



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER MO-1990**

**Appeal MA-040281-1**

**Municipality of Meaford**



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## **NATURE OF THE APPEAL:**

The Municipality of Meaford (the Municipality) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to a specific municipal address. The request relates to information pertaining to a deck allegedly built in contravention of the *Building Code Act*. The documentation indicates that a corporation owns the property at/or near where the deck was constructed. The deck was demolished by the Municipality.

Although the initial request was submitted by a lawyer, the appeal form that commenced this proceeding lists the corporation as the appellant with the lawyer acting as its representative. In light of the manner in which the appeal form was completed, I will treat the corporation as the appellant.

The initial access request sought copies (including electronic) of all notes, memoranda and correspondence and records of any telephone conversations, made or recorded between June 10, 2003 and July 30, 2004 between the Municipality, its employees, officers and third parties with respect to a [specified address].

As set out in its initial decision letter dated August 31, 2004, relying on the exemptions in section 8(1)(a), (c) and (d) (law enforcement) and 8(2)(a) (law enforcement report), the Municipality denied access to any of the requested records.

The appellant appealed the decision.

In accordance with its standard practice in appeals, this office sent the Municipality a Request for Documentation asking it for an Index of Records at issue indicating the exemptions claimed for each record, along with a copy of each record (with any severed portions highlighted). Nothing was received by the due date set out in the Request for Documentation.

Accordingly, this office issued an Order for Production. Without forwarding a copy of the records as required, but within the time frame for claiming additional discretionary exemptions, the Municipality sent a letter along with a list of documents. The list indicated that the documents were found in a file in the custody of the Municipality's outside counsel. The letter accompanying the list set out that in addition to the section 8 exemptions, the Municipality was claiming, in the alternative, that the discretionary section 12 exemption (solicitor/client privilege) applied to the listed documents.

After this office provided the Municipality with an extension of time to comply with the Order for Production, the Municipality finally forwarded documentation to this office, accompanied by a letter. The documents were divided into three categories; "Documents - Court Related", "Documents - Solicitor/Client Privilege" and "Documents - Miscellaneous", accompanied by an index for each of the categories describing their content. The letter accompanying the documents set out that personal information had been deleted from three documents in the category "Documents - Miscellaneous". The letter ended with the following:

As indicated previously, the Municipality claims an exemption for all Court Related Documents and the documents listed under Solicitor/Client Privilege, and request[s] that the personal information be deleted as indicated.

The matter was then moved to the mediation stage.

At mediation the appellant agreed that correspondence to or from its solicitor could be removed from the appeal. No further matters could be resolved at mediation and the appeal moved to the adjudication stage.

I sent a Notice of Inquiry to the Municipality, initially, outlining the facts and issues and inviting it to make representations. Because the Municipality claimed that some of the records contained "personal information" I decided to add section 14 (personal privacy) as an issue in the appeal. As some of the documentation the Municipality provided to this office post-dated the request, I also asked for representations on the scope of the request. The Municipality submitted representations in response to the Notice.

In its representations, the Municipality stated:

For clarification in my letter to the assistant commissioner, dated 16<sup>th</sup> of November, 2004, where all relevant materials were sent, there were included three sets of documents which are not to be produced to the requester. These are as follows:

1. Documents - court related;
2. Documents - solicitor/client privilege;
3. Four pages of notes which include personal information (names of individuals) which have been deleted.

I then sent a Notice of Inquiry to the appellant's representative together with a complete copy of the Municipality's representations. The appellant's representative, in turn, provided representations.

As the appellant's representations raised issues to which I determined that the Municipality should be given an opportunity to reply, I sent the representations accompanied by a covering letter to the Municipality inviting their reply representations. The Municipality did not file any reply representations.

## **RECORDS**

The records that the Municipality forwarded to this office included correspondence, memoranda, internal communications, notes, emails, reports, forms, photographs and Orders, grouped under the headings set out above. Because the appellant agreed at mediation that correspondence to or from its solicitor could be removed from the appeal, documents listed as numbers 15, 16, 23, 24, 29, 30, 31, 34, 38, 39, 40 and 47 in the records the Municipality identified as "Documents - Miscellaneous", are no longer at issue. Based on the initial decision letter, the subsequent letter

from the Municipality, the way the records are categorized, and the representations of the Municipality, I have concluded that the Municipality is claiming that the section 8(1)(a), (c) and (d) and 8(2)(a) exemptions apply to the "Documents - Court Related", the section 12 exemption applies to the "Documents - Solicitor/Client Privilege" and the section 14 exemption applies to "Documents - Miscellaneous".

## PRELIMINARY MATTERS

### SCOPE OF THE REQUEST

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
  - (a) make a request in writing to the institution that the person believes has custody or control of the record;
  - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and

. . . . .

- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134, P-880].

The time frame of the request was between June 10, 2003 and July 30, 2004. Some of the records that the Municipality provided to this office post-date this time frame. The Municipality made no specific representations on the scope of the request. The appellant's representations set out that the time frame for the request relates to a period from July 2003 to July 2004.

In my opinion the time frame set out in the request is specific and governs the scope of this appeal. I find that the request is for responsive records relating to a time period between June 10, 2003 and July 30, 2004. In my view any documentation relating to another period is not responsive to the request.

I therefore find that, except for handwritten notes of a telephone conversation between an employee of the Municipality and the Municipality's outside counsel, all of the records which the Municipality identified as "Documents - Solicitor/Client Privilege" for which the

Municipality claimed solicitor/client privilege fall outside the temporal scope of the appeal, and are not responsive to the request.

I also find that of the records the Municipality grouped under “Documents - Court Related”, records numbered 6, 8, 9 and 11 to 14 are outside the temporal scope of the appeal. In addition, I find that of the records the Municipality grouped under “Documents – Miscellaneous”, records numbered 3, 35, 36, 37, 41 to 46, 48, 49, 50 and 53 to 57 also fall outside the temporal scope of the appeal.

As a result, only the following records remain to be considered in this appeal:

- A handwritten note of a telephone conversation found under number 1 in the records identified by the Municipality as “Documents – Solicitor/Client Privilege”.
- Records numbered 1 to 5, 7 and 10 in the records identified by the Municipality as “Documents - Court Related”.
- Records numbered 1, 2, 4 to 14, 17 to 22, 25 to 28, 32, 33, 51 and 52 in the records identified by the Municipality as “Documents - Miscellaneous”.

## **DISCUSSION**

### **SOLICITOR-CLIENT PRIVILEGE**

#### **Introduction**

Section 12 of the *Act* reads:

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

Section 12 contains two branches. Branch 1 includes two common law privileges:

- solicitor-client communication privilege; and
- litigation privilege.

Branch 2 is based on the closing words of this section, which refer to “a record ... 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.”

#### ***Solicitor-client communication privilege***

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.)].

I have reviewed the representations on section 12 and the record at issue. As noted, this exemption is claimed for the Municipality’s outside counsel’s handwritten notes between himself and an employee of the Municipality. I find that this record represents the legal advisor’s working papers directly related to seeking, formulating or giving legal advice and/or falls within the “continuum of communications” between a solicitor and client. As a result, I find that the section 12 exemption applies to this record.

## **LAW ENFORCEMENT**

The Municipality takes the position that the records it identified as “Documents - Court Related” are exempt from disclosure under the discretionary exemptions in sections 8(1)(a), (c) and (d) and section 8(2)(a), which read:

8. (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
  - (a) interfere with a law enforcement matter;
  - (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
  - (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source.

- (2) A head may refuse to disclose a record,
- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of regulating and enforcing compliance with the law.

### **Law Enforcement**

The term “law enforcement” is used in several parts of section 8, and is defined in section 2(1) as follows:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b)

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

Under sections 8(1)(a), (c) and (d), the Municipality must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Goodis* (May 21, 2003), Toronto Doc. 570/02 (Ont. Div. Ct.), *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

It is not sufficient for the Municipality to take the position that the harms under section 8 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

### ***Does This Involve Law Enforcement?***

From my review of the documents that the Municipality provided it appears that the Municipality alleges that, contrary to section 8 of the *Building Code Act*, the deck was constructed without a permit. Section 36(1)(c) of the *Building Code Act* provides that a person (which includes a corporate entity) who fails to comply with a requirement of the *Building Code Act* is guilty of an offence. Section 36(4) of the *Building Code Act* provides for the penalty of a fine upon conviction. As a result of the alleged failure to comply with the provisions of the *Building Code*

*Act*, the Municipality commenced an ongoing proceeding under the *Provincial Offences Act* before the Ontario Court of Justice (Provincial Offences Division).

I find that, in the circumstances before me, the process of enforcing the provision of the *Building Code Act* involves investigations or inspections which could lead to proceedings in a court of law where penalties could be imposed and, therefore, qualifies as “law enforcement” under the *Act*.

***Section 8(1)(a) : Interference with a Law Enforcement Matter***

The Municipality states that the appellant’s request arose after the charges under the *Building Code Act* were laid against the appellant.

The Municipality submits that the identity of third parties contained in the Municipality’s file relating to the investigation should not be disclosed under the *Act*. The Municipality submits that the names of witnesses and “willsay” statements of witnesses must be disclosed through the *Provincial Offences Act* process, and if not disclosed in that manner, states that it is “unlikely” the evidence of those witnesses could be used in the trial. The Municipality adds that the representative of the appellant received full disclosure of all documents that the Municipality relies on in that prosecution.

The Municipality does not explain how the proceeding will be harmed by disclosure of the requested information, simply stating that the information ought not to be disclosed under the *Act*.

The appellant disagrees with the Municipality’s characterization of the timing of the request and says that it took place before any charges were laid. The appellant says that the request for information arose when the Municipality issued an Order to Comply and a Stop Work Order alleging that a deck was built on a marine allowance. The appellant asserts that the prosecution commenced by the Municipality was “complaint driven”, “most likely by the neighbour with whom there is a dispute”. Relying on Order P-447, the appellant submits that the request should be treated separately from any disclosure made in the *Provincial Offences Act* Proceeding.

The appellant further submits that the Municipality has failed to provide any evidence to indicate that disclosure of the records could reasonably be expected to interfere with a law enforcement matter.

In Order MO-1864, a case dealing with the exemption in section 8(1)(a) of the *Act*, I addressed a circumstance where the institution in that appeal failed to explain how that prosecution could be affected by disclosure, simply asserting that because the matter is before the courts, the information should not be released.

In ordering the institution in that appeal to release the information, I wrote:

... although the City says that the prosecution and even the affected party could be affected by the disclosure of the information, they do not go the extra step to explain how, simply asserting that, as the matter is before the courts, the



information should not be released. In the result, in my opinion, the City has failed to provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. As set out above, it is not sufficient for the City to simply state, without more, that the record is part of a continuing law enforcement matter to fulfil the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*, cited above].

I have reviewed the representations and the records at issue and in the appeal before me there is a similar insufficiency of evidence to establish the application of section 8(1)(a) to the records numbered 1 to 5, 7 and 10 in the records identified by the Municipality as “Documents - Court Related” (or for that matter to the records numbered 1, 2, 4 to 14, 17 to 22, 25 to 28, 32, 33, 51 and 52 in the records identified by the Municipality as “Documents - Miscellaneous”).

I therefore conclude that the exemption in section 8(1)(a) does not apply.

***Section 8(1)(c): Reveal Investigative Techniques and Procedures Currently in Use or Likely to be Used in Law Enforcement.***

The Municipalities representations are silent regarding how the withheld information fits within section 8(1)(c). The appellant points out the failure of the Municipality to provide any evidence in support of claiming this exemption.

I have reviewed the representations and the records and I find that the Municipality has failed to establish the application of section 8(1)(c) to the records numbered 1 to 5, 7 and 10 in the records identified by the Municipality as “Documents - Court Related” (or for that matter to the records numbered 1, 2, 4 to 14, 17 to 22, 25 to 28, 32, 33, 51 and 52 in the records identified by the Municipality as “Documents - Miscellaneous”). The Municipality has failed to explain how disclosure of the information would reveal any investigative techniques and procedures or cause the harm contemplated by the exemption.

***Section 8(1)(d): Disclose the Identity of a Confidential Source of Information in Respect of a Law Enforcement Matter, or Disclose Information Furnished Only by the Confidential Source.***

The Municipality’s representations are similarly silent regarding how the withheld information fits within section 8(1)(d). The appellant also points out the failure of the Municipality to provide any evidence in support of claiming this exemption.

I have reviewed the representations and the records and I find that the Municipality has failed to establish the application of section 8(1)(d) to the records numbered 1 to 5, 7 and 10 in the records identified by the Municipality as “Documents - Court Related” (or for that matter to the records numbered 1, 2, 4 to 14, 17 to 22, 25 to 28, 32, 33, 51 and 52 in the records identified by the Municipality as “Documents - Miscellaneous”). The Municipality has failed to explain how disclosure of the information would disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source or cause the harm contemplated by the exemption.

In summary, I find that the Municipality has failed to establish the application of the exemptions in sections 8(1)(a), (c) or (d).

***Section 8(2)(a): Law Enforcement Report***

In order for a record to qualify for exemption under section 8(2)(a) of the *Act*, the Municipality must satisfy each part of the following three-part test:

1. the record must be a report; and
2. the report must have been prepared in the course of law enforcement, inspections or investigations; and
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

(Orders MO-1238, P-200 and P-324)

The word “report” is not defined in the *Act*. However, previous orders have found that to qualify as a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Order P-200).

This interpretation was affirmed by Senior Adjudicator David Goodis in Order MO-1238. In that case, Senior Adjudicator Goodis rejected arguments to the effect that this interpretation was too narrow. He stated:

... an overly broad interpretation of the word “report” could create an absurdity. If “report” means “a statement made by a person” or “something that gives information”, all information prepared by a law enforcement agency would be exempt, rendering sections 8(1) and 8(2)(b) through (d) superfluous. The Legislature could not have intended that result. As stated in *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen’s Printer, 1980) (the “Williams Commission”) (at p. 294):

The need to exempt certain kinds of law enforcement information from public access is reflected in all of the existing and proposed freedom of information laws we have examined. This is not surprising; if they are to be effective, certain kinds of law enforcement activity must be conducted under conditions of secrecy and confidentiality. Neither is it surprising that none of these schemes simply exempts all information relating to law enforcement. The broad rationale of public accountability underlying freedom of information schemes also requires some

degree of openness with respect to the conduct of law enforcement activity. Indeed, if law enforcement is construed broadly to include the enforcement of many regulatory schemes administered by the provincial government, an exemption of all information pertaining to law enforcement from the general right to access would severely undermine the fundamental objectives of a freedom of information law.

This office's interpretation of the word "report" in section 8(2)(a) is not only plausible, but also promotes the purposes of the legislation. The Commissioner's interpretation takes into account the public interest in protecting the integrity of law enforcement procedures which underlies the purpose of the exemption. To the extent that any harm could reasonably be expected to result from disclosure of law enforcement records, the various exemptions in sections 8(1) and 8(2)(b) to (d) may apply (for example, where disclosure could reasonably be expected to interfere with a law enforcement matter under section 8(1)(a), or deprive a person of the right to a fair trial under section 8(1)(f)). In addition, certain law enforcement records which consist of a formal statement or account of the results of the collation and consideration of information qualify for exemption under section 8(2)(a), regardless of the potential for harm from disclosure [see, for example, Order MO-1192]. At the same time, this interpretation takes into account the public interest in openness as articulated by the Williams Commission, since records which do not meet the specific definition of report, and which do not otherwise qualify for exemption under the remaining provisions of section 8, cannot be withheld under this exemption.

In Order MO-1238, Senior Adjudicator Goodis made it clear that the title of a document will not necessarily determine whether or not it is a "report". For example, he found that section 8(2)(a) did not apply to a Field Inspection Report or an Inspection Record of a municipal building department, both of which contained entries made over a period of time, on the basis that documents of this kind did not satisfy the first requirement of the section 8(2)(a) exemption test. Similarly, in Order M-158, former Adjudicator Anita Fineberg found that a number of memoranda met the definition of "report", while a number of others did not.

In this appeal, other than identifying record number 10 in the list accompanying the records under the category "Documents Miscellaneous" as an Inspection Report, the Municipality has failed to identify which other records it views as a report. I have considered the substance and nature of the records remaining at issue, including record number 10 under the category "Documents Miscellaneous" and have assessed whether they consist of a "formal statement or account of the results of a collation and consideration of information", as opposed to a "mere observation or recording of facts". In my opinion none of the records remaining at issue for which this exemption was claimed (or for that matter the records numbered 1, 2, 4 to 14, 17 to 22, 25 to 28, 32, 33, 51 and 52 in the records identified by the Municipality as "Documents - Miscellaneous") fall within the definition of a "report" set out above, and therefore do not qualify for exemption under section 8(2)(a).

As I have found that none of the law enforcement exemptions apply, and no other exemptions were claimed for these records, records numbered 1 to 5 and 7 in the records identified by the Municipality as "Documents - Court Related" are to be disclosed to the appellant.

Although I have concluded that the section 8(1)(a), (c), (d) and 8(2)(a) exemptions do not apply to record number 10 in the records identified by the Municipality as "Documents - Court Related", because this record may contain "personal information", I will include it in the section 14 analysis that follows.

I will now consider whether section 14 has any application to the records numbered 1, 2, 4 to 14, 17 to 22, 25 to 28, 32, 33, 51 and 52 in the records identified by the Municipality as "Documents - Miscellaneous", and record number 10 in the records identified by the Municipality as "Documents - Court Related".

### **PERSONAL INFORMATION**

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates.

Section 2(1) of the *Act* defines "personal information", in part, as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (g) the views or opinions of another individual about the individual, and
- (h) 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;

To qualify as “personal information”, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225], but even if information relates to an individual in a professional, official or business capacity, it may still qualify as “personal information” if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

In my opinion record number 10 in the records identified by the Municipality as “Documents - Court Related” and the records numbered 4, 6, 10, 11, 14, 17, 18, 19, 20, 22, 25 and 32 in the records identified by the Municipality as “Documents - Miscellaneous” contain information about identifiable individuals in their personal capacity, which I find to be personal information.

As only personal information of identifiable individuals can be exempt under section 14 and no other exemptions were claimed for these records, records numbered 1, 2, 5, 7, 8, 9, 12, 13, 21, 26, 27, 28, 33, 51 and 52 in the records identified by the Municipality as “Documents - Miscellaneous” are to be disclosed to the appellant.

The personal information of identified individuals in the following documents remains to be considered in this order:

Record number 10 in the records identified by the Municipality as “Documents - Court Related”

Records numbered 4, 6, 10, 11, 14, 17, 18, 19, 20, 22, 25 and 32 in the records identified by the Municipality as “Documents - Miscellaneous”.

## **INVASION OF PRIVACY**

Section 14 reads, in part:

- (1) 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.
- (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
  - (b) access to the personal information may promote public health and safety;
  - (c) access to the personal information will promote informed choice in the purchase of goods and services;
  - (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
  - (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
  - (f) the personal information is highly sensitive;
  - (g) the personal information is unlikely to be accurate or reliable;
  - (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
  - (i) the disclosure may unfairly damage the reputation of any person referred to in the record.
- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

Section 14(1) is a mandatory exemption protecting information whose disclosure constitutes an unjustified invasion of another individual's privacy. Where a requester seeks access to another individual's personal information, section 14(1) prohibits an institution from disclosing this information unless any of the exceptions at sections 14(1)(a) through (f) apply. If any of these exceptions apply, the information cannot be exempt from disclosure under section 14(1). Section 14(1)(f), in particular, permits disclosure only where it "does not constitute an unjustified invasion of personal privacy."

Sections 14(2) through (4) of the *Act* provide guidance in determining whether disclosure would result in an unjustified invasion of an individual's personal privacy.

Section 14(2) provides some criteria for determining whether the personal privacy exemption applies. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) lists the types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has ruled that once a presumption against disclosure has been established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2). A section 14(3) presumption can be overcome, however, if the personal information at issue is caught by section 14(4) or if the “compelling public interest” override at section 16 applies (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

***Section 14(3)(b): Was the Information Compiled and is it Identifiable as Part of an Investigation into a Possible Violation of Law?***

I have reviewed record number 10 in the records identified by the Municipality as “Documents - Court Related” and documents numbered 4, 6, 10, 11, 14, 25 and 32 in the records identified by the Municipality as “Documents - Miscellaneous” and I am satisfied that they were compiled and are identifiable as part of an investigation into a possible violation of the *Building Code Act*.

As a result, the presumed unjustified invasion of personal privacy at section 14(3)(b) applies to the personal information in record number 10 in the records identified by the Municipality as “Documents - Court Related” and records numbered 4, 6, 10, 11, 14, 25 and 32 in the records identified by the Municipality as “Documents - Miscellaneous”. Section 14(4) does not apply to this information. Disclosure of this information therefore constitutes an unjustified invasion of personal privacy and is therefore exempt under section 14(1) of the *Act*.

I am not satisfied that any other section 14(3) presumptions apply to the records remaining at issue. As a result I will now consider the application of section 14(2) to the records numbered 17, 18, 19, 20 and 22 in the records identified by the Municipality as “Documents - Miscellaneous”.

***All the Relevant Circumstances in Section 14(2)***

The list of factors under section 14(2) is not exhaustive. As set out in Order P-99, other circumstances may be relevant in determining whether a disclosure of personal information does or does not constitute an unjustified invasion of personal privacy.

The records numbered 17, 18, 19, 20 and 22 in the records identified by the Municipality as “Documents - Miscellaneous” are in the nature of queries or responses to queries initiated by the Director of the corporation that owns the property at/or near where the deck was constructed. This individual is listed as a contact for the appellant in the appeal form that commenced this proceeding (and also occupied the property).

In my view, this falls within the scope of an unlisted factor or circumstance in favour of disclosure that is significant and in this appeal outweighs any factor or circumstance in favour of privacy protection in section 14(2) in relation to information about this individual. I find

therefore that disclosure of this individual's personal information in records numbered 17, 18, 19, 20 and 22 in the records identified by the Municipality as "Documents - Miscellaneous" is not an unjustified invasion of personal privacy and falls within the section 14(1)(f) exception. It is therefore not exempt under section 14(1). As these records do not contain the personal information of other individuals I will order them disclosed in their entirety.

As the representations of the appellant raise issues relating to the public interest, I will now turn to a consideration of whether section 16 of the *Act* applies.

## **PUBLIC INTEREST IN DISCLOSURE**

Section 16 reads as follows:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [Emphasis added]

In order for section 16 to apply, two requirements must be met: first, a compelling public interest in disclosure must exist; and secondly, this compelling public interest must clearly outweigh the purpose of the exemption (here, section 14) (Order P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.), leave to appeal refused [1999] S.C.C.A. No. 134 (note)).

In Order P-984, Adjudicator Holly Big Canoe discussed the first requirement referred to above:

"Compelling" is defined as "rousing strong interest or attention" (Oxford). In my view, the public interest in disclosure of a record should be measured in terms of the relationship of the record to the *Act's* central purpose of shedding light on the operations of government. In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

If a compelling public interest is established, it must be balanced against the purpose of any exemptions which have been found to apply. Section 16 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption. [See Order P-1398]

The Municipality makes no submissions on the application of section 16.

The appellant submits that the public interest override in section 16 should be applied because, the appellant states, the Municipality has not sought to uniformly enforce, strictly or otherwise, the requirements of the *Building Code Act* with respect to other items constructed on the marine allowance. The appellant further states that disclosure of the records is desirable for the purpose



of subjecting the activities of the institution to public scrutiny. The appellant submits that the records should be disclosed to preserve the integrity of the Municipality. The appellant also asserts that the removal of the deck caused considerable controversy and also perhaps embarrassment to the Municipality.

In support of its position that the matter has generated considerable public interest, the appellant provided newspaper clippings to demonstrate that “considerable public interest was aroused when the deck was demolished”.

### *Analysis and Findings*

In my view, disclosure of the severed portions of personal information in the records would not “serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices”, as required in Order P-984. Rather, the appellant seeks access to the severed portions of the records in order to pursue its own interests, namely the defense to a proceeding under the *Building Code Act*. In my view this is a private matter, rather than one of a public interest, and for this reason section 16 does not apply.

Finally, based on the representations filed by the Municipality and my review of the records, I am satisfied that it properly exercised its discretion to refuse access to the records and/or information that falls within the scope of the request that I have not ordered disclosed.

### **ORDER:**

1. I order the Municipality to disclose to the appellant records numbered 1 to 5 and 7 in the records identified by the Municipality as “Documents - Court Related”, records numbered 1, 2, 5, 7, 8, 9, 12, 13, 17, 18, 19, 20, 21, 22, 26, 27, 28, 33, 51 and 52 in the records identified by the Municipality as “Documents - Miscellaneous” and portions of record number 10 in the records identified by the Municipality as “Documents - Court Related” and numbered 4, 6, 10, 11, 14, 25 and 32 in the records identified by the Municipality as “Documents - Miscellaneous” by sending them to the appellant by **December 14, 2005** but not before **December 9, 2005**. For greater certainty, I have highlighted the exempt information in record number 10 in the records identified by the Municipality as “Documents - Court Related” and records numbered 4, 6, 10, 11, 14, 25 and 32 in the records identified by the Municipality as “Documents - Miscellaneous” on the copy provided to the Municipality with this order. The highlighted information is **not** to be disclosed.
2. I uphold the decision of the Municipality to deny access to the records which the Municipality identified as “Documents - Solicitor/Client Privilege”, records numbered 6 and 8, 9 and 11 to 14 in the records identified by the Municipality as “Documents - Court Related”, records numbered 3, 35, 36, 37, 41 to 46, 48, 49, 50 and 53 to 57 in the records identified by the Municipality as “Documents - Miscellaneous” and the highlighted exempt information in record number 10 in the records identified by the Municipality as

“Documents - Court Related” and records numbered 4, 6, 10, 11, 14, 25 and 32 in the records identified by the Municipality as “Documents - Miscellaneous” that are highlighted on the copies provided to the Municipality with this order.

3. In order to verify compliance with provision 1 of this order, I reserve the right to require the Municipality to provide me with a copy of the records numbered 1 to 5, 7 and 10 in the records identified by the Municipality as “Documents - Court Related” and the records numbered 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 32, 33, 51 and 52 in the records identified by the Municipality as “Documents - Miscellaneous” as disclosed to the appellant.

Original signed by: \_\_\_\_\_  
Steven Faughnan  
Adjudicator

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November 8, 2005