City's outside legal counsel. I find that these pages fall within the scope of common-law solicitor-client communication privilege. They reflect direct communications of a confidential nature between a solicitor and client made for the purpose of obtaining or giving professional legal advice. Accordingly, Pages 540-614, 650-684, 692-719, 945-969, 972-1019 and 1026-1043 qualify for exemption under section 12 of the *Act*.

Pages 398-402 consist of a fax cover page and attached memo from the City's outside legal counsel to his internal client outlining suggested amendments to the draft agreement under discussion at that time. Page 970 is a cover letter to the TPA from outside legal counsel, which makes reference to legal advice reflected in the attached draft agreement (Pages 972-1019). For the same reasons as outlined above regarding the draft agreements, I find that Pages 398-402 and 970 qualify for exemption under section 12.

Pages 832-839 comprise two versions of a draft letter from the City's outside counsel to the affected party. They contain a number of handwritten and/or electronic edits. I find that these pages also qualify for exemption under section 12. The edits suggested by outside counsel constitute legal advice in this context, and the exchange of draft correspondence between the City and its counsel falls within the scope of the "continuum of communications" described in *Balabal*.

Page 849 is an internal e-mail sent by a lawyer in the City's legal department to her TPA client. In it, she provides advice to the client concerning an aspect of the development site. I find that all of the requirements of solicitor-client communication privilege are present, and Page 849 qualifies for exemption under section 12.

Similarly, Page 226 is an internal memorandum from a City lawyer to a different internal client, outlining advice regarding an aspect of the development site. For the same reasons as Page 849, I find that Page 226 qualifies for exemption under section 12.

Pages 802-803 comprise a letter from the TPA to the City's legal department seeking legal advice regarding an aspect of the development site, and Pages 805-807 consist of an internal memorandum and handwritten notes sent by a City lawyer to her superiors on the topic identified in Pages 802-803. I find Pages 802-803 qualify for solicitor-client communication privilege as direct confidential communication between a client and solicitor for the purpose of seeking legal advice; and that Pages 805-807 are working papers prepared by legal counsel in this context (*Susan Hosiery*). Therefore, Pages 802-803 and 805-807 qualify for exemption under section 12 of the *Act*.

Page 799 is a letter sent by an outside party to the City's legal department, and Page 804 is a letter sent by the City's legal department to another individual associated with the author of Page 799. These communications are clearly taking place outside the scope the solicitor-client

relationship and for that reason Pages 799 and 804 cannot qualify for solicitor-client communications privilege.

Pages 808-818 consist of a "Request For Conveyancing" sent by a City lawyer to a conveyancer, asking for a search of title on the development site, as well as the land registration documents identified during the search. These pages do not reflect a confidential communication between solicitor and client, nor have I been provided with sufficient evidence to establish that these pages, which date back to 1995 and include publicly available land registration records, fall within the category of working papers outlined in *Susan Hosiery*. Accordingly, I find that Pages 880-818 do not fall within the scope of solicitor-client communication privilege and do not qualify for exemption under section 12 of the *Act*. Because Pages 808-818 do not qualify for exemption under either section 14(1) or section 12, and no other exemptions have been claimed for these pages, I will order that they be disclosed to the appellant.

Pages 1044-1054 consist of a fax cover sheet, a cover letter and an attached draft agreement sent by the City's outside legal counsel to the affected party. This communication is clearly taking place outside the scope of the solicitor-client relationship and for that reason Pages 1045-1054 cannot qualify for solicitor-client communication privilege.

In summary, I find that only Pages 226, 398-402, 481, 540-614, 650-684, 692-719, 802-803, 805-807, 832-839, 849, 945-970, 972-1019 and 1026-1043 qualify for exemption under section 12 of the *Act*.

ECONOMIC AND OTHER INTERESTS

The City claims sections 11(c) and (d) for most of the pages of records that remain at issue in this appeal. I have already determined that some of the pages qualify for exemption under sections 14(1), 10(1) or 12. Therefore, I will restrict my discussion of section 11 to the pages that are not otherwise exempt, namely:

> 74-84, 86-142, 147-60, 167-188, 190-207, 225, 246-251, 254-274, 283-287, 315 (in part), 322, 332-367, 370-371, 385 (in part), 386, 388-401, 403-406, 411-412, 427-433, 435-439, 448-473, 475-480, 484-508, 510-539, 616-619, 620-621, 623-624, 640-643, 687-691, 720-721, 723-747, 750-752, 789, 799, 804, 819-823, 841, 851-852, 855, 860, 862-863, 866-867, 912-915, 927, 932-933, 938-941, 943, 1021 and 1044-1080

Sections 11(c) and (d) read as follows:

> 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;

Prior orders have stated that the purpose of section 11(c), or its provincial counterpart, is to protect the ability of institutions to earn money in the market-place. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions. [Order P-1190]

For these sections to apply, the City must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the City must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

The City's representations on sections 11(c) and (d) read as follows:

> The records at issue contain the details or the substance of the terms and conditions of a number of draft Agreements, the specific results of appraisals and environmental site assessments, financial impact of the proposal for TPA, confidential correspondence between the parties, etc.
>
> As previously indicated, the TPA is responsible for operating all City owned parking lots and carparks. The business of providing parking facilities in Toronto is a highly competitive one. At last count, there are almost 40 parking lot/underground garage operators in the city. The TPA is in competition with these operators for both business and appropriate site locations. The TPA is continuously looking to expand its operations. The project with [the affected party], in particular the new proposal, represents a profitable expansion for the TPA in an area where there is a shortfall of parking.
>
> The City submits that the various drafts of the Agreement set out in specific detail the terms and conditions under which the TPA was or is prepared to sell the development rights to [the affected party]. It is acknowledged and understood by the TPA and [the affected party] that such detailed terms and conditions remain confidential in the process, subject to changes pending City Council approval of the final agreement at which time the transaction can be considered completed. (It should be noted that at the outset of negotiations with [the affected party], the TPA agreed that all matters regarding the development of the site was to be "in confidence and private" between the parties.)
>
> The purpose of the various environmental and evaluation reports, especially those prepared for the TPA, is to provide information and guidance to the TPA with respect to market value, financial viability, and environmental and other issues for

> development, etc. Those reports prepared for [the affected party] were also provided to the TPA and evaluated by the TPA's own consultants.
>
> The reports were useful and necessary for the TPA in the negotiation process with [the affected party]. Since a final Agreement is still pending, they will continue to be relevant and important to any ongoing or further negotiations between the TPA and [the affected party]. The disclosure of these records despite the agreement between the parties to keep this information confidential could undermine these negotiations.
>
> Further, the project could fall through for a number of reasons i.e., Council does not accept [the affected party's] amended proposal; zoning approval is not given for the increased density; or [the affected party] decides to pull out. Given the acute need for additional parking to meet the shortfall in the area, it is more than likely that the TPA in such circumstances will look to the sale of the development rights to other interested parties.
>
> The City submits that the disclosure of the records at issue could reasonably be expected to place the TPA at a disadvantage in any such negotiations with other potential purchasers, as they will be in a position to know the detailed terms and conditions under which the TPA is willing to negotiate, what the TPA accepts as fair market value, what impact environmental findings may or may not have on the negotiations etc. Interested developers may seek to use this information as leverage in their negotiations and thereby jeopardize the TPA's competitive and financial positions.

The City also cites Orders PO-1887-I, MO-1228, PO-1894 and MO-1474 in support of its position: These orders stand for the general proposition that information relating to the terms of an offer to purchase property or a conditional purchase and sale agreement, which has not yet closed or been finalized, qualifies for exemption under sections 11(c) and (d) of the *Act*.

The appellant makes the following submissions in response:

> I submit that it is unlikely that disclosure of the documents would place the City in any "disadvantage in any such negotiations with other potential purchasers". There is already a binding agreement between the TPA and [the affected party] and there simply cannot be any other "potential purchasers" as claimed by the City.
>
> Even if the subject deal does not actually close as contemplated, there is no reason why the City should then seek another developer to construct anything on the parking lot. The original agreement should never have been made and, if the subject deal does not close, the City should give priority to the wishes of the Village community and leave the parking lot as it is. It makes no sense, in this context, to show concern about the potential for the City having to find another developer for this parking lot.

I do not accept the City's position.

In my discussion of section 10(1), I made reference to the January 12, 1998 letter from the affected party outlining its expectation that documentation provided to the City during the course of ongoing negotiations regarding the proposed development would be treated confidentially by the City. I accepted this letter as evidence to support the application of section 10(1) for records that otherwise met the three-part test for exemption. However, I do not accept that the affected party's expectation of confidentiality is sufficient to establish the section 11(c) or (d) exemptions, which speak to the economic, financial and competitive interests of the City, not the affected party.

I acknowledge that previous orders of this office have considered the application of sections 11(c) and (d) (and the equivalent provisions in the provincial *Freedom of Information and Protection of Privacy Act* - sections 18(1)(c) and (d)) in circumstances where a negotiated purchase and sale agreement has been executed by an institution and an affected party, but the deal has not yet closed. The two provincial orders identified by the City (Orders PO-1887-I and PO-1894) dealt with the sale of land by the Ontario Realty Corporation (the ORC). In those appeals, I found, based on evidence and argument put forward by the ORC, that disclosing information that relates to the terms of a conditional agreement of purchase and sale that has not yet closed could reasonably be expected to result in the section 18(1)(d) harms. I also found that evaluation reports and feasibility studies conducted by the ORC on the subject property should qualify for exemption under section 18(1)(d). In that regard, I applied the reasoning from Order MO-1228, also referred to by the City, which dealt with a property appraisal conducted by the City of Ottawa in the context of negotiations for the development of a park. Former Adjudicator Dora Nipp also dealt with development-related records in Order MO-1474, the fourth order referenced in the City's representations.

Each case must be considered on its own facts and, in my view, the records and circumstances in the present appeal can be distinguished from these previous orders.

The City's representations confirm that two reports on the subject property were prepared by the TPA and made publicly available at the October 2002 meeting of City Council. Discussions regarding the development proposal also took place at open meetings of the Administration Committee, and it would appear that there has been ongoing public consultation on the design and use of the property over several years. It is reasonable to conclude that a great deal of information concerning the terms of the agreements and ongoing discussions was conveyed in the context of these public meetings. Indeed, the supplementary representations provided by the appellant make specific reference to the terms of the agreements. In my view, it is not reasonable for the City to argue that virtually all records (some of which date as far back as 1995), should be withheld on the basis of a perceived harm should the development ultimately not proceed.

Unlike the sale of a specific property, which was at issue in Orders PO-1887-I and PO-1894, this appeal involves a proposal for the development of a site that would entail an entirely different use. Should the deal fall through, the City would not simply try to re-sell the site to another

vendor for the same use proposed by the affected party. That is not to say that the site would not go back on the open market. However, if it does, a wide range of options are open to the City and the TPA, and any new development could vary significantly from the particular development negotiated with the affected party. In my view, these circumstances significantly reduce the likelihood of harms under sections 11(c) or (d) through the disclosure of records that would have limited, if any, relevance to any subsequent negotiation process.

All of the pages of records at issue in this appeal were created prior to the City Council meeting in October 2002 when the matter was referred back to the Administration Committee for further consideration. As stated earlier, the two TPA reports from April and June 2002 were made public at the October Council meeting. In my view, the public disclosure of these reports, which, according to the City, reflect recommended new terms and conditions to the existing agreement between the City and the affected party, make it difficult for the City to substantiate a reasonable expectation of sections 11(c) and (d) harms through the release of records created in the context of discussions leading to these public documents. Different considerations may apply to records created in the context of negotiations taking place after the October 2002 City Council meeting, but no such records are at issue in this appeal.

For all of these reasons, I find that the City has failed to provide the detailed and convincing evidence necessary to establish a reasonable expectation of prejudice to its economic interests or competitive position (section 11(c)) or a reasonable expectation of injury to its financial interests should the pages that do not otherwise qualify for exemption under sections 14(1), 10(1) and 12 be disclosed. Therefore, I find that the following pages do not qualify for exemption under section 11(c) or (d) and should be disclosed to the appellant:

> 74-84, 86-142, 147-160, 167-188, 190-207, 225, 246-251, 254-274, 283-287, 322, 332-367, 370-371, 385 (in part), 386, 388-401, 403-406, 411-412, 427-433, 435-439, 448-473, 475-481, 584-508, 510-539, 616-619, 620-621, 623-624, 640-643, 687-691, 720-721, 723-747, 750-752, 789, 799, 804, 819-823, 841, 851-852, 855, 860, 862-863, 866-867, 912-915, 927, 932-935, 938-941, 943, 1021 and 1044-1080.

ORDER:

1. I order the City to disclose the following pages of records to the appellant by **October 16, 2003** but not before **October 10, 2003**:

   63-64, 68-69, 74-142, 147-165, 167-207, 225, 233, 242-244, 246-252, 254-305, 308-314, 317-322, 324-384, 385 (in part), 386, 388-392, 395-397, 403-417, 427-439, 446-447, 474, 482-539, 615-625, 627-628, 640-643, 648-649, 687-691, 720-753, 756-763, 765-771, 772 (in part), 773-779, 780 (in part), 781-796, 798-801, 804, 808-825, 831, 840-841, 848, 850-853, 855-856, 858-860, 862-868, 912-916, 920, 922, 924-926, 928-931, 936-937, 942-944, 971, 1020-1025 and 1044-1080.

2. I uphold the City's decision to deny access to the following pages of records:

   1-62, 65-67, 70-73, 143-146, 166, 209-224, 226-232, 234-238, 240-241, 245, 253, 306-307, 323, 385 (in part), 387, 398-402, 418-426, 440-443, 445, 448-473, 475-481, 540-614, 629-639, 644-647, 650-686, 692-719, 754-755, 764, 772 (in part), 780 (in part), 797, 802-803, 805-807, 826-830, 832-839, 842-847, 849, 854, 857, 861, 869-911, 917-918, 927, 932-935, 938-941, 945-970, 972-1019 and 1026-1043; and the undisclosed portions of Pages 239, 315-316, 393-394, 444, 626, 919, 921 and 923. I have attached a highlighted version of Pages 385, 772 and 780 with the copy of this order sent to the City, which indicates the portions that should **not** be disclosed.

3. In order to verify compliance with Order Provision 1, I reserve the right to require the City to provide me with a copy of the records which are disclosed to the appellant.

Original signed by: September 11, 2003
Tom Mitchinson
Assistant Commissioner