



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2262

Appeals MA-050354-2 and MA-060070-1

City of Ottawa



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NATURE OF THE APPEAL:

The City of Ottawa (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from a representative for a named organization for the following information:

All information at the City of Ottawa (especially in the possession of/under the control of the list of people below) regarding and relating to the [named organization's] Millennium Garden Project: including external and internal correspondence from/to [the Mayor]; [Named Councillor]; Legal department; Finance department; Planning department; Development Services department; and any parties relating to the Millennium Garden Project (including [three named individuals] and others). The information may be stored or kept in the form of email, fax, scrap books, note and phone messages, in filing cabinets or desk drawers or personal files.

The requester then listed the people that were either referred to in the above paragraph or that she wanted included in the search for responsive records.

Appeal number MA-050354-1

The City advised the requester that, after a preliminary review of the request, it was determined that a large number of records would likely be responsive. As a result, the City issued a fee estimate decision pursuant to section 45 of the *Act*. The City requested a 50% deposit of the fee estimate in order to begin processing this request. The requester provided the deposit to the City.

The City subsequently provided the requester with written notice that, due to the estimated large number of responsive records, the time for responding to her request would be extended. The requester appealed the time extension decision of the City to this office. That issue was addressed in appeal number MA-050354-1. That appeal was resolved when the City agreed to provide the requester with an opportunity to view a portion of the records to which she was being granted access, prior to the date of release, if she would attend at the City and view the records.

The requester subsequently met with the City's Freedom of Information Analyst and agreed to narrow the scope of her request to the following information:

Copies of all records relating to the [named organization's] Millennium Garden Project. The most recent version of the donor list and all donor information from mid-May 2005 onwards for the following donors:

[The requester identified nine donors, seven of which appear to be individuals, and two of which appear to be companies or organizations]

The City issued three separate decision letters.

In its first decision letter, the City granted partial access to the requested records. Access to the remaining records was denied pursuant to section 12 (solicitor-client privilege) and section 14(1) (personal privacy) in conjunction with the presumption at section 14(3)(f) (financial information)

of the *Act*. The requester was advised that, pursuant to section 45(1) of the *Act*, the City would charge a fee of \$17.00 for photocopying the records. In addition, the requester was advised that, pursuant to section 21 of the *Act*, the City would be notifying third parties to determine whether they objected to the release of records in which their interests might be affected.

In its second decision letter, the City advised the requester that she was being granted partial access to an additional package of records. Access to the records in this package was denied pursuant to sections 11(c) and (d) (economic and other interests), and section 14(1) in conjunction with the presumption at section 14(3)(f) of the *Act*.

In the City's third decision letter, the requester was advised that, pursuant to the notification of the third parties regarding some of the records at issue, a decision was made to grant her partial access to the remaining records. Access to the non-disclosed portions was denied pursuant to sections 10(1)(a), (b), and (c) (third party information), sections 11(c) and (d) and section 14(1) in conjunction with the presumption at section 14(3)(f) of the *Act*.

The requester appealed all of the City's decisions to this office and appeal number MA-050354-2 was opened.

During mediation of appeal number MA-050354-2, the requester advised that she is no longer seeking access to any of the information for which section 12 is being claimed.

Also during mediation, the City provided the mediator with an index of records identifying the records at issue and the exemptions claimed. The mediator advised the requester that, pursuant to the index of records, the City denies access to portions of the records on the basis that they are not responsive to her request. The requester advised that she would like the adjudicator to determine whether the information identified by the City as non-responsive, is indeed non-responsive to her request. Responsiveness was added as an issue in this appeal.

As no further mediation was possible, appeal number MA-050354-2 was transferred to the adjudication stage of the appeal process.

Appeal MA-060070-1

The City notified a third party, whose interests might be affected by the disclosure of information related to the original request, and provided him with two packages of responsive records to review. The third party objected to the release of information relating to him and his company on the basis that section 10(1) of the *Act* applied. In addition, the third party raised concerns about an invasion of personal privacy, in the event that some of the information at issue is disclosed to the requester.

After considering the third party's representations, the City issued a decision advising that the records contained in one package [Tab 3 for the purposes of this Order] would be withheld pursuant to sections 10(1)(a), (b), and (c) of the *Act*. With respect to the records in the other

package [Tab 10 for the purposes of this Order], the City advised the third party that his representations did not meet the three-part test of section 10(1) and, therefore, that the exemption at section 10(1) did not apply. The City did, however, accept that some of the information in Tab 10 qualifies as personal information and should be withheld under section 14(1) in conjunction with the presumption at section 14(3)(f) of the *Act*. The City advised the third party that it intended to disclose the information at issue to the requester, with the exception of portions of the information in Tab 10 that would be withheld pursuant to the personal privacy exemption. The City explained that the disclosure of this information to the requester was subject to the third party's right of appeal.

The third party appealed the decision of the City to release the records contained in Tab 10.

During the mediation of appeal number MA-060070-1, the third party clarified that while his appeal relates to the application of section 10(1) of the *Act*, he is not raising the application of section 10(1)(b) and (d) of the *Act*. In addition, the third party raised privacy related concerns about the disclosure of the information. As a result, the application of section 14(1) of the *Act* has been added as an issue in this third party appeal.

Further mediation of appeal number MA-060070-1 was not possible and the file was transferred to adjudication.

Inquiry into appeal numbers MA-050354-1 and MA-060070-1

As both appeal number MA-050354-1 and appeal number MA-060070-1 deal with the same records, I decided to address them together in one inquiry.

I began my inquiry by sending a Notice of Inquiry to the City initially, seeking representations on all of the issues on appeal, specifically, third party information, personal information, personal privacy, government information and non-responsive information. I also asked the City to address the third party's position that the information in Tab 10 included third party information and personal information. The City provided representations in return. In its representations, the City advised that it was no longer relying on section 10(1)(b) but that it continued to rely on section 10(1)(a) and (c) as well as the other exemptions. Section 10(1)(b) was therefore removed from the scope of the appeal.

I also sent a copy of the Notice of Inquiry to the third party seeking representations specifically on the application of the third party and personal privacy exemptions. The third party responded with representations.

Finally, I sent a copy of the Notice of Inquiry to five other parties (the affected parties) who might be affected by the outcome of the appeals, inviting them to submit representations on the application of the personal privacy exemptions. None of the five affected parties responded to the Notice of Inquiry.

I then sent a copy of the Notice of Inquiry to the requester seeking representations on all of the issues on appeal. With the copy of this Notice sent to the requester I enclosed copies of the City's non-confidential representations and the representations submitted by the third party. The requester submitted representations. The requester also asked that I consider other information that she had provided to me prior to my request for representations. I will consider this other information as part of the requester's representations.

At that time, I also sent a copy of the third party's representations to the City, inviting the City to respond to the issues on appeal in the third party appeal. As the City had already addressed the third party appeal in its initial representations, it chose not to submit any further representations on that issue.

In her representations, the requester raised a jurisdictional issue to which I believed the City should be given an opportunity to reply. Accordingly, I sent a copy of the requester's representations (including those provided prior to sending the Notice of Inquiry) to the City seeking representations in reply. The City provided reply representations.

The City's reply representations, in turn, provided submissions on the jurisdictional issue to which I felt the requester should be given an opportunity to respond. As a result, I sent a copy of the City's reply representations, in their entirety, to the requester. The requester provided sur-reply representations in response.

RECORDS:

The records have been grouped together under numbered "tabs" and described in an index of records issued by the City. The records that remain at issue are described in the following table:

Appeal MA-050354-2

| Record # | Description | Withheld in Full or in Part | Number of Pages | Exemptions Applied and pages at issue |
|-----------------|--|------------------------------------|---------------------------|--|
| TAB 3 | Third party business information [named company] | In full | 55 pages and 5 site plans | s.10(1) (all pages) |
| TAB 4 | Third party personal information [third party] | In full | 27 pages | s.14(1) & s.14(3)(f) (all pages) s.11(c) & s.11(d) (pages 1-3, 5, 6, 22 and 25) |

| Record # | Description | Withheld in Full or in Part | Number of Pages | Exemptions Applied and pages at issue |
|-----------------|---|---|------------------------|---|
| TAB 5 | Third party personal information [five named individuals] | In full | 24 pages | s. 14(1) & s.14(3)(f) (all pages) s.11(c) & s. 11(d) (pages 1, 4, 9, and 17) |
| TAB 6 | Emails, notes, correspondence, receipts | In part | 11 pages | s. 14(1) & s.14(3)(f) (pages 1-3, 5-7, 9, 10) s.17 (responsiveness) (page 8) |
| TAB 7 | Emails, notes, correspondence, receipts | In part | 5 pages | s.14(1) & s. 14(3)(f) (pages 1, 2, 5) s.17 (responsive) (page 3) |
| TAB 8 | Emails, notes, correspondence, receipts | In part | 31 pages | s.14(1)& s. 14(3)(f) (pages 2-7, 10, 14, 26, 27) |
| TAB 9 | Emails, notes, correspondence, receipts | In part | 35 pages | s.14(1) & s. 14(3)(f) (pages 2, 12, 18-20, 31,35) s.17 (responsive) (page 31) |
| TAB 10 | Emails, correspondence, reports, minutes and receipts | In part [note this record has been withheld in full based on third party appeal. City claims only part is exempt under s.14(1)] | 149 pages | s.14(1) & 14(3)(f) (pages 1, 7, 12, 14, 16, 19, 20, 23, 26, 29-31, 36-41, 45, 50, 51, 53, 54, 61-69, 72, 75, 78, 89, 90, 103, 108, 109, 136, 138, 139, 142) |

| Record # | Description | Withheld in Full or in Part | Number of Pages | Exemptions Applied and pages at issue |
|----------|---|-----------------------------|-----------------|--|
| TAB 11 | Invoices, bank statement information and a Refund Tracking Report | In part | 18 pages | s.14(1) & s.14(3)(f) (pages 5-18) s. 11(c) & s.11(d) (pages 1, 3) s.17 (responsive) (pages 5, 6) |

Appeal MA-060070-1

| Record # | Description | Withheld in Full or in Part | Number of Pages | Exemptions Applied and pages at issue |
|----------|---|---|-----------------|---|
| TAB 10 | Emails, correspondence, reports, minutes and receipts | In full [based on third party appeal. Note: City only claims this should be withheld in part under section 14(1). See above.] | 149 | s.10(1) claimed by third party, all pages |

DISCUSSION:

PRELIMINARY JURISDICTIONAL ISSUE

In her representations, the requester submits that her request for information is not subject to the *Act* because the organization is part of the City. She submits that the organization she represents is part of the City because all of its board members are appointed by City Council [section 2(3) of the *Act*]. The requester takes the position that because her organization is part of the City, the records to which she seeks access should be available outside of the scope of the *Act*. She argues that the exchange of this information between the City and her organization is an internal issue and not an issue under the *Act*.

A determination by this office of whether an organization is part of a municipality under section 2(3), or whether an organization is, in and of itself, an institution, is relevant when a request for information is being made *to* that organization. In such a case, the determination is necessary to establish whether the organization is governed by the *Act* and, if so, whether it is granting access to information in its custody or control in accordance with the legislative provisions.

In this appeal, the request was submitted *by* an organization for information held by the City, an institution governed by the *Act*. Whether or not the requester's organization is entitled to access to that information through channels other than those established by access to information legislation is an issue that falls outside of my jurisdiction. I agree with the requester that it is an internal issue that exists between her organization and the City. Accordingly, I will not address this issue further in this appeal.

SCOPE OF REQUEST/RESPONSIVENESS OF THE RECORDS

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

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and...
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

It is a well-settled principle that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Ambiguity in the request should be resolved in the requester's favour [Orders P-134, P-880]. Furthermore, previous orders of this office have established that to be considered responsive to the request, records must "reasonably relate" to the request [Order P-880].

The City has identified the specific portions of the records that it has severed on the basis that they are non-responsive to the request. In its representations it describes them as follows:

1. Tab 6, p. 8: The notation at the bottom right hand corner of this page was removed as it referred to a phone number. City staff has not been able to determine internally who the number refers to, and a reverse search of the phone number has been inconclusive in that respect. The number has therefore been determined to be unresponsive to the request.

2. Tab 7, p. 3: The excluded portion of this record (top of page) relates to discussion between City staff persons on the processing of the requester's MFIPPA [*Municipal Freedom of Information and Protection of Privacy Act*] request. It does not relate to the subject matter of her request, and was created after the date of her original request. It is therefore non-responsive to her request for those two reasons.
3. Tab 9, p. 31: The excluded portion of this record relates to discussion among City staff members concerning a subject matter outside the scope of the request, namely the levies for property owners in Business Improvement Area generally. It does not relate to the subject matter of the request.
4. Tab 11, p. 5 and 6: The information on this daily cheque run that pertains to individual or corporate donors not specifically requested by the requester has been removed as non-responsive as it does not relate to the request. Note that the City takes the position that pages 7 to 18 of Tab 11 answer/respond to the portion of the request for "The most recent version of the donor list and all donor information from mid-May 2005 onward for the following donors ..." and have been severed for the reasons described in Issue E [personal privacy] above.

Additionally, in its representations on section 14(1), the City makes the following submission that is relevant to the issue of the non-responsiveness of pages 5 and 6 of Tab 11:

Note that it is the City's position that the information on this daily cheque run relating to the remaining donors (i.e. those not specifically named by the requester) has been severed for two reasons:

- (1) it is not responsive to the request since it pertains to donors not identified by the requester.

As noted above, in mediation the requester advised that she wished to have the severances identified by the City as non-responsive reviewed to confirm whether they are indeed non-responsive to the request. However, in her representations, she did not make any specific submissions on responsiveness.

Having reviewed the requester's narrowed request, set out above, I am satisfied that some of the information that has been severed by the City as non-responsive is responsive to the requester's request, while some is not.

Page 8 of Tab 6 is a brief handwritten document with scribbles and notations. The City has severed a phone number at the bottom of the page that appears to be unconnected to any of the

information written on the page. I accept the City's position that this phone number is not responsive to the request and I will uphold its decision to sever this information.

As for the severed portions of page 3 of Tab 7, and page 31 of Tab 9, I find that this information is also not responsive to the request. As described by the City the severed portions under both tabs relate to email interchanges between City staff concerning matters that do not fall within the scope of the request.

Pages 5 and 6 of Tab 11 make up a daily cheque run that lists the cheques issued on a specific date to individual or corporate donors receiving a refund. The list includes the names of each refund recipient and the amount refunded. The City has severed the names of all of the recipients. Most of the names have been severed as non-responsive, while the names of the individuals specifically identified in the request have been severed under section 14(1), the personal privacy exemption. The City takes the position that the names have been severed as non-responsive because they are the names of donors not specifically identified by the requester. I disagree with the City's position. Applying a liberal interpretation of the request, I find that this information falls squarely within the scope of the request as a record reasonably "relating to the [named organization's] Millennium Garden Project" as stipulated in the request. Accordingly, I find that the information on pages 5 and 6 of Tab 11 that has been withheld as non-responsive is responsive to the request.

As many of the names on the daily cheque run relate to individuals and might therefore qualify as their personal information, I will determine below whether they are exempt from disclosure under the mandatory personal privacy exemption at section 14(1) below. However, I will order the City to disclose the names of all businesses and corporations listed in the daily cheque run at pages 5 and 6 of Tab 11.

THIRD PARTY INFORMATION

The City submits that the records in Tab 3 contain the proprietary business information of the third party's company and are exempt from disclosure pursuant to section 10(1) of the *Act*. The third party agrees that this information should be exempt under section 10(1). However, the requester would like this issue to be examined.

Additionally, the third party claims that all of the records in Tab 10 consist of the proprietary business information of his company and therefore, qualify for exemption under section 10(1) of the *Act*. The City takes the position that section 10(1) does not apply and that Tab 10 should be disclosed with the exception of portions that should be withheld under section 14(1).

Therefore, I must determine whether the information in Tab 3 and Tab 10 is exempt from disclosure as a result of the application of the mandatory exemption at section 10(1) of the *Act*.

Section 10(1): the exemption

The relevant portions of section 10(1) state:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

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) 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), (c) and/or (d) of section 10(1) will occur.

Part 1: type of information

The types of information listed in section 10(1) have been discussed in prior orders. Those that are potentially relevant in these appeals are:

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 of 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 adopt these definitions for the purposes of these appeals.

The City submits that the information contained in Tab 3 consists of records submitted to the City by the third party and that they qualify as technical information as they “were created by [the third party], are of a sophisticated technical nature, and reflect his design and artistic expertise.” It also submits that the records in Tab 3 contain the financial information of the third party. The City goes on to identify the different types of records in Tab 3 as follows:

- scale drawings and sketches of the proposed project,
- specifications of design elements and construction materials for the proposed project,
- a document that outlines the designers conceptual design for the project and which includes drawings and sketches to scale,
- an estimated budget,
- invoices for services relating to the preparation of the site plans and drawings,
- lists of the third party’s company’s pricing for professional services, and
- five large site plans.

The City submits that the records contained in Tab 10 consist of:

- correspondence to the City by the Millennium Garden Fundraising Steering Committee (the Committee) regarding the receipt of donations and the processing of the refunds or other options for the donors,

- correspondence to the City by the committee regarding its aims, suggestions for processes to be used for the project, suggestions for City involvement for the project, and details of fundraising events,
- reports of meetings of the Committee;
- a newsletter of the Committee (p.25),
- communications in the nature of public information announcements (p. 26, 60),
- a petition in support of the project (p. 5),
- information regarding the application for a receipt of a City Signs Permit (p. 47, 48, 49, 59), and
- fax or other transmittal cover sheets.

The City submits that the information in Tab 10 that relates to the funds raised by the Committee contains the Committee's financial information in accordance with the definition of that term. However, the City states that the remaining information does not fall within the types of information listed in section 10(1) and therefore does not meet the first part of the test.

The third party submits that the exemption at section 10(1) applies to all of the records, in both Tab 3 and Tab 10. He states that all design drawings have either a title block or logo, or a stamp of his signature indicating they were created by him in the name of his company, and that all business correspondence and invoices are on company letterhead. The third party submits that this is convincing evidence to prove that they are the property of his company.

I have reviewed all of the records in both Tab 3 and Tab 10 and find that while Tab 3 contains information that qualifies as either technical or financial information, the majority of the records in Tab 10 do not contain information that falls within part 1 of the section 10(1) test.

As described by the City, Tab 3 contains drawings and sketches of the proposed Millennium Garden Design Project (the Project), including design elements and construction material specifications. These drawings range from artists' renditions and sketches to detailed site plans. Within these drawings and sketches are also written documents that describe the design elements and the technical specifications of the Project. Tab 3 also contains budget estimations put forward by the designer (the third party) broken down into estimated costs of specific design elements, as well as invoices prepared by the third party's company for professional services rendered with respect to the drawings and sketches prepared for the Project. Finally, Tab 3 contains a record prepared by the third party's company that lists the professional fees that it will be charging on the work that it does on the Project, including the third party's work, the graphic designer's work, the consulting fees, and the work done by structural engineers.

In my view, the drawings and sketches, as well as the written descriptions of the design specifications, including site plans, clearly qualify as technical information, as they consist of information that belongs to an organized field of knowledge, primarily, architecture and design, and to some extent, the field of structural engineering. As for the remaining information, in my view, the budget estimations, the invoices and the third party's professional fees, qualify as

financial information, as they reveal the third party's cost accounting methods, pricing practices and other types of information relating to money. Accordingly, I find that the information in the records in Tab 3 qualifies as either technical information or financial information within the meaning of those terms in part 1 of the test in section 10(1).

I find that a small amount of information contained in Tab 10 qualifies as commercial and financial information. There are three locations in the records found under Tab 10 where the total monetary amount raised by the Committee is listed (pages 2, 3, and 51). There is one location where the Committee identifies its target estimated funding for the project (page 25) and another where it describes amounts that particular fundraising events will likely net (page 85). In my view, this information qualifies as the Committee's commercial and financial information. Additionally, Tab 10 contains a number of photocopied invoices and receipts submitted to the City for reimbursement for expenses incurred by the Committee in relation to fundraising events for the Project (pages 94 to 148). Many of the receipts and invoices are listed on itemized lists prepared by the City. I find that the invoices, receipts and itemized lists qualify as the Committee's financial information. Accordingly, this information also meets part 1 of the test under section 10(1).

As for the remaining portions of Tab 10, I do not find that they contain the type of information that meets part 1 of the test under section 10(1). As described by the City, Tab 10 primarily contains correspondence, in various forms, that relates to the progress of the Project. There are a number of email chains involving exchanges between City employees and City employees and other individuals involved, in some way, with the Project. Many are communications between the City and one of the co-chairs of the Committee. Tab 10 also contains letters addressed to the City that were written by the third party on his company letterhead as well as letters written by him on Committee letterhead, identifying his position.

I find that none of the information qualifies as technical, commercial or financial information. The correspondence and other documents contain general updates and comments on the progress of the Project and how things are being run. They also include details on fundraising events. In my view, they do not contain information that belongs to an organized field of knowledge that relates to the buying, selling, or exchange of merchandise or services, or that relates to money and its use or distribution.

Accordingly, I find that with the exception of the total monetary amount raised by the Committee found on pages 2, 3 and 51, the target estimated funding on page 25, the estimated amounts that fundraising events will net on page 85 and all of the invoices, receipts and expense lists which I have found qualify as financial or commercial information within the meaning of those terms, Tab 10 does not contain any information that meets part 1 of the section 10(1) test. As all three parts of the section 10(1) test must be met for the exemption at section 10(1) to apply, the majority of the information in Tab 10 does not qualify for exemption under section 10(1).

Tab 10 does however contain information that might qualify as personal information for the mandatory personal privacy exemption under section 14(1). I address the application of this exemption to this information below.

I must now determine whether the following information meets part 2 of the test under section 10(1):

- The information in Tab 3;
- the total monetary amount raised by the Committee (Tab 10, pages 2, 3, and 51);
- the Committee's target estimated funding and amounts that fundraising events will likely net (Tab 10, pages 25 and 85);
- invoices, receipts and expense lists (Tab 10, pages 94 to 148).

Part 2: supplied in confidence

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].

The contents of a contract involving an institution and a third party will not normally qualify as having been "supplied" for the purpose of section 10(1). The provisions of a contract, in general, have been treated as mutually generated, rather than "supplied" by the third party, even where the contract is preceded by little or no negotiation or where the final agreement reflects information that originated from a single party [Orders PO-2018, MO-1706].

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 City submits that the information contained in Tab 3 was supplied directly to the City by the third party's company. It submits that many of the drawings, sketches and plans bear the name or stamp of the company, and the financial records are on the letterhead of the company. The City also submits that "as a matter of course, the City takes a cautious approach with respect to the disclosure of site plans and related plans prior to the finalization of the project."

Discussing whether the third party's company supplied the records in Tab 3 with an expectation of confidentiality, the City submits that based on a number of factors the third party's company held a reasonable implicit expectation of confidentiality. The City identifies the factors as follows:

1. [The third party] has represented to the City that his plans and drawings have been registered at the Canadian Intellectual Property Office (Canadian Copyrights Database). He further asserts that [the named company] reserves the exclusive rights to produce, reproduce, publish and present his works.
2. The City has no information before it to suggest that these records are in the possession of the requester or that [the named company] has disclosed the plans to any other entity beyond what may have been required to gain community support for the design.
3. It should be noted that some drawings in the City's custody were already disclosed to the requester where City staff were able to determine that those drawings were part of the public record at City Committee and Council.
4. Finally, the City is not aware of the arrangement, if any, that may have existed between [the named company] and the [requester] with respect to the disclosure of the design or financial information by [the third party] to the [requester].

The City submits that none of the information in Tab 10 was supplied to the City in confidence.

The third party submits that all design concepts and graphic patterns have been registered at the Canadian Intellectual Property Office and explains that it is normal practice in the interior design and architectural trades that drawings for any project include a paragraph that indicates that they

are copyright reserved, and are the exclusive property of the design company and should not be used without its consent.

The third party submits that all of the information at issue was supplied to the City in confidence. As noted above, he submits that all design drawings have either a title block, logo, or stamp of his signature on them, and all business correspondence and invoices are on company letterhead, all of which he submits is convincing evidence that this information is the property of his company.

The requester does not make any specific submissions on whether the information at issue was supplied in confidence to the City by the third party.

Having reviewed the records in Tab 3, and the information that remains at issue in Tab 10, in my view, this information has clearly been supplied to the City. Records of the type found in Tab 3 require a certain amount of expertise and technical knowledge and they are clearly identified as being created by either the third party in his business capacity and/or by his company. Similarly, the information that remains at issue in Tab 10 are monetary amounts that have been established by the Committee and have clearly been supplied to the City.

Based on the nature of the information in the records contained in Tab 3 as well as the fact that the third party's submission that it is normal industry practice for drawings and design concepts to be registered with the Canadian Intellectual Property Office, and that he has done so in this case, I find that the third party has supplied the records in Tab 3 in confidence to the City. In my view, the submissions from the parties with respect to their expectations for how the information was to be treated and how it was treated lend support to my finding that the records were "supplied in confidence" within the meaning of section 10(1).

However, I do not find that the information that remains at issue in Tab 10 has been supplied to the City, in confidence. The third party has not provided any evidence to demonstrate that the total amount raised by the Committee, the target estimated funding amounts for the entire project, and the targets for particular funding events were intended to be retained in confidence by the City. In my view, such amounts are often publically announced in order to encourage public support. I have been provided with no evidence to suggest that they should remain confidential. Additionally, none of the correspondence that makes up the rest of the information in Tab 10 indicates explicitly that it was the intention of the parties that it be kept in confidence, nor does the substance that correspondence implicitly suggest that it should be. As a result, I find that the information that remains at issue in Tab 10 has not been supplied in confidence to the City within the meaning of part 2 of the section 10(1) test. As all three parts of this test must be met for the exemption at section 10(1) to apply, subject to my discussion on section 14(1), the remaining information in Tab 10 should be disclosed to the requester.

As I have found that the information in Tab 3 has been supplied in confidence to the City, I find that part 2 of the test has been met with respect to that information. I must now determine whether the part 3 harms test applies to the records in Tab 3.

Part 3: harms

To meet this part of the test, the institution and/or the third party must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

The failure of a party resisting disclosure to provide detailed and convincing evidence will not necessarily defeat the claim for exemption where harm can be inferred from other circumstances. However, only in exceptional circumstances would such a determination be made on the basis of anything other than the records at issue and the evidence provided by a party in discharging its onus [Order PO-2020].

The only information that remains at issue for the purposes of the application of the exemption at section 10(1) is the information contained in Tab 3.

The City submits that disclosure of the technical and financial information of the third party’s company could reasonably be expected to prejudice the competitive position of the company and cause it an undue loss as contemplated by section 10(1)(a) and (c). It submits:

The design for the project was created by [third party’s company] and reflects [the third party’s] design and artistic expertise. The disclosure of the records to the [requester’s organization] could reasonably be expected to deprive [the third party’s company] of the chance to advance these designs on a competitive basis should the project be resurrected, or for a different project, as the use that the [requester’s organization] would make of these records if disclosed is unknown.

Again, the City reiterates that it is not a party to, nor is it privy to the arrangement, if any, that may have existed between [the third party’s company], [the third party] and the [requester’s organization] with respect to the commissioning of the design for the project or future ownership of the designs. The City is cognizant that the relationship between the [requester’s organization] and [the third party’s company] has broken down where the project is concerned. The City must therefore assume that disclosure of the designs and financial information by the [requester’s organization] (should these be disclosed to them) to a competitor design firm is possible. This could reasonably be expected to lead to a loss of a future commission for [the third party’s company], and give a financial advantage to the [requester’s organization], which if in possession of the drawings as a result of this access request and appeal, might not have to commission new drawings for any similar projects in the future thereby depriving [third party’s company] of a new commission prospect.

The third party submits that his company initiated this project and invested a lot of time and effort in preparing the documents which were registered with the Canadian Intellectual Property Office. The third party submits:

As the initiator, original creator of the [Project] design concepts and drawings, my company enjoys exclusive rights to produce, reproduce, publish or publicly present my work. However, the disclosure of [the information in Tab 3] would either result in these design concepts, drawings, and graphic patterns being used in a way that is prejudicial to my honour and reputation, or in association with a person or an organization without my permission. In any event, it is within reasonable expectation that the disclosure of these documents would significantly prejudice our competitive position in the market place and inevitably result in undue gain or unjustified enrichment to other persons or businesses in similar professions.

The requester does not make specific representations on the harms component, part 3, of the section 10(1) test.

In my view, the representations submitted by the third party provide me with minimal explanation as to how disclosure of the information in Tab 3 would give rise to the harms outlined in sections 10(1)(a) and/or 10(1)(c). However, based on my review of the records and the representations of the City, I accept that I have been provided with the necessary detailed and convincing evidence to establish a reasonable expectation that disclosure would result in prejudice (section 10(1)(a)) and/or undue loss (section 10(1)(c)) to the third party and his company.

I accept the City's arguments that because the specifications and concepts for this Project are unique and arise from the third party's artistic skills and design expertise, it could reasonably be expected that were a competitor to gain access to them they would be used to prejudice the third party's advantage and cause his company to suffer an undue loss were the Project revived or similar type of project proposed.

Accordingly, I find that the information in Tab 3 qualifies for exemption pursuant to the exemption at section 10(1).

ECONOMIC AND OTHER INTERESTS

Sections 11(c) and (d) state:

A head may refuse to disclose a record that contains,

- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;

The purpose of section 11 is to protect certain economic interests of institutions. The report titled *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 Report) explains the rationale for including a "valuable government information" exemption in the *Act*:

In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute . . . Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

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

To establish a valid exemption claim under section 11(d), an institution must demonstrate a reasonable expectation of injury to its financial interests.

For sections 11 (c) or (d) to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

The City submits that all of the severances that it has made under sections 11(c) and (d) of the *Act* in Tabs 4, 5, and 11 (as indicated in its index of records) relate to the City's financial account numbers. In particular, it submits:

[D]isclosure of [the City's] account numbers could reasonably be expected to prejudice its economic interests and be injurious to its financial interests as there is a reasonable risk that those numbers would be misused by third parties to illegally access City funds or to undertake fraudulent transactions, should the numbers be accidentally disclosed by the requester to third parties.

The City also submits that account numbers are only disclosed externally to those receiving cheques by the City or for banking purposes.

The requester makes no specific representations on whether the disclosure of the information at issue would prejudice the City's economic interests or be injurious to its financial interests.

All of the information for which the City has claimed sections 11(c) and (d) (pages 1, 2, 3, 5, 6, and 22 of Tab 4, pages 1, 4, 9, and 17 of Tab 5 and pages 1 and 3 of Tab 11), are one-page photocopies of remittances issued to various individuals and organizations as refunds for their donations for the Project. The top part of these pages identify that the City is issuing a refund of a particular dollar amount while the bottom part of these pages are cheques made out to the various donors. The only information on these pages for which sections 11(c) and (d) has been claimed is the City's bank account number which appears at the bottom of each cheque.

I have carefully reviewed the City's representations and the information at issue. I am not persuaded that the City has satisfied the requirements of the sections 11(c) or (d) exemptions.

Any cheque issued by any bank account holder, whether an individual or a corporation, contains the bank account number at the bottom. This is standard practice in banking. Clearly aware that this information appears at the bottom of all cheques that it issues, the City has issued cheques to all of the donors for this particular Project who requested a refund of their donated funds when it was established that the Project was not to go ahead. In my view, if it truly "could be reasonably expected" that disclosure of this information would lead to third parties illegally accessing an account holder's funds or result in third parties undertaking fraudulent transactions, it would be reasonable to expect the City to put into place more safeguards and be more vigilant about to whom it issues cheques. As well, in my view, if disclosure of an account number could reasonably be expected to result in fraudulent transaction, it would not be standard practice in the banking industry to display them on the bottom of cheques.

The evidence adduced by the City amounts to speculation of possible harm, which is insufficient to meet the requirements of sections 11(c) or (d). In short, the City has failed to provide the requisite detailed and convincing evidence to demonstrate that disclosure of the bank account information could reasonably be expected to prejudice the economic interests of the City or be injurious to the financial interests of the City. Accordingly, I do not accept that disclosure of the City's bank account number could reasonably be expected to prejudice the City's economic interests or be injurious to its financial interests.

The City has not claimed any other exemptions apply to pages 1 and 3 of Tab 11. Therefore, I will order that these pages be disclosed to the requester.

As the City has claimed that section 14(1) applies to all of the information in Tabs 4 and 5, which includes the bank account information in the pages identified above, I must now determine whether or not section 14(1) applies to those records and the portions of Tab 10 for which section 14(1) has been claimed.

PERSONAL INFORMATION

In order to determine whether the exemption at section 14(1) of the *Act* may apply, it is necessary for me to decide whether the record contains “personal information”. That term is defined in part as follows:

2(1) “personal information” means recorded information about an identifiable individual, including,

- (b) ... 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 opinion or views of the individual except if 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,
- (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.)].

The City has identified a number of portions of the records that contain personal information and has severed that information. That information is outlined more clearly in the index listed above.

The third party submits that all of the information in Tab 10 qualifies as his personal information and that it should be severed under section 14(1). The City has identified some of the information in Tab 10 as personal information but takes the position that the remainder does not qualify and that it is prepared to disclose it.

In my analysis, I will first determine whether the severances made by the City under section 14(1) qualify as personal information. I will then go on to determine whether all of the remaining information in Tab 10 qualifies as the third party's personal information.

Having reviewed the specific severances made by the City under section 14(1) and the representations that it has submitted, I find that, with the exception of two categories of information, the majority of the severances contain information that qualifies as personal information as that term is defined in the *Act*.

In many places (Tab 4, Tab 5, Tab 6, pages 6, 7, and 10, Tab 10, pages 1, 5, 6, 7 and 51 and Tab 11, pages 5 to 18) the information that has been withheld consists of the addresses and names of donors together with the amounts they donated. In some circumstances this information includes the details of whether the individual donors chose to have the money refunded or redirected to another charity when it was established that the Project was to be cancelled. In others it relates to requests for tax receipts related to that individual's donation (for example, page 6 of Tab 6). I find that all of this information qualifies as the donors' personal information within the meaning of paragraphs (b), (d), (f) and (h), of the definition of personal information.

At Tab 9, page 12 and Tab 10, pages 19, 23, 29, 30, 31, 50, 53, 54, 75, 78, and 89, severances have been made to comments in email exchanges that reveal personal information about that individual. These comments consist of brief mentions of personal matters, for example the health of an individual or their family members or an individual's travel plans. In some instances they reveal an individual's personal views or opinions. In my view, this information falls clearly within paragraphs (e) and (h) of the definition of personal information.

The severances at Tab 6, pages 3 and 9, Tab 7, pages 1, 2 and 5, Tab 8, pages 3, 4, 6, 7, and 14, Tab 9, pages 19, 20, and 31, and Tab 10, pages 7, 12, 14, 16, 19, 20, 23, 26, 29, 30, 31, 36, 37, 38, 41, 60, 61, 62, 63, 64, 65, 66, 67, 69, 75, 78, 89, and 90 that are personal email addresses,

street addresses, or telephone numbers of identifiable individuals. I find that this information qualifies as personal information in accordance with paragraphs (c) and (d) of the definition in section 2(1).

At pages 1 and 2 of Tab 6, the City has severed an individual's name, business contact information and business email address on an email exchange. At Tab 7, page 5, Tab 8, pages 2, 4, 5 and 10, Tab 9, pages 2, 18, and 35, and Tab 10, pages 7, 12, 39, 40, 45, 61, 63, 65, 66, 68, 69, 71, 75, and 90, the City has severed the business email address of another individual. On page 40 of Tab 10, the City has severed the business email address of the third party. The City submits that because the content of the emails exchanges on these pages are entirely unrelated to the individual's work, the business email address and/or contact information qualifies as personal information.

As noted above, 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].

Dealing first with the severances at pages 1 and 2 of Tab 6, the text of the email on which the severances have been made relates to a complaint that the individual has about the Project. Although, this information originates from the individual's business email account, in this case, the text of the email consists of the personal opinions and views of the individual who sent it. To disclose the business email address and contact information would render the individual identifiable and, coupled with this individual's complaint, would reveal something of a personal nature about that individual. Accordingly, I accept that in this instance, the severed information consists of the individual's personal information within scope of paragraphs (c) and (h) of the definition of personal information.

As for the business email addresses found at Tab 7, page 5, Tab 8, pages 2, 4, 5 and 10, Tab 9, pages 2, 18, and 35, and Tab 10, pages 7, 12, 39, 40, 45, 61, 63, 65, 66, 68, 69, 71, 75, and 90, I find that they do not qualify as personal information. Having reviewed the severances and the emails to which they relate, although they may be unrelated to the individual's work at the business to which email addresses originate from, they are not sent in a personal capacity. The emails are being sent by the individual in the capacity as representative of the Committee and relate to the Project. In my view, to disclose the business email addresses would not reveal anything inherently personal about the individual to whom that address relates. Therefore, I find that the business email addresses do not qualify as personal information. Accordingly, I will order that they be disclosed to the requester.

Finally, personal credit card numbers and their expiration dates on receipts for expenses made in relation to various Committee fundraising events have been withheld (Tab 8, pages 26 and 27 and Tab 10, pages 103, 109, 136, 138, 139, and 142). I find that this information qualifies as personal information within the meaning of paragraph (c) of the definition. However, I find that the type of credit card being used (Mastercard, Visa, or other) that has been severed at Tab 8,

pages 26 and 27, does not qualify as personal information and these references should be disclosed to the requester.

Therefore, except from the references to the type of credit cards used for payments and the business email addresses identified above, I find that the information for which the City has claimed the section 14(1) exemption, qualifies as personal information as that term is defined in section 2(1) of the *Act*.

The City has not severed the remaining information in Tab 10 as it takes the position that it is not personal information. The third party disagrees and submits that Tab 10, in its entirety, should not be disclosed as all of the information qualifies as his personal information. He submits:

The record contains "personal information" as defined in section 2(1), specifically including:

- (1) information relating to financial transactions in which I have been involved;
- (2) my address, telephone number and email address;
- (3) my personal opinions or views on the Somerset Street Chinatown Millennium Garden Project;
- (4) correspondence sent by me to the City requesting the City's official position regarding the Millennium Garden Project which is implicitly or explicitly or a private or confidential nature.

Tab 10 contains 149 pages of records that include letters, faxes, fax cover sheets and email exchanges. Much of this correspondence is between the third party and the City, although it is not exclusively so. Some of it appears on the third party's company letterhead and some of it appears on the letterhead of the Committee. Tab 10 also contains information about expenses incurred by the third party in relation to fundraising for the Project. This information includes receipts submitted for reimbursement and the City's own documents that compile the expenses incurred on the Project.

As noted above, the City has severed all of the information that it believes qualifies as personal information, specifically the information related to financial transactions, the third party's address, personal telephone number and personal email address, as well as the third party's personal opinions or views on the Project. The City has also severed other personal information found in the documents that relates to the third party's personal affairs. I find that this information qualifies as personal information within the meaning of section 2(1). In my view, these severances address most of the third party's concerns.

Having reviewed all of the information that remains at issue in Tab 10, I find that none of it properly qualifies as personal information within the definition of that term. The text of all the correspondence relates to the Project and, in my view, is not written to the City in the third party's personal capacity. The communications are either written by the third party as a representative of the Committee or by another individual designated as such. The majority of

letters and some of the more formal email exchanges identify the writer's position on the Committee under the signature line, indicating clearly that the letter is written in that capacity. At least one of the letters appears on the third party's company letterhead. That letter discusses generalized issues related to the Project. In my view, this letter is written in the third party's business capacity as the individual who created the designs that are to be used for the Project. Finally, addressing the receipts and the information related to the expenses incurred, I find that these expenses were incurred on behalf of the Committee and do not qualify as personal information.

Therefore, I do not find that any of the remaining information in Tab 10 qualifies as personal information, as it relates to the third party and to others in their business capacity.

In conclusion, I have found that the following information does not qualify as personal information:

- type of credit card used for the expense incurred found at Tab 8 pages 26 and 27, and
- the business email addresses found at Tab 7, page 5, Tab 8, pages 2, 4, 5 and 10, Tab 9, pages 2, 18, and 35, and Tab 10, pages 7, 12, 39, 40, 45, 61, 63, 65, 66, 68, 69, 71, 75, and 90, and
- the information that remains at issue in Tab 10 (the information that the City has *not* severed).

As no other exemptions have been claimed for this information I will order it disclosed to the requester.

I will now determine whether the disclosure of the information that I have found to be personal information (Tab 4, Tab 5, Tab 6, pages 1, 2, 3, 5, 6, 7, 9 and 10, Tab 7, pages 1, 2 and 5, Tab 8, pages 2, 3, 4, 5, 6, 7, 10 and 14, Tab 9, pages 2, 12, 18, 19, 20, 31 and 35, Tab 10, pages 1, 7, 12, 14, 16, 19, 26, 29, 30, 31, 36, 37, 38, 40, 41, 50, 51, 53, 54, 61 -67, 69, 75, 78, 89, 90, 103, 108, 109, 136, 138, 139 and 142 and Tab 11, pages 5 to 18) qualifies for exemption under section 14(1) of the *Act*.

PERSONAL PRIVACY

I have found that the records contain the personal information of individuals other than the requester. I must now determine whether section 14(1) applies to exempt that personal information from disclosure. Where a requester seeks the personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies.

If the information at issue falls within any of paragraphs (a) to (f) of section 14(1), the information should be disclosed. These are exceptions to the exemption at section 14(1). The City submits that the exception to the exemption at section 14(1)(f) applies in the circumstances of this appeal.

Section 14(1)(f) is relevant to this appeal. This paragraph reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 14(1)(f) is another exception to the exemption at section 14(1). Section 14(1)(f) allows for personal information to be disclosed if the disclosure of that information does not constitute an unjustified invasion of personal privacy.

The section 14(1)(f) exception is more complex than that in section 14(1)(a), and requires a consideration of additional parts of section 14. The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 14(1)(f).

If any of the paragraphs in section 14(4) apply, disclosure of the information does not constitute an unjustified invasion of personal privacy, the exception at section 14(1)(f) applies, and the information must be disclosed to the requester.

In the circumstances of this appeal none of the paragraphs in section 14(4) apply.

If any of the presumptions at paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the “public interest override” at section 16 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

Section 14(3): presumptions

The City submits that the presumption at section 14(3)(f) applies to the information that relates to the donations made by individuals in their personal capacity. Specifically, the information at issue in Tab 4, Tab 5, Tab 6, pages 7 and 10, Tab 10 pages 1, 7 and 51 and Tab 11, pages 5 to 18.

Section 14(3)(f) states:

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

describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

The City submits that section 14(3)(f) applies to all information that reveals donations amounts including any tax receipts issued, because it constitutes the donors' personal financial information. The City submits that this information describes the financial activities of the donors. It also submits that any information regarding tax receipts applied for or received by the donors constitutes that donor's financial history and activity.

I accept the City's position and find that the presumption at section 14(3)(f) applies. In Order MO-1227, former Assistant Commissioner Tom Mitchinson found that donated items listed in appraisal reports, together with the fair market value attributed to each item, and the tax benefit to be derived from the donation qualified for exemption under section 14(3)(f). In the circumstances of this appeal, the records clearly link each individual donor with a specific monetary amount. In my view, following the reasoning in MO-1227, the donation amounts, as well as any tax benefit or refund given as a result of each donation describes the donors' financial activities within the meaning of section 14(3)(f).

Accordingly, I find that the presumption at section 14(3)(f) applies to the information about the donations found in Tab 4, Tab 5, Tab 6, pages 7 and 10 and the remaining information in Tab 10 pages 1, 7 and 51 and Tab 11, pages 5 to 18. As I have found that none of this personal information falls under section 14(4) and the possible application of section 16 of the *Act* has not been raised, I find that this information is exempt under section 14(1) and should not be disclosed to the requester.

Section 14(2): factors

If no presumption at section 14(3) applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.

As no section 14(3) presumption applies to the remaining personal information at issue (Tab 6, pages 1, 2, 3, 5, 6 and 9, Tab 7, pages 1, 2 and 5, Tab 8, pages 2, 3, 4, 5, 6, 7, 10 and 14, Tab 9, pages 2, 12, 18, 19, 20, 31 and 35, Tab 10, pages 12, 14, 16, 19, 26, 29, 30, 31, 36, 37, 38, 40, 41, 50, 53, 54, 61-67, 69, 75, 78, 89, 90, 103, 108, 109, 136, 138, 139 and 142 and Tab 11, pages 5 to 18), the City submits the factors at section 14(2)(f) and (h) weighing in favour of non-disclosure apply to exempt this information from disclosure. This information includes the names of the individual donors together with information including their street addresses, email addresses, personal opinions and views, as well as other personal information about them.

The City submits that none of the factors in section 14(2) weighing in favour of disclosure apply but that all of the information is sensitive (section 14(2)(f)), particularly with respect to the credit

card information, and that it was supplied in confidence (section 14(2)(h)), particularly with respect to the information that relates to the opinions of individuals and the other personal information where it appears with an individual's name.

The requester's representations suggest that the factor weighing in favour of disclosure in paragraph (a) might be relevant. The requester submits that her organization believes that the City is using the *Act* as an excuse to avoid providing an accounting of the Project's trust fund disbursements. She submits that the City's actions in this regard are politically motivated.

Accordingly, I find that the factors in paragraphs (a), (f), and (h) of section 14(2) should be considered in the determination of the remaining information. Those sections read:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and

The requester suggests section 14(2)(a) is a relevant factor weighing in favour of disclosure because disclosure of this information is desirable for the purpose of subjecting the activities of the City to public scrutiny. She submits that the City provided and shared detailed accounting data relating to the Project with her organization up to a certain date, after which nothing has been shared. She submits that the City has deliberately curtailed the sharing of this information for politically motivated reasons.

I acknowledge the requester's confusion and frustration. However, having reviewed the information at issue I am not satisfied that releasing the personal information of the donors and other individuals will accomplish the task of subjecting the activities of the City to public scrutiny. Consequently, I give the factor in paragraph (a), which weighs in favour of disclosure of the information, minimal weight.

For the factor in section 14(2)(f) to apply and information to be found to be "highly sensitive", it must be found that the disclosure of the personal information could reasonably be expected to cause significant personal distress to the subject individual [Order PO-2518]. I accept that some donors might not wish to be publicize how much they donated to the Project, and that other individuals whose personal views and opinions are at issue may not wish to be contacted or have their views and opinions shared. However, I am not satisfied that it would be reasonable to

expect that disclosure would cause *significant* personal distress to those to whom the information relates. Accordingly, I conclude that the factor at section 21(2)(f) weighing in favour of privacy carries minimal weight.

With regard to the factor in section 14(2)(h), given that the majority of the personal information that is at issue consists of names, contact information, financial information and personal opinions and views or details about personal issues of identifiable individuals, I am satisfied that this information was supplied by the individuals in question in confidence. I understand that the requester organization feels that it has a close connection to the Project and that it should be afforded a unique right to this information. However, in the circumstances, disclosure of this information is disclosure to the world and not only to this organization. I have been given no evidence to conclude that the individuals to whom this information relates intended for this information to be made generally available to the public. Therefore, I give the factor in section 14(2)(h) significant weight.

I have carefully considered the matter and I find, on balance, that in this case the factor favouring privacy protection, at section 14(2)(h), far outweighs the factor at section 14(2)(a) that favours disclosure. I am satisfied that disclosure of the personal information of the donors and other identifiable individuals would constitute an unjustified invasion of their personal privacy.

Therefore, I find that all of the personal information contained in the records at issue in this appeal (specifically, Tab 4, Tab 5, the severances made at pages 1, 2, 3, 5, 6, 7, 9 and 10 of Tab 6, pages 1, 2 and 5 of Tab 7, pages 2, 3, 4, 5, 6, 7, 10 and 14 of Tab 8, pages 2, 12, 18, 19, 20, 31 and 35 of Tab 9, pages 1, 7, 12, 14, 16, 19, 26, 29, 30, 31, 36, 37, 38, 40, 41, 50, 51, 53, 54, 61-67, 69, 75, 78, 89, 90, 103, 108, 109, 136, 138, 139 and 142 of Tab 10 and pages 5 to 18 of Tab 11) qualifies for exemption under section 14(1) of the *Act*.

ORDER:

1. I order the City to disclose the following information to the requester by **February 29, 2008** but not before **February 25, 2008**:
 - the names of the corporate donors on pages 5 and 6 of Tab 11;
 - the severances on pages 1 and 3 of Tab 11;
 - the type of credit card used on pages 26 and 27 of Tab 8;
 - the business email addresses found at Tab 7, page 5, Tab 8, pages 2, 4, 5 and 10, Tab 9, pages 2, 18, and 35 and Tab 10, pages 7, 12, 39, 40, 45, 61, 63, 65, 66, 68, 69, 71, 75, and 90.
 - the remaining information in Tab 10 which does not qualify as personal information (specifically, the information that the City has *not* severed)

2. I uphold the City's decision not to disclose the following information:
 - All of the information contained in Tab 3;

- All of the information contained in Tabs 4 and 5;
 - The names of the individual donors on pages 5 and 6 of Tab 11;
 - The severed portions of Tab 6, pages 1, 2, 3, 5, 6, 7, 9 and 10, Tab 7, pages 1, 2, and 5, Tab 8, pages 2, 3, 4, 5, 6, 7, 10, and 14, Tab 9, pages 12, 19, 20, and 31, Tab 10, pages 1, 7, 12, 14, 16, 19, 26, 29, 30, 31, 36, 37, 38, 41, 50, 51, 53, 54, 61-67, 69, 78, 89, 90, 103, 108, 109, 136, 138, 139 and 142 and Tab 11, pages 7 to 18.
3. In order to verify compliance with this Order, I reserve the right to require the City to provide me with a copy of the records disclosed to the requester pursuant to provision 1, upon my request.

Original signed by: _____
Catherine Corban
Adjudicator

January 10, 2008