



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2048

Appeals MA-050078-1 and MA-050169-1

The Corporation of the Township of Tay



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NATURE OF THE APPEALS:

The Corporation of the Township of Tay (the Township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to general records relating to a named property, as follows:

1. All records retained by the [Township] in the building permit file for the [named] property from May 2003 to the present including, but not limited to, permit applications and approvals. Drawings and approvals, contractor information, all inspection reports to document inspections undertaken at certain states of construction, occupancy permits, notations, working notes, orders, correspondence of any nature (electronic or otherwise), any documentation relating to changes requested or made to the original approved permits; and
2. All records retained by the [Township] relating to property taxes for the [named] property relating to the calendar years 1996 through 2003 including annual taxes levied, penalty amounts levied on arrears, dates and amounts of issuance of tax bills, dates and amounts of payments received, correspondence of any nature (electronic or otherwise) relating to any non-payment of property taxes and any other documentation issued by or retained by the [Township] in respect of collection of the property taxes for the Property.

The Township located records responsive to the request and pursuant to section 21(1) of the *Act* and notified an affected person, the owner of the subject property (the owner), who might have an interest in the disclosure of some of the records. Following the owner's request that no information related to him be disclosed, the Township issued a decision letter to the original requester denying access to the records responsive to the first part of the request taking the position that the request was frivolous pursuant to section 4(1)(b) of the *Act*. With respect to the second part of the request, the Township denied access on the basis that the requested records are currently available to the public and therefore exempt from disclosure under section 15(a) (information published or available). In that regard, the Township advised the requester that an application for a tax certificate through the Treasury Department should satisfy that portion of the request.

Appeal Number MA-050078-1

The original requester, now the appellant, appealed the Township's decision and Appeal Number MA-050078-1 was opened.

During the mediation of Appeal Number MA-050078-1, the Township reviewed the records responsive to the request and issued a revised decision letter to the appellant granting partial access, denying access to the remainder pursuant to section 8(2)(a)(law enforcement), section 10(1)(a) (third party information), and section 14(1) in conjunction with section 14(3)(f) (personal privacy) of the *Act*. An Index of Records was enclosed with the decision. The Township also issued a decision under section 21(7) of the *Act* to the owner advising of its revised position to disclose some of the records in part or in full to the appellant.

The appellant advised the mediator that her review of the Index of Records suggested that additional records exist. In particular, the appellant advised that the Township failed to locate records relating to a particular building permit, Building Permit No. 030208, as well as records on the subject of a heritage matter related to the property. With respect to the exemptions claimed by the Township, the appellant advised that she did not intend to seek access to the portions of the records denied pursuant to the personal privacy provisions at section 14 of the *Act*, but that she continued to seek access to the records or portions of records withheld under sections 8(2)(a), and 10(1)(a).

During a telephone mediation meeting, the Township advised that it had located additional records relating to Building Permit No. 030208 and agreed to undertake to create an index detailing the newly located records. The Township agreed to conduct a search for property tax records and to create an index of any such records located during that search. The Township also agreed to revise the Index of Records previously provided to the appellant to ensure that they included a date. Finally, the Township advised that a search for records relating to the heritage matter had not been conducted as the request sought access to “records retained by the [Township] in the building permit file...” and records relating to heritage matters are not typically filed in building permit files. Although the appellant did not wholly accept the Township’s explanation, she advised that she was no longer interested in obtaining the records relating to the heritage matters concerning the property.

Following the telephone mediation meeting, the Township issued a supplementary decision letter granting partial access to newly located tax records. Portions of the tax records were denied under section 14(1) in conjunction with section 14(3)(f). Along with the supplementary decision letter, the Township enclosed four updated indices of responsive records to the appellant.

Having reviewed the indices supplied by the Township, the appellant subsequently narrowed the scope of records in dispute as described in the “Records” section of this Notice of Inquiry. However, the appellant advised that she was not satisfied that the Township conducted a reasonable search for the property tax records. The appellant advised that it was her intention that her request for property tax records encompasses historical property tax information concerning the tax bills rendered and from her review of the Index of Records entitled “Tax Sale”, which details the responsive tax related records, it is her position that the Township failed to address this aspect of her request. Additionally, with respect to the Township’s search efforts regarding its building permit files, the appellant advised that she had expected that an inspection report or similar document would have been located taking into consideration the Township’s correspondence, dated March 12, 2004. Accordingly, whether the Township conducted a reasonable search was added as an issue to this appeal.

As no further issues were resolved during mediation the appeal was transferred to the adjudication stage of the appeal process.

The issues for adjudication in Appeal Number MA-050078-1 are the following:

- The application of the exemption at section 8(2)(a).

- The application of the exemption at section 10(1)(a).
- Whether the Township conducted a reasonable search for responsive records.

I began my inquiry into this appeal by sending a Notice of Inquiry to the Township and received representations in return. I also sent copies of the Notice of Inquiry to the owner and seven other parties who might be affected by the disclosure of the records at issue (the affected parties). The owner responded with representations. Three affected parties provided no representations but advised that they had no objections to sharing the information that related to them. Firstly, the architect that prepared Record 3 relating to Building Permit No. 030299 advised that he has no objection to disclosing that record to the appellant. As the Township has claimed section 8(2)(a) applies to that record, it is still at issue in this appeal. Secondly, the engineer who prepared Records 13 and 14, relating to Building Permit No. 030208 also advised that he had no objection to sharing records prepared by him with the appellant. As the Township has claimed section 8(2)(a) for Record 13, that record remains at issue in this appeal. Record 14 however, can be disclosed. Finally, the third affected party advised that the only involvement his company had in the matter at issue was through another affected party and consisted of preparing a geotechnical engineer's report/letter sent in 2003 which is Record 18 relating to Building Permit No. 030208. That affected party also confirmed that he did not have any objection to sharing his letter with the appellant.

In summary, as a result of these consents to disclose, the following records are no longer at issue in this appeal and should be disclosed to the appellant:

Records relating to Building Permit No. 030208

- Record 14 – Cover letter and drawings from named engineering company, September 9, 2003
 - page (1) Cover letter dated September 9, 2003
 - page (2) Engineering drawing no. 0291-4
 - page (3) Handwritten drawing
- Record 18 – Correspondence from named engineering company, including geotechnical engineer's assessment and drawings of Ftg & Floor Beams, August 28, 2003.
 - page (1) Cover letter dated August 28, 2003
 - page (2) Engineering drawing no. 0291-1
 - page (3) Letter dated August 26, 2003
 - page (4) Engineering drawing no. 0291-1
 - page (5) Engineering drawing no. 0291-2
 - page (6) Engineering drawing no. 0291-3

Following receipt of the Township's representations, I then sent a copy of the Notice of Inquiry to the appellant. With the Notice of Inquiry I enclosed copies of the representations of the Township and the non-confidential representations of the owner. The appellant provided representations in return.

As the appellant's representations raised issues to which I felt the Township should have an opportunity to reply, I sent a copy of the appellant's representations to the Township. The Township provided reply representations.

Appeal Number MA-050169-1

During mediation of Appeal Number MA-050078-1, after the Township issued the revised decision letter, the mediator contacted the owner, who had been notified by the Township of its intention to grant partial or full access to the records to the original requester (the appellant in Appeal Number MA-050078-1). The owner advised that he intended to appeal the Township's decision to grant partial or full access to the records in which he has an interest. The owner, now the third party appellant, submitted an appeal letter to this office and Appeal Number MA-050169-1 was opened.

The Township, the third party appellant and the mediator engaged in a face-to-face mediation. The Township and the third party appellant agreed to the disclosure three records, which are accordingly no longer at issue. These are Record 18 relating to Building Permit No. 040015, Record 2 relating to Building Permit No. 030299 and Record 12 relating to Building Permit No. 030208. If these records have not already been disclosed to the appellant, the Township should disclose them immediately. At the conclusion of the mediation meeting the third party appellant advised that he remains opposed to the release of Record 7 relating to Building Permit No. 030299 and Record 24 relating to Building Permit No. 030208 on the basis that the records contain his personal information.

As no further issues were resolved during mediation, the appeal was transferred to the adjudication stage of the appeal process.

I began my Inquiry into the third party appeal by sending a Notice of Inquiry to the third party appellant. The third party appellant chose not to submit representations.

I then sent a copy of the Notice of Inquiry to the Township. The Township provided representations in response. I provided the appellant with a copy of the Township's representations and gave him an opportunity to reply. The appellant responded with a brief letter stating his position and asked that I rely on the representations he submitted in response to the Notice of Inquiry for Appeal Number MA-050078-1

The issues for adjudication in Appeal Number MA-050169-1 are the following:

- The application of the exemption at section 10(1)(a).
- The application of the exemption at section 14(1) in conjunction with section 14(3)(f).

As appeals MA-050078-1 and MA-050169-1 deal with records responsive to the same request, I will address the issues on appeal in both appeals in the present order. For the purposes of this order I will refer to the original appellant of Appeal Number MA-050078-1 as "the appellant" and will refer to the owner of the property, the third party appellant in Appeal Number MA-050169-1 as "the third party appellant".

RECORDS:

MA-050078-1

The records that remain at issue in this appeal are as follows:

Records relating to Building Permit No. 040015

<i>Record No.</i>	<i>Description of Record</i>	<i>No. of Pages</i>	<i>Section Applied</i>	<i>Withheld in Full/Part</i>
2	Application Tracking Sheet, March 9, 2004	1	8(2)(a)	Part
3	Building Inspection Report, January 26, 2005	1	8(2)(a)	Full
4	Building Inspection Report, April 8, 2004	1	8(2)(a)	Full
5	Building Inspection Report, May 5, 2004	1	8(2)(a)	Full
6	Building Inspection Report, May 25, 2004	1	8(2)(a)	Full
8	Fax from [named company], March 23, 2004	3	8(2)(a)	Part
10	Correspondence, [named company], May 5, 2004	1	8(2)(a)	Full
11	Correspondence, Michael Haines (of Township), March 16, 2004	2	8(2)(a)	Full
15	Floor layout, March 10, 2004	1	10(1)(a)	Full
17	Staff Notes, March 11, 2004	1	8(2)(a)	Full
19	Ministry Environment Vendors Licence, no issue date	1	8(2)(a)	Full

Records relating to Building Permit No. 030299

<i>Record No.</i>	<i>Description of Record</i>	<i>No. of Pages</i>	<i>Section Applied</i>	<i>Withheld in Full/Part</i>
3	Correspondence, [Named Architectural Firm], October 6, 2003	6	8(2)(a)	Part
4	Estimate [Named Company], August 9, 2003	1	8(2)(a)	Full
5	Application of Material Estimate [Named Company], September 22, 2003	1	8(2)(a)	Full
6	Correspondence, [Named Architectural Firm], August 14, 2003	1	8(2)(a)	Full

Records relating to Building Permit No. 030208

<i>Record No.</i>	<i>Description of Record</i>	<i>No. of Pages</i>	<i>Section Applied</i>	<i>Withheld in Full/Part</i>
1	Fax from [Named Company], August 27, 2004	1	8(2)(a)	Full
2	Building Inspection Report, August 27, 2004	1	8(2)(a)	Full
3	Building Inspection Report, April 8, 2004	1	8(2)(a)	Full

4	Building Inspection Report, March 12, 2004	1	8(2)(a)	Full
6	Detail at Grid A-6 [Named Company], March 8, 2004	1	10(1)(a)	Full
7	General Reviews by Architect & Engineers, March 12, 2004	1	8(2)(a)	Full
13	Fax from [Named Company], September 22, 2003	1	8(2)(a)	Full
15	Commitment to General Reviews by Architect and Engineers September 2, 2003	1	8(2)(a)	Full
16	Building Inspector Report, September 2, 2003	1	8(2)(a)	Full
17	Notice from [Named Company], August 29, 2003	4	8(2)(a)	Full
19	Inspection Report, [Named Company], August 22, 2003	2	8(2)(a)	Full
20	Building Inspection Report, August 22, 2003	1	8(2)(a)	Full
21	Inspection Report, [Named Company], August 21, 2003	2	8(2)(a)	Full
22	Site Instruction Report, [Named Architectural Firm], August 14, 2003	4	8(2)(a)	Full
24	App. Tracking Sheet, August 1, 2003	1	8(2)(a)	Part
25	Estimate from [Named Company], July 26, 2003	1	8(2)(a)	Full
26	Invoice from [Named Company], July 11, 2003	1	8(2)(a)	Full
27	Floor/Roof Drawings, [Named Company], July 10, 2003	12	10(1)(a)	Full
28	Estimate from [Named Company], February 3, 2003	2	8(2)(a)	Full

MA-050169-1

There are two records that remain at issue in this appeal:

Records relating to Building Permit No. 030299

<i>Record No.</i>	<i>Description of Record</i>	<i>No. of Pages</i>	<i>Section Applied</i>	<i>Withheld in Full/Part</i>
7	Building Permit Fee Analysis	1	10(1)(a) 14(1)	Full

Records relating to Building Permit No. 030208

<i>Record No.</i>	<i>Description of Record</i>	<i>No. of Pages</i>	<i>Section Applied</i>	<i>Withheld in Full/Part</i>
24	App. Tracking Sheet, August 1, 2003	1	10(1)(a) 14(1)	Part

DISCUSSION:

PERSONAL INFORMATION

The third party appellant takes the position that Record 7 relating to Building Permit No. 030299 and portions of Record 24 relating to Building Permit No. 030208 contain his personal information, disclosure of which would result in an unjustified invasion of privacy under section 14(1).

In order to determine whether 14(1) of the *Act* may apply, it is necessary to first decide whether the record contains “personal information” and, if so, to whom it relates. That term is defined in section 2(1) 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,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual’s name if 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. 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].

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].

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.)].

Representations

As noted above, following a mediation meeting with the Township and the mediator, the third party appellant advised that he remained opposed to the release of Record 7 relating to Building Permit No. 030299 and portions of Record 24 relating to Building Permit No. 030208 on the basis that they contain his personal information. In his representations, the third party appellant did not specifically address how the information at issue qualifies under section 2(1) of the *Act* as personal information but makes it clear that it is his position that this information is personal, as it relates to a building that will house his personal residence, something that he believes the “majority of Canadians consider very private.” The third party appellant also states in his representations that, it is his view that disclosure of this information would result in “a total violation of our business interest and personal privacy.”

The Township addresses each record individually in its representations. With respect to Record 7 relating to Building Permit No. 030299, the building permit fee analysis, the Township submits:

The record is simply a fee payment summary which indicated a fee credit as the applicant had a fee balance applied from another permit. The record contains no personal information.

Further, the record does not contain any information identifying it to the subject property, although I realize that the release of the record would in effect tie it to the property as it relates to the records originally requested by the requester.

Addressing Record 24 relating to Building Permit File No. 030208, an application tracking sheet, the Township describes the record as “a Township form which is circulated to all municipal departments during the approval stage of the building permit application process.” Responding

to the appellant's concerns about the disclosure of any of his personal information that might be contained on this form the Township stated:

We agreed to release with personal information (applicant name) and property location information deleted. Further, the record contained in a handwritten note on the upper portion of the form from a staff member relating to the heritage designation considerations on the subject property – which we indicated we would delete prior to release.

This would leave the form containing no personal information or property identifier, leaving simply a prescribed Township form with check marks indicating the status of the building permit approval process from various Township Departments.

Analysis and Finding

Having carefully considered the third party appellant's position and representations and having closely reviewed the records that he asserts contain his personal information, I find that apart from the applicant name and property location that the Township is prepared to sever, the information contained in Record 7 relating to Building Permit No. 030299 and Record 24 relating to Building Permit No. 030208 does not constitute the personal information of the third party appellant within the meaning of section 2(1) of the *Act*.

In order to fall within the definition of personal information under section 2(1) of the *Act* the information must be about an "identifiable individual." As explained by the Township, Record 7 relating to Building Permit No. 030299 is a fee payment summary. The record lists an amount already paid to the Township and subtracts fees that are to be paid, leaving a fee credit. Other than the fact that the record is responsive to the request, there is no information linking this fee summary to either the third party appellant or to the property to which it relates.

Additionally, even if the monetary amounts could be considered to reveal the identity of the applicant by the fact that the record is responsive to the request, I do not find that the information relates to the third party appellant in his personal capacity. Along with the other records related to this appeal, the Township has provided me with a copy of the Application to Permit (Record 1 relating to Building Permit No. 030299) to which the fee summary relates. The Application to Permit is not at issue in these appeals. The Owner's Name portion of the application is made out in the name of the third party appellant's company and indicates that the proposed use of the building for which the building permit application is being filed is commercial use. Accordingly, I do not find that the monetary amount paid at the time the Application to Permit was filed is about the third party appellant in a *personal* capacity but rather a business capacity as the application for the permit was filed under the third party appellant's company's name. I also do not find that this information reveals anything of a personal nature of the third party appellant. Therefore, I find that Record 7 does not contain personal information within the meaning of section 2(1) of the *Act*.

Similarly, I find that none of the information at issue in Record 24 relating to Building Permit No. 030208 falls within the definition of "personal information" in section 2(1) of the *Act*. As

described above Record 24 is entitled “Building and Municipal Services Application Tracking Sheet” and appears to be an internal form used by the Township to track any such application. The Township makes clear in its representations that it is prepared to sever the information contained in that record that might consist of personal information (as noted above, the appellant is not interested in obtaining access to any portions of the records that contain personal information). Therefore, the only significant pieces of information that remain at issue on the record that must be examined are the handwritten note relating to the heritage designation consideration and a monetary amount paid at the time the building permit application was filed. As with Record 7 relating to Building Permit No. 030299, the related Application to Permit (which is not at issue in these appeals) is also made out in the name of the third party appellant’s company and also indicates that the proposed use of the building for which the building permit application is being filed is commercial use. Accordingly, I find that the monetary amount paid at the time the Application to Permit was filed and noted on Record 24 is not about the third party appellant in a *personal* capacity; rather, it is about the third party appellant in a business capacity. I also find that this information does not reveal anything of a personal nature of the third party appellant. As for the handwritten note relating to the heritage designation consideration, I find that this information clearly does not qualify as personal information as it relates to the property itself and not the third party appellant. Therefore, given that the Township is prepared to sever the portions of the record that contains the information that would qualify as the third party appellant’s personal information, I find that the remaining portions of Record 24 do not contain information that qualifies as personal within the meaning of section 2(1) of the *Act*.

In summary, I have found that Record 7 relating to Building Permit No. 030299 and the portions of Record 24 relating to Building Permit No. 030208 which the Township is prepared to disclose do not contain the personal information of the third party appellant.

It should also be noted that the Township claims that section 8(2)(a) applies to the bottom portion of Record 24, that is, the “Notes” and “Comments” portions of the form. I will discuss the application of section 8(2)(a) to that portion of Record 24 below.

LAW ENFORCEMENT

The Township submits that the majority of the records at issue in Appeal Number MA-050169-1 are exempt from disclosure pursuant to the discretionary exemption at section 8(2)(a) of the *Act*.

General Principles – Section 8(2)(a)

Section 8(2)(a) states:

- (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 enforcing and regulating compliance with a law;

Law enforcement

The term “law enforcement” is used in section 8(2)(a), 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);

The term “law enforcement” has been found to apply in the following circumstances:

- a municipality’s investigation into a possible violation of a municipal by-law [Orders M-16, MO-1245]
- a police investigation into a possible violation of the *Criminal Code* [Orders M-202, PO-2085]
- a children’s aid society investigation under the *Child and Family Services Act* [Order MO-1416]
- Fire Marshal fire code inspections under the *Fire Protection and Prevention Act, 1997* [Order MO-1337-I]

The term “law enforcement” has been found *not* to apply in the following circumstances:

- an internal investigation to ensure the proper administration of an institution-operated facility [Order P-352, upheld on judicial review in *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (1993), 102 D.L.R. (4th) 602, reversed on other grounds (1994), 107 D.L.R. (4th) 454 (C.A.)]
- a Coroner’s investigation under the *Coroner’s Act* [Order P-1117]
- a Fire Marshal’s investigation into the cause of a fire under the *Fire Protection and Prevention Act, 1997* [Order PO-1833]

Law enforcement report

In order for a record to qualify for exemption under section 8(2)(a) of the *Act*, the Township 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.
[See Order 200 and Order P-324]

The word “report” is not defined in the *Act* but has been defined in previous orders as “a formal statement or account of the results of the collation and consideration of information”. Generally, results would not include mere observations or recordings of fact [Orders P-200, MO-1238, MO-1337-I as well as Order PO-1709, upheld on judicial review in *Ontario (Minister of Health and Long-Term Care) v. Goodis*, [2000] O.J. No. 4944 (Div. Ct.)].

This interpretation was also addressed in further detail 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 under lies 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 section 8(2)(a).

Section 8(4): exception to the exemption

Routine inspection report

Section 8(4) states:

Despite clause (2)(a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency that is authorized to enforce and regulate compliance with a particular statute of Ontario

The section 8(4) exception is designed to ensure public scrutiny of material relating to routine inspections and other similar enforcement mechanisms in such areas as health and safety legislation, fair trade practices laws, environmental protection schemes, and many of the other regulatory schemes administered by the government [Order PO-1988].

Generally, “complaint driven” inspections are not “routine inspections” [Orders P-136, PO-1988]. The existence of a discretion to inspect or not to inspect is an important but not necessarily determinative factor in deciding whether an inspection is “routine” [Orders P-480, P-1120, PO-1988].

Representations

The Township submits that the records for which it has claimed section 8(2)(a) are:

Report[s] prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law.

It is a responsibility of the Township to employ qualified individuals to carry out investigations and/or inspections to enforce regulations to obtain compliance with the Ontario Building Code.

...

It is the opinion of the Township that an inspection report qualifies as a report and is prepared in the course of routine inspections. The report is prepared by an agency that is authorized to enforce and regulate compliance with a particular statute of Ontario being the Ontario Building Code.

The appellant submits:

The Institution submits that it is the responsibility of the Institution to employ qualified individuals to carry out investigations and/or inspections to enforce regulations to obtain compliance with the Ontario Building Code. It is further the opinion of the Institution inspection report qualifies as a report and is prepared in the course of routine inspections. The records have been prepared by an agency that is authorized to enforce and regulate compliance with the Ontario Building Code, and Ontario statute.

Only a limited number of records relate to inspection reports, with the balance comprising tracking sheets, faxes, general correspondence, staff notes, MOE [Ministry of Environment] licence, estimates, general reviews and notices. The Institution has failed to address any documentation other than "inspection reports" or any correlation between these documents and the issue of "law enforcement" as defined by the *Act*.

...

Based on precedent as established under Order M-364, and upheld under Order nos. MO-2138; MO-1295 (re: 8(2)(a) for no other than inspection reports) and MO-1337-I (re letters, memos, etc.) in my view, none of the Records contain any formal statement or account of the "result of the collation and consideration of the information by the individuals who prepared them" and would therefore not qualify as reports" for the purposes of section 8(2)(a) of the *Act*.

Since all three parts of the section 8(2)(a) test must be satisfied in order for the exemption to apply, in my view these records would not qualify for exemption under section 8(2)(a) of the *Act*.

No municipal by-laws or fire code violations are involved nor is there any evidence of any police investigations with respect to this query. The Institution's

response was simplistic and lacking any specifics to justify a “law enforcement” exemption.

Analysis and findings

I have divided the records for which the Township has claimed section 8(2)(a) into four groups based on type:

A. Letters, faxes and other correspondence

- *Records relating to Building Permit No. 040015*
Records 8 (page 3), 10, 11, 19
- *Records relating to Building Permit No. 030299*
Records 3 (pages 1 and 2), 4, 5, 6,
- *Records relating to Building Permit No. 030208*
Records 1, 13, 17, 25, 26, 28

Records 8 (page 3) and 10 relating to Building Permit No. 040015, Records 3 (pages 1 and 2), 4, 5, and, 6, relating to Building Permit No. 030299 and Records 1, 13, 25, 26, and 28 relating to Building Permit No. 030208 are all correspondence, faxes and letters, from private companies, including architects, engineers and builders, relating to or detailing information about building renovations to be done to the building at issue. The majority are addressed to the third party appellant but some are addressed to companies or individuals who appear to be sub-contractors. They consist of information about different types of material for building renovations (page 3 of Record 8, Building Permit No. 040014), architectural assessments of requirements for the renovations (Record 3, pages 1 and 2, and Record 6, Building Permit No. 030299), proposals and estimates for material and work done on the renovations (Records 4 and 5, Building Permit No. 030299), structural inspections conducted by engineering companies or recommendations from engineering companies about specific materials to be used in renovations (Record 10, Building Permit No. 040015 and Records 1 and 13, Building Permit No. 030208) and estimates or invoices from affected party companies regarding renovations to be completed on the building at issue (Records 25, 26 and 28, Building Permit No. 030208).

All of these records are prepared by third parties that are private companies. There is no evidence before me to suggest that the authors of these letters are agencies that have the function of enforcing and regulating compliance with a law. Additionally, as mentioned above, the word “report” has been defined in previous orders as “a formal statement or account of the results of the collation and consideration of information”. None of these records can be defined as such but are rather documents that record mere observations or recordings of fact. As a result, I find parts 1 and 2 of the test have not been established. As all three parts of the section 8(2)(a) test must be satisfied in order for the exemption to apply, Records 8 (page 3) and 10 relating to Building Permit No. 040015, Records 3 (pages 1 and 2), 4, 5 and 6 relating to Building Permit No. 030299 and Records 1, 13, 25, 26, and 28 relating to Building Permit No. 030208 do not qualify for exemption under section 8(2)(a) of the *Act*.

Records 11 and 19 relating to Building Permit No. 040015 are, respectively, a letter from the Township to the affected party’s company regarding the building permit application and a

Ministry of the Environment vendor's licence. Although I do agree that both of these records are prepared by agencies which have the function of enforcing and regulating compliance with a law, neither of them consist of a formal account of the results of a collation or consideration of information. Record 19 is simply a vendor's licence and considers no information. Record 11 contains statements of fact or observations. Specifically, it provides a list of documents or information that the Township requires from the third party appellant before it can conduct a complete plan and application review. Records 11 and 19 relating to Building Permit No. 040015 do not qualify under part 2 of the test and I find that they are not exempt under section 8(2)(a).

Record 17 relating to Building Permit No. 030208 is a letter to the Township from the third party appellant's company. The letter advises the Township that a specific consultant or contractor that the third party appellant's company had originally retained to work on the building renovations had been replaced by another. This record also does not qualify for exemption. Firstly, the record does not qualify as a "report" within the meaning of section 8(2)(a) exemption as it records a mere statement of fact. Secondly, the letter was not prepared "in the course of law enforcement, investigations, or inspections." Thirdly, having been written by the third party appellant, the letter was certainly not prepared by an agency that has the function of enforcing and regulating compliance with a law. Accordingly, none of the three parts of the section 8(2)(a) test have been met and Record 17 relating to Building Permit No. 030208 does not qualify for exemption.

B. Inspection Reports and Instruction Reports prepared by third parties (engineers or architects)

- *Records relating to Building Permit No. 030208*
Records 19, 21, 22

Record 19 is a memorandum prepared by a private engineering company addressed to the third party appellant's company. Record 21 is entitled "Inspection Report" and is prepared by a private engineering company for the third party appellant. Record 22 is a document entitled "Site Instruction" prepared by a private architecture firm also for the third party appellant. These records are all prepared by private companies. There is no information before me to suggest that these private companies are agencies that have the function of enforcing and regulating compliance with a law, nor that these records were prepared "in the course of" law enforcement investigations or inspections. Accordingly, I find that Records 19, 21, and 22 relating to Building Permit No. 030208 do not qualify for exemption under section 8(2)(a) of the *Act*.

C. Municipality forms and staff notes

- *Records relating to Building Permit No. 040015*
Records 2, 17
- *Records relating to Building Permit No. 030299*
Record 3 (page 6)
- *Records relating to Building Permit No. 030208*
Records 7, 15, 24

Record 2 relating to Building Permit No. 040015 and Record 24 relating to Building Permit No. 030208 are Township Building and Municipal Services Application Tracking Sheets. These are standard form documents that have been completed by the Township for the respective building permits applications. The portion that is being withheld under section 8(2)(a) by the Township for both forms is a handwritten portion at the bottom of the form under the heading “Notes”, and subheading “Comments”. The notes appear to be staff notes detailing action taken with respect to the building permit application to which the form relates. Having reviewed the information contained in the portions at issue, in my view, these notes only consist of statements of fact, specifically factual statements of actions taken by staff including calls made, information gathered or notes indicating that correspondence has been sent. The information does not consist of a formal account of the results of a collation or consideration of information and therefore, I find that these records cannot be characterized as “reports”. As part 1 of the three part test has not been established, Record 2 relating to Building Permit No. 040015 and Record 24 relating to Building Permit No. 030208 do not qualify for exemption under section 8(2)(a) of the *Act*.

Record 17 relating to Building Permit No. 040015 consists of notes to file on a standard Township memo form. The notes are handwritten by Township staff and from my review appear to detail factual information related to the building permit application. In my view, this record also contains statements of fact or observations recorded by staff and are not accurately considered formal statements or accounts of the collation or consideration of information. For this reason, this record is not a “report” and I find that Record 17 does not qualify for exemption under section 8(2)(a) of the *Act*.

Page 6 of Record 3 relating to Building Permit No. 030299 and Records 7 and 15 relating to Building Permit No. 030208 are standard form documents entitled “Commitment to General Reviews by Architect and Engineers”, developed by the EABO which is a committee comprised of representatives from Professional Engineers Ontario, Ontario Association of Architects and Ontario Building Officials Association. The form is completed by the owner of the building subject to a building permit and is signed by all consultants, including engineers and architects, retained for general reviews. From my review of the forms themselves, the information contained in them consists of a brief project description, the address of the project, the name, address and signature of the company or individual that owns the property and the signatures and business information for the engineering firm retained to provide general reviews of the parts of construction of the building. In my view, none of this information can be described as a “formal statement or account of the results of a collation and consideration of information”, nor were these documents prepared in the course of law enforcement, inspections or investigations and none of the parties who have signed the forms qualify as “an agency which has the function of enforcing and regulating compliance with a law”. As a result, I find none of the three parts of the test have been established and Page 6 of Record 3 relating to Building Permit No. 030299 and Records 7 and 15 relating to Building Permit No. 030208 do not qualify for exemption under section 8(2)(a) of the *Act*.

D. Building Inspection Reports

- *Records relating to Building Permit No. 040015*
Records 3, 4, 5, 6
- *Records relating to Building Permit No. 030208*

Records 2, 3, 4, 16, 20

As I have set out above, it has been well established by this office that the title of a document will not necessarily determine whether or not it is a "report" within the meaning of part 1 of the section 8(2)(a) test [Order MO-1238].

In Order M-1109 Former Assistant Commissioner Tom Mitchinson found that police occurrence reports did not qualify as "reports" for the purpose of section 8(2)(a), as they were documents routinely completed by police officers that consist primarily and essentially of descriptive material, notwithstanding that they contained a few comments which might be considered evaluative in nature.

In Order M-364, Inquiry Officer Mumtaz Jiwan considered whether inspection reports and deficiency notices created by the building department of a municipality having the function of enforcing and regulating compliance with the *Building Code Act, 1992* and the Building Code qualified for exemption under section 8(2)(a). The inspection reports consisted of a series of entries on pre-printed forms, individually dated and containing observations on the work completed and the remedial work required to be done. The deficiency notices were also on pre-printed forms and listed the deficiencies observed and the remedial work required. Inquiry Officer Jiwan rejected the argument that these inspection reports and deficiency notices met the definition of a "report".

In Order MO-1238, Senior Adjudicator David Goodis applied the reasoning in Order M-364, also finding that inspection reports of a municipal building inspector did not qualify as "reports. Adjudicator Sherry Liang followed Senior Adjudicator Goodis' approach in P0-1988 in her analysis of the application of section 14(2)(a), the provincial equivalent of section 8(2)(a), to area inspection reports related to the development of a hydroelectric facility and dam. Adjudicator Liang stated:

In sum, although it is generally accepted that occurrence reports or inspection reports are generated out of law enforcement activities, it has been found that they do not have the quality of formality of analysis required to qualify as "reports" for the purpose of section 14(2)(a) or its municipal equivalent. I find that the area inspection reports before me are similar in nature to the records under consideration in the above orders. Their purpose is to describe, rather than to evaluate and their contents consist essentially of observations and facts rather than evaluations of those observations and facts. The fact that there are some comments in some of the reports which might be considered evaluative does not detract from their essential nature.

The building inspection reports at issue in this appeal are one page standard form documents that have been completed by hand by Township staff, presumably a building inspector. The substantive information on the inspection reports under the heading "Remarks" consists of observations and recordings of fact on the work completed and note remedial or additional work required to be done. The inspection reports also list whether or not the building has passed inspection at the time the inspection is done.

I have carefully reviewed all of these records and, in my view, none of them contain a formal statement or account of the result of the collation and consideration of the information by the individuals who prepared them. Following the reasoning applied in Orders M-364 and MO-1238 I find that the building inspection reports record mere observations or statements of facts and that they do not qualify as "reports" for the purposes of section 8(2)(a) of the *Act* and the exemption does not apply to them.

In the alternative, if the building inspection reports qualify as "reports" for the purpose of section 8(2)(a), I find that they were "prepared in the course of routine inspections" within the meaning of the exception to the section 8(2)(a) exemption at section 8(4) and must therefore be disclosed.

The inclusion of section 8(4) in the *Act* followed from a recommendation in *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980*, vols. 2 and 3 (Toronto: Queen's Printer, 1980) (the Williams Commission Report). The drafters of that Report recommended that information gathered for regulatory enforcement purposes be treated the same as information gathered for criminal law enforcement, for the purposes of the law enforcement exemption. However, they were concerned that such an exemption not be too broadly construed:

...if the notion of material relating to civil and regulatory enforcement is too broadly construed, much that should be made accessible under a freedom of information law would be brought within the exemption. In particular, it would be inappropriate to withhold routinely from public scrutiny all material relating to routine inspections and other similar enforcement mechanisms in such areas as health and safety legislation, fair trade practices laws, environmental protection schemes, and many of the other regulatory schemes administered by the government.

Consistent with the above discussion, orders interpreting section 8(4) of the *Act* have found that "complaint driven" inspections are not "routine inspections" [see, for instance, Order P-136, PO-1988]. The existence of the discretion to inspect or not to inspect is an important but not necessarily determinative factor in deciding whether an inspection is "routine" [Orders P-480, P-1120, PO-1988].

If the building inspection reports could be found to qualify as reports within the meaning of section 8(2)(a), in the circumstances of this appeal they are not "complaint" driven. In my view, these building inspection reports would qualify as "routine inspections" by the Township which is an agency that is authorized to enforce and regulate compliance with the *Ontario Building Code*. They are reports that are routinely conducted when buildings are constructed or renovated and are designed to enforce regulations related to public safety based on a regulatory scheme, the *Ontario Building Code*. This view is supported by the Township's representations themselves. The Township takes the position that the records are reports within the meaning of section 8(2)(a) because it is the responsibility of the Township to employ individuals to ensure compliance with the *Ontario Building Code*. The Township goes on to state that inspection reports are reports that are prepared in the course of routine inspection.

In conclusion, even if I had found that the Building Inspection Reports meet the definition of "reports" for the purpose of section 8(2)(a) of the *Act*, I find that they fall within the mandatory exception in section 8(4) as "routine inspections", and must be disclosed.

I have found that the law enforcement exemption at section 8(2)(a) does not apply to Records 2, 3, 4, 5, 6, 8, 10, 11, 17, and 19 relating to Building Permit No. 040015, Record 3, 4, 5, and 6 relating to Building Permit No. 030299, and Records 1, 2, 3, 4, 7, 13, 15, 16, 17, 19, 20, 21, 22, 24, 25, 26, and 28 relating to Building Permit No. 030208.

As no other exemptions were claimed for Records 2, 3, 4, 5, 6, 7, 8, 10, 17 and 19 relating to Building Permit No. 040015 and Records 2, 3, 4, 7, 15, 16, and 20 relating to Building Permit No. 030208 and section 10(1) could not apply, these records must be disclosed to the appellant.

Although no other exemptions were claimed, because Records 3, 4, 5, and 6 relating to Building Permit No. 030299 and Records 1, 13, 17, 19, 21, 22, 25, 26 and 28 relating to Building Permit No. 030208 may contain third party information and as the third party exemption is mandatory, I will include them in the section 10(1) analysis that follows. As the third party appellant has claimed section 10(1) applies to Record 24 relating to Building Permit No. 030299 it will also be included in my analysis of the application of that exemption.

THIRD PARTY INFORMATION

Although Record 3 relating to Building Permit No. 030299 and Record 13 relating to Building Permit No. 030208 may contain information that would qualify for exemption under section 10(1), as noted above, the architect who prepared the Report in Record 3 and the engineer who prepared Record 13 have both consented to the disclosure of the information relating to them. Section 10(2) of the *Act* states:

A head may disclose a record described in subsection (1) if the person to whom the information relates consents to the disclosure.

As I have found that section 8(2)(a) does not apply to these records and the affected parties have consented to the disclosure of these records, I will order the Township to disclose Record 3 relating to Building Permit No. 030299 and Record 13 relating to Building Permit No. 030208 to the appellant. I will, therefore, not include them in my analysis of the application of section 10(1).

The Township takes the position that the section 10(1)(a) exemption applies to Record 15 relating to Building Permit No. 040015 and Records 6 and 27 relating to Building Permit No. 030208.

The third party appellant takes the position that section 10(1)(a) applies to exempt Record 7 relating to Building Permit No. 030299 and Record 24 relating to Building Permit No. 030208 from disclosure. As noted above, the Township is prepared to disclose these records to the appellant.

As noted above, I will also be considering whether section 10(1)(a) applies to Records 4, 5, and 6 relating to Building Permit No. 030299 and Records 1, 17, 19, 21, 22, 25, 26 and 28 relating to Building Permit No. 030208 as they may contain third party information.

In the circumstances of this appeal, 10(1)(c) might also apply. Because section 10(1) is a mandatory exemption, I will consider whether section 10(1)(c) applies.

Sections 10(1)(a) and (c) read:

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;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

Section 10(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions [*Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.)]. Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace [Orders PO-1805, PO-2018, PO-2184, MO-1706].

For section 10(1)(a), (b) or (c) to apply, the institution and/or the third party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b) and/or (c) of section 10(1) will occur.

Part 1: type of information

Parties' representations

The Township submits that the records for which section 10(1) has been claimed contain commercial and technical information. The Township states that the records reveal information that is commercial in nature because the building provides the owner, the third party appellant, with a commercial enterprise and future residence currently under construction on the top floor of the building.

The third party appellant also submits that the records at issue contain information that can be defined as technical, commercial and financial information. Dealing first with how the records contain technical information, the third party appellant described how difficult it is to restore a 103 year old building and how difficult it is to find engineers and trades people with working knowledge to such types of restorations. He submits that the release of their information is in violation of client confidentiality and their drawings, sketches, and other documents are considered to be under copyright protection. With respect to commercial information the third party appellant explains that the records would reveal information about the building such as square footage, ceiling heights, window locations, service and storage areas and that from this information it would be possible to determine sales, profits, stock values, potential growth and get an idea of the business' profitability.

Addressing how the records contain financial information the third party appellant submits:

Several documents being requested can be used by applying available demographics and cost accounting methods, pricing practices, overheads etc.

The appellant argues that none of the information in the records at issue qualifies as technical, commercial or financial information within the meaning of section 10(1). She submits:

The registered owner of the property, [third party appellant's named company], is a corporate entity that does not conduct any commercial activity on the Property. No technical commercial, financial or labour relations information has been requested relating to the space leased to the retail hardware store (operated under the corporate entity Harbour Hardware Limited ...) approved for occupancy on the Property and therefore no information could be exploited to jeopardize this commercial or in the manner disadvantage the property owner. Moreover, the indexed records that are the subject of this Appeal do not include any information related to revenue calculations, commercial sales targets, programs or method used by any affected party to generate revenues, affected party's suppliers, customers and/or markets.

Analysis and findings

The types of information listed in section 10(1) have been discussed in previous orders. Commercial and technical information have been defined as follows:

Technical information is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. While it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing [Order PO-2010].

Commercial information is information that relates solely to the buying, selling or exchange or merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises [Order PO-2010]. The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information [P-1621].

Financial information refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs [Order PO-2010].

I will first address those records for which the Township has claimed section 10(1).

Record 15 relating to Building Permit No. 040015 is a hand drawn Floor Layout detailing the floor dimensions of existing building as well as the floor dimensions of the renovations to be made to expand that building. Record 6 relating to Building Permit No. 030208 consists of engineering drawings prepared by a registered engineer, as demonstrated by an official seal that is entitled "Detail at Grid A-6." Record 27 relating to Building Permit No. 030208 consists of a cover letter and 11 attached drawings prepared by a registered engineer, also with official seals.

In my view, the cover letter and the drawings that make up these three records clearly qualify as "technical information" within the meaning of section 10(1). Although Record 15 relating to Building Permit No. 040015 does not give any indication as to who prepared it and does not contain an official engineer's stamp the floor layout precisely defines technical information in that it outlines plans and specifications for the renovations to be made to the subject property. The records relating to Building Permit No. 030208 (Record 6 and 27) are primarily drawings that are all sealed with an official stamp designating the engineer that prepared them as a Registered Professional Engineer in the Province of Ontario and provide detailed and technical descriptions of components of the renovation of the subject property. Page 1 of Record 27 is a cover letter that makes a brief report on findings made during a structural inspection. In my view, this information also qualifies as technical information. Accordingly, I find that the first part of the section 10(1) test has been established for Record 15 relating to Building Permit No. 040015 and Records 6 and 27 relating to Building Permit No. 030208.

I will now address those records for which the third party appellant has claimed section 10(1). As described above, Record 7 relating to Building Permit No. 030299 is a fee payment summary. The record lists an amount already paid to the Township and subtracts fees that are to be paid leaving a fee credit. Record 24 relating to Building Permit No. 030208, which I have also

described above, is entitled "Building and Municipal Services Application Tracking Sheet", and in this record the "comments" section and the monetary amount paid at the time the building permit application was filed (which I found not to be exempt under section 8(2)(a)) remain at issue. Although, in my view, the "comments" section of Record 24 does not contain any information that would qualify as the types of information required by section 10(1), the monetary amounts in both Record 7 and Record 24 contain information that could be considered "financial information" within the meaning of section 10(1). The monetary amounts could arguably be seen as an operating cost as the renovations are part of the cost of doing business for the third party appellant's company. Accordingly, I find that Record 7 relating to Building Permit No. 030299 and Record 24 relating to Building Permit No. 030208 meet the requirements of part 1 of the section 10(1) test.

Finally, I will address those records for which section 10(1) has not be claimed but from my review may contain information that qualifies for mandatory exemption under section 10(1). These records are: Records 4, 5, and 6 relating to Building Permit No. 030299 and Records 1, 17, 19, 21, 22, 25, 26 and 28 relating to Building Permit No. 030208

Records 4 and 5 relating to Building Permit No. 030299 are documents prepared by a roofing and renovation company. Record 4 is a proposal detailing the specifications and estimates for the work required to be done on the third party appellant's building and Record 5 is a more detailed diagram of the material to be used and how it would be applied. In my view, this information is clearly technical in nature, describing the construction of a structure and prepared by a professional in the field. Record 4 also contains some of the unit prices charged by the company for certain aspects of renovations to be completed. I find that this information would qualify as financial information as it details pricing practices. I also find that the information contained in this record qualifies as commercial information as it relates to the buying and selling of services. I therefore find that part 1 of the section 10(1) test has been established for both Records 4 and 5 relating to Building Permit No. 030299.

Record 6 relating to Building Permit No. 030299 is a cover letter from an architecture firm. The letter references Site Instruction No. 1 (which is Record 22 relating to Building Permit No. 030208 to be discussed below) and requests a meeting. In my view, none of the information contained in this record qualifies as technical, commercial, financial, or any of the other types of information required by section 10(1). Accordingly, this record does not meet part 1 of the section 10(1) test.

A number of records relating to Building Permit No. 030208 contain information that qualifies as technical information as it is information that relates to the renovation of the building in question and has been prepared by a professional in the field. Record 1 is a fax detailing a structural inspection of the subject property conducted by an engineering firm. Record 21 is an inspection report prepared by and engineering firm and Record 19 is memorandum that discusses certain aspects of the inspection report of Record 21. Record 22 is a Site Instruction from an architecture firm. I find that these records clearly contain technical information within the meaning of part 1 of the section 10(1) test.

Records 25 and 28 relating to Building Permit No. 030208 are estimates from trades companies for work to be done and Record 26 is an invoice from an engineering firm. All three of these

records contain financial information related to the companies' unit pricing. Additionally, in my view, the information in all three records relate to the buying and selling of services and therefore contain information that qualifies as "commercial". Accordingly, part 1 of the section 10(1) test has been established for Records 25, 26 and 28 relating to Building Permit No. 030208.

Finally, Record 17 relating to Building Permit No. 030208 is a letter from the affected party advising the Township that he has changed structural engineers for the renovations to be made to the subject property. I find that Record 17 does not contain information that qualifies as technical, commercial, financial or any other type of information required by part 1 of the section 10(1) test. Part 1 has therefore not been established for Record 17 relating to Building Permit No. 030208.

In sum I find that the following records contain the type of information contemplated by part 1 of the section 10(1) test:

- *Records relating to Building Permit No. 040015*
Records 15
- *Records relating to Building Permit No. 030299*
Records 4, 5, and 7
- *Records relating to Building Permit No. 030208*
Records 1, 6, 19, 21, 22, 24, 25, 26, 27 and 28

I find that Record 6 relating to Building Permit No. 030299 and Record 17 relating to Building Permit No. 030208 do not contain information that qualifies as the information contemplated by part 1 of the section 10(1) test. As all three parts must be met for section 10(1) to apply and as apart from section 8(2)(a) which I have found not to apply, no other exemptions have been claimed for either of these records, Record 6 relating to Building Permit No. 030299 and Record 17 relating to Building Permit No. 030208 should be disclosed to the appellant.

Part 2: supplied in confidence

With respect to the records that contain or reveal the types of information described in section 10(1) I must consider whether this information was supplied in confidence to the Township, either implicitly or explicitly.

Supplied

The requirement that it be shown that the information was "supplied" to the institution reflects the purpose in section 10(1) of protecting the informational assets of third parties [Order MO-1706].

Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party [Orders PO-2020, PO-2043].

None of the parties comment on the “supplied” component of part 2 of the section 10(1) test in their representations.

I have carefully reviewed the records for which part 1 of the section 10(1) applies (Record 15 relating to Building Permit No. 040015, Records 4, 5, and 7 relating to Building Permit No. 030299 and Records 1, 6, 19, 21, 22, 24, 25, 26, 27 and 28 relating to Building Permit No. 030208).

I will first address those records for which the Township has claimed section 10(1) and those that I have included in analysis as they contain information that might qualify as section 10(1) (Record 15 relating to Building Permit No. 040015, Records 4, and 5 relating to Building Permit No. 030299 and Records 1, 6, 19, 21, 22, 25, 26, 27 and 28 relating to Building Permit No. 030208). Many of these records contain information and technical drawings prepared by registered engineers and other professionals and none of these documents have been prepared by the Township. All of these records have been provided to the Township by the third party appellant as part of information submitted for the purpose of fulfilling the requirements of the Building Permit Application Process as outlined by the *Ontario Building Code*. For these reasons, in my view it is clear that these records have been “supplied” to the Township within the meaning of section 10(1).

Specifically addressing the records for which the third party appellant claims section 10(1), I find that the information contained in Record 7 relating to Building Permit No. 030299, the fee payment summary, and Record 24 relating to Building Permit No. 030208, the “Building and Municipal Services Application Tracking Sheet”, was not supplied to the Township by a third party. Not only were these records generated by the Township itself, but the information contained in those records, the amount of the fee or fees charged by the Township for building permit application fees, are established by the Town and not by the third party appellant who paid the fees. Therefore, I find that the information contained in these records was not supplied to the institution by a third party within the meaning of the “supplied” component of part 2 of the section 10(1) test.

In confidence

In order to satisfy the “in confidence” component of part two, the parties resisting disclosure must establish that the supplier had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis [Order PO-2020].

In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential

- treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure [Order PO-2043]

The Township takes the position that “all persons who apply for a building permit are under the impression that it is implied (implicit) that all documents related to the permit will be kept confidential”. They also submit:

The building permit applications and inspection process is carried out by the municipality to ensure that the applicable sections of the Ontario Building Code are enforced.

Documents related to [the building permit application] process can detail information of a confidential nature such as ingress points, alarm locations and other factors which could be used for improper purposes by other persons. In addition, these records may reference law enforcement actions necessary to obtain compliance with the Ontario Building Code.

As per requirements of the Ontario Building Code and as part of the building permit application process contractors and/or engineers submit documents to the Township through the owner, these documents are supplied to the institution with a reasonable expectation of confidentiality.

Further to the above, the owner had specifically informed me that due to the sensitive nature of the commercial component and related information, he expected that this information would not be released to any other person without his consent.

Accordingly, [the Township] believe[s] that the owner had the explicit expectation of confidentiality related to the records.

The third party appellant submits:

All information to the Township and our various trade services was done so with a very clear understanding of confidentiality. While perhaps this intent was naïve on our part, I would suggest that as a businessman, I had every right to expect the treatment of such information would be handled in a confidential manner. Needless to say, the average Canadian is not an expert when it comes to the understanding of IPC regulations.

The appellant submits that none of the information at issue was supplied in confidence to the Township:

Neither the Institution nor any Affected Party has provided any satisfactory evidence that any information supplied to the Institution was given in confidence. An agent was utilized in obtaining Building Permit No. 040015 and authorization does not contain any reference to confidentiality. The Institution has not provided any specific documentary evidence to support its contention that the "owner" has specifically informed the Clerk of the Institution that "due to the sensitive nature of the commercial component and related information, he expected that his information would not be released to any other person without his consent." Contrary to the Institution's assertion, the Affected Party does not verify his claim but rather indicates confidentiality was simply a naïve assumption with no evidence cited or any specific communication to the institution either verbally or in writing. In any event, there is no prior identification of this purported request in any index of record or in mediation.

I have carefully reviewed Record 15 relating to Building Permit No. 040015 and Records 6 and 27 relating to Building Permit No. 030208 claimed by the Township to be exempt under section 10(1) and Records 4, and 5 relating to Building Permit No. 030299 and Records 1, 19, 21, 22, 25, 26 and 28 relating to Building Permit No. 030208, which on my review appeared as if they might contain information that qualifies under the mandatory third party exemption. I have also carefully considered the representations of the parties and the circumstances of this appeal. I find that there is no evidence that any of this information was supplied "in confidence".

I acknowledge that the third party appellant has expressed that it was his presumption that such information would have been kept confidential and appreciate that the third party appellant may not have understood or even known that the *Act* might apply and that the records he submitted in support of his building permit application would be subject to the *Act*. However, there is no evidence before me that indicates that he expressed any particular concern to the Township about the disclosure of this information when he provided it to them or at any time prior to being notified of the request. He made no efforts to confirm that his presumption that the information would be kept confidential was correct nor did he identify any of the documents that he prepared or submitted as such. The Township submits all persons who apply for a building permit are under the implicit assumption all documents related to the permit will be kept confidential". If this is the case, the Township would be advised to ensure that individuals who submit information in support of a building permit application are informed that the *Act* applies and the information submitted may be subject to disclosure. Moreover, none of the affected parties to whom this information relates have provided submissions to support the view that they expected that this information was to be treated confidentially. In sum, as there is no explicit statement in any of the records to indicate that these records were provided in confidence and as, in my view, no objective basis for an implicit expectation of confidentiality has been established, I find that none of these records were either explicitly or implicitly supplied "in confidence" within the meaning of that requirement of part 2 of the section 10(1) test.

With respect to the records for which the third party appellant claims section 10(1), even if I had found the information in Record 7 relating to Building Permit No. 030299 and Record 24 relating to Building Permit No. 030208 to have been supplied, I am not satisfied that this information was been supplied "in confidence" by a third party. The fee information reveals fees

paid to the Township as a result of building permit application. These fees are set by law or by the Township and therefore can not be said to be information that has been “supplied in confidence” to the Township. Accordingly, Record 7 relating to Building Permit No. 030299 and Record 24 relating to Building Permit No. 030208 have not met part 2 of the section 10(1) test.

All three parts of the test must be met in order for the section 10(1) exemption to apply. None of the records remaining at issue meet part 2, and this is a sufficient basis for me to conclude that they are not exempt under section 10(1). Nevertheless, for the sake of completeness I will assess whether the harms component of part 3 of the test can be established for these records.

Part 3: harms

To discharge their burden of proof under Part 3, the Township and/or the affected party must demonstrate that disclosure “could reasonably be expected to” lead to one of the harms in section 10(1). They must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm.” Evidence amounting to speculation of possible harm is not enough to satisfy this part of the test (*Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)).

A party’s failure to provide detailed and convincing evidence of a section 10(1) harm will not necessarily defeat its exemption claim where this office can infer such harm from other circumstances. Only in exceptional cases, however, would this office make such an inference based on materials other than the records at issue and the evidence provided by a party in discharging its onus (Order PO-2020).

Representations of the parties

The Township submits generally that disclosure would result in a harm to the third party appellant under section 10(1)(a):

As referenced earlier, the owner had expressed concern to [the Township] that release of the information could jeopardize his commercial enterprise and the security of his future residence.

Further, based on the owner’s concerns related to the above, I am of the opinion that due to the sensitive nature of the plans and related building information, release could interfere significantly with the contractual or other negotiations relating to the operation of his business.

Although the third party appellant makes no specific representations on the harms listed in section 10(1) as he “found it impossible to slot such information in the various categories allowed under the *Act*”, a number of comments made in his representations address possible harms that could occur were the information at issue disclosed. He submits the following points:

- That the building in question will house his personal residence and the release of information certainly exposes entrance and general security information.

- That as the appellant (the person who requested the information) is unknown to him, disclosure could result in any one of a number of harms because the appellant could be a competitor, a financial group, a robber or the mafia or perhaps a secret terrorist cell.
- The information related to or prepared by engineers and designers hired for the restoration and renovations would be a tremendous value to another individual in his position or other trades people in the field would acquire an unfair advantage.
- That release of the information could be used by an individual to try to gain unwarranted access to the building or cause harm to his family.
- That the release of the drawings and sketches prepared by the various designers and engineers would be in violation of confidentiality and additionally, that such records are considered to be copy written.
- That disclosure of the information would permit competitors to determine sales, profits, stock values, potential growth, employee requirements and get a fairly good handle on profitability and whether a competing business would be worthwhile. This would damage the third party appellant's competitiveness as it is the only hardware/general store in a growing community.
- Were documents that indicate the various stages of construction disclosed and made accessible to competitors, it would threaten his company's competitive position.
- Disclosing financial information would severely impact any negotiations they might have regarding matters including deflecting competition, arranging financing, or dealing with new ventures.
- That the business is currently in negotiations with two groups with regard to heritage restrictions and an actual decommissioning of heritage on the property and release of the information could affect the outcome of those negotiations.

The third party appellant states that he considers "the release of such documents a total violation of [his] business interest and privacy".

The appellant responds:

There is no submission by either the Institution or the Affected Party that provides "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.)].

...

Finally, there is no evidence of a sensitive nature to the Records requested other than to render a building of historic an architectural value secure for occupancy as a retail hardware store and personal residence. The residential component of the project appears to have been abandoned in any event and none of the indexed documents that are the subject matter of this Appeal relate in any way to the security of a future residence [having been specifically deleted by the Requester]. No information requested is related to any contractual or other negotiations relating to the operation of any commercial activity operated from the premises.

The section 10(1)(a) exemption claim does not apply in view of the information outlined in the Notice of Inquiry and the representations submitted by the parties. In any event, the 3-part test has not been met.

Analysis and findings

I am not convinced that disclosure of the information in the records remaining at issue could reasonably be expected to prejudice significantly the competitive position or interfere significantly with contractual or other negotiations of any of the affected parties, including the third party appellant, as contemplated by section 10(1)(a), result in any undue loss or gain for those individuals as contemplated in section 10(1)(c), or lead to any of the other harms listed in section 10(1). I find that the Township, the third party appellant and the affected parties have failed to provide the level of detailed and convincing evidence necessary to establish a reasonable expectation that any of the harms could occur were the information disclosed.

The third party appellant argues that disclosure of the records would have a detrimental impact on himself and his company particularly in relation to negotiations that he might be required to enter into with respect to financing or heritage designations (section 10(1)(a)) and would provide his competitors with information that would result in an undue loss for himself and his company (section 10(1)(c)). Having carefully reviewed the records, without a more detailed explanation as to how disclosure could result in such harms, I am not convinced that they could be reasonably expected to occur.

The third party appellant also argues that disclosure of the information prepared by the other affected parties (the engineers and other trades people) could reasonably be expected to prejudice the competitive position or interfere significantly with the contractual negotiations of those other individuals (section 10(1)(a)) and could result in undue loss to them as their competitors would obtain an unfair advantage (section 10(1)(c)). Additionally, he argues that disclosure of the drawings would be a violation of copyright. The engineers and trades people whose information is at issue in this appeal were notified and given the opportunity to provide submissions on the disclosure of the information that related to them. Two engineers and one architect consented to the release of their information, one of them consenting specifically to disclosure of drawings that he created. The other engineers and trades people chose not to respond to the Notice of Inquiry and therefore offer no arguments to support the appellant's position. In my view, the engineers and trades people themselves are in the best position to provide evidence of harm under section 10(1)(a) and (c) resulting from the disclosure of their information and the fact that

they did not comment on such disclosure, or in some circumstances actually agreed to disclose the very information the third party appellant states should be protected, favours the appellant's position that the expectation of harm is not adequately supported.

In addition to his submissions that relate more closely to the harms listed in sections 10(1)(a) and (c), the third party appellant also takes the position that disclosure of the information could jeopardize the security of his future residence. The Township supports this assertion. Although this type of harm does not obviously fall within the harms listed in section 10(1) (arguably, section 10(1)(c) might apply), having carefully reviewed all of records, in my view, no reasonable expectation of such harm is established. The only document that could conceivably compromise the security of his commercial enterprise and private residence would be Record 6 relating to Building Permit No. 040015, the floor layout. However, given the lack of detail on this specific floor layout, in my view, disclosure cannot reasonably be expected to result in such harm. While the floor layout reveals the dimensions of the original building as well as the projected outside dimensions of the building following the renovations, it is extremely general in nature, showing only the ground floor and does not identify information that might appear on a floor plan such as interior room dimensions, entrance ways, or alarm locations. Therefore, I find that the argument put forward by the third party appellant and the Township that the third party appellant's security could be placed in jeopardy if the records were disclosed is speculative at best and not adequately supported by evidence.

In summary, I find that the evidence provided in support of the harms that could reasonably be expected to occur were the records disclosed is neither detailed nor convincing and does not meet the evidentiary standard established by the Court of Appeal for part 3 of the section 10(1) test.

Accordingly, since neither part 2 nor part 3 of the test is established, I find that none of the records qualify for exemption under section 10(1) and should be disclosed to the appellant.

REASONABLE SEARCH

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act* [Orders P-85, P-221, PO-1924-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

A number of previous orders have identified the requirements in reasonable search appeal [Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920]. Generally, a reasonable search is one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request [Order M-909]. The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Orders P-624, M-909, PO-1744].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

Representations

In the course of this appeal, the appellant has maintained that additional records responsive to the request exist. In particular the appellant takes the position that the Township has not conducted a reasonable search for property tax records and that additional records related to the building permit files, specifically an additional record dated March 12, 2004 should exist.

The Township provided representations in support of its position that the searches conducted for responsive records were reasonable. The Township submitted that the scope of the search was discussed with the requester during mediation. The Acting Deputy Clerk/Freedom of Information Coordinator (FOIC) described the search conducted in his representations and submitted an affidavit to support his representations. In his affidavit, he attests to the fact that he arranged and oversaw the search process which involved himself, his secretary and the Deputy Clerk. He attests to the fact that the search involved locating the responsive building permit files as well as reviewing the contents of building permit files in front of and behind the subject files to ensure that no misfiling of relevant documentation had occurred. He also attests to the fact that the related property file as well as three property files on either side of the subject property file were also searched to determine if any building permit file documents had been inadvertently filed in that system. In his representations, the FOIC advised that his secretary also conducted an electronic search in the Township's records management software system. The FOIC also addressed the possibility that records existed but no longer exist and advised that the Township's Records Management by-law provides for a retention period of 2 years on site with an additional 5 years off site commencing on the date on which an active building permit is closed.

The appellant submits that she is not satisfied that the Township has conducted a reasonable search for property tax records and that at the least, an additional record relating to the building permit files should exist. As outlined in the "Nature of the Appeal", above, the appellant advised during mediation that it was her intention that her request for property tax records encompass historical property tax information concerning the tax bills rendered. From her review of the Index of Records entitled "Tax Sale", which details the responsive tax related records, it is her position that the Township failed to address this part of her request. The appellant also advised in mediation that she would expect an inspection report or similar document dated March 12, 2004 would have been located. In her representations, the appellant submits that the Township has not provided sufficient evidence that it has made a reasonable effort to identify and locate responsive records and makes a number of points about the search and the records she believes must exist. She makes the following statements in her representations:

- The Institution does not mention any search for records related to records retained by the Institution relating to property taxes. As this aspect of the request was ignored in its entirety in the Institution's reply, the Appellant concludes that NO search was conducted for tax records and the Institution continues to ignore this vital component of the Appellant's request.

- The Institution states, in its affidavit, that the “exhaustive” search included related building permit files and a few files (3 only) before and after its “related building permit files” and “subject property file”. The affidavit conclusively confirms that the heritage preservation file relating to the Property was not searched, although it is apparent that, of necessity there is a correlation between the building and heritage preservation files [as further confirmed by the reply of the Affected Party]. The author of the identified March 12, 2004 correspondence was not contacted. No other Institution Staff were contacted who may have had knowledge of responsive records to ascertain whether or not any inspections were conducted prior to arriving at the conclusion set forth in the March 12, 2004 correspondence (i.e. the Chief Building Official, building inspectors, etc.). The Institution neither admits nor denies that an inspection report or similar document exists to verify the conclusion set forth in the March 12, 2004 correspondence identified.
- The Institution’s affidavit does not adequately respond to the Adjudicator’s criterion detailed on pages 6 and 7 of the Notice of Inquiry dated August 2nd, 2005. The “exhaustive” search was restricted to a Secretary and Deputy Clerk checking “related” building permit files and some undefined “subject property” file. The property is a familiar historic building subject to an agreement with the Institution pursuant to the heritage designation fee.

In her representations, the appellant also identifies the Township’s records retention by-law and lists the retention period for different types of documents including those requested.

Additionally, the appellant attaches to her representations copies of email transmissions to and from the appellant to the Institution not identified as responsive records, although within the dates specified and containing subject matter directly related to the building file.

Findings

I will deal first with the property tax records requested by the appellant in part two of her request. In responding to the request, the Township has clearly conducted some sort of search for tax related records for the specific property. The Township has identified 11 documents that deal with property taxes and has identified them in an index as records related to “Tax Sale”. All but one of those documents have been disclosed to the appellant. However, during mediation, the appellant advised that this information does not fully address her request for records relating to property taxes from 1996 through to 2003 and that it is her belief that additional records exist. The Township, in its representations, does not mention any search for records related to property taxes, either those listed in the index entitled “Tax Sale” or otherwise, nor does the Township explain why the “Tax Sale” records fully respond to part two of the appellant’s request which appears to be greater in scope. Additionally, none of the records located predate 2001. As noted above, for me to find that a reasonable search has been conducted I must find that an experienced employee expending reasonable effort has conducted a search to identify any records that are reasonably related to the request. Without any representations specifically detailing a search for property tax records as detailed in part two of the appellant’s request, I have not been provided

with sufficient evidence to show that the Township has made a reasonable effort to search and locate property tax records as requested by the appellant. Accordingly, I will order the Township to conduct a new search for all property tax records for the subject property between the years 1996 through 2003.

Addressing the Township's search for records responsive to part one of the request, and specifically the appellant's position that an additional record dated March 12, 2004 should exist, as noted above, the *Act* does not require the institution to prove with absolute certainty that further records do not exist but the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. In my view, the Township, by its representations and the affidavit submitted by its FOIC, has provided me with sufficient evidence to conclude that an experienced employee expended a reasonable effort to search for and identify any records that are reasonably related to the request. In the circumstances, I am satisfied that the search conducted by the Township for records relating to part one of the appellant's request, was reasonable.

In response to the appellant's comments that the heritage preservation file relating to the property was not been searched, a review of the request reveals that such a search would fall outside its scope. Part one of the appellant's request specifically referred to the "building permit file". While there may be a correlation between the building and heritage preservation files, in my view, a reasonable reading of the request would not necessarily include information contained in a heritage preservation file. Should the appellant wish to obtain access to information related to the heritage preservation file she would be advised to submit a new access to information request to the Township.

CONCLUSION:

In summary, I have found that Record 7 relating to Building Permit No. 030299 and the portions of Record 24 relating to Building Permit No. 030208 do not contain the personal information of the third party appellant and therefore that the invasion of privacy exemption at section 14(1) of the *Act* does not apply.

I have found that that the law enforcement exemption at section 8(2)(a) of the *Act* does not apply to Records 2, 3, 4, 5, 6, 8, 10, 11, 17, and 19 relating to Building Permit No. 040015, Record 3, 4, 5, and 6 relating to Building Permit No. 030299, and Records 1, 2, 3, 4, 7, 13, 15, 16, 17, 19, 20, 21, 22, 24, 25, 26, and 28 relating to Building Permit No. 030208.

I have found that Record 15 relating to Building Permit No. 040015, Records 4, 5, 6, and 7 relating to Building Permit No. 030299 and Records 1, 6, 17, 19, 21, 22, 24, 25, 26, 27 and 28 relating to Building Permit No. 030208 are not exempt under the third party exemption at section 10(1) of the *Act*.

Finally, I have found that the Township has conducted a reasonable search for part one of the appellant's request, as outlined in the request letter, but has not conducted a reasonable search for records responsive to part two of the appellant's request.

ORDER:

1. I order the Township to disclose to the appellant Record 3 relating to Building Permit No. 030299 and Records 13, 14 and 18 relating to Building Permit No. 030208 as the affected parties to whom these records relate have consented to their disclosure. These records should be disclosed to the appellant immediately.
2. I order the Township to disclose all of the other records at issue in this appeal to the appellant by **June 1, 2006** but not before **May 29, 2006**.
3. I order the Township to conduct a further search for records responsive to part two of the appellant's request, as outlined in the request letter and to provide the appellant with a decision in accordance with the provisions of the *Act*, treating the date of this order as the date of the request, without recourse to a time extension. I further order the Township to provide me with a copy of its decision when it sends the decision to the appellant.
4. I find that the search undertaken by the Township for records responsive to part one of the appellant's request was reasonable and I dismiss that part of the appeal.
5. In order to verify compliance with this order, I reserve the right to require the Township to provide me with a copy of the records disclosed to the appellant pursuant to Provisions 1 and 2.

Original Signed By _____
Catherine Corban
Adjudicator

_____ April 27, 2006