



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

INTERIM ORDER MO-2552-I

Appeal MA08-387

City of Toronto



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NATURE OF THE APPEAL:

This second interim order addresses the sole remaining issue from Interim Order MO-2511-I. By way of background, a journalist submitted a request to the City of Toronto (the City) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for “[a]ll individuals who are in arrears of their property taxes in excess of \$500,000, including property address and outstanding amount.”

The City located two pages of responsive records, which are a cover memorandum, dated August 28, 2008, and a chart (Attachment 2) that the City Treasurer submitted to City Council’s Government Management Committee. The City denied access to these records pursuant to the discretionary exemption in section 6(1)(b) (closed meeting) and the mandatory exemption in section 14(1) (personal privacy) of the *Act*. The journalist appealed the City’s decision to this office. The cover memorandum is no longer at issue in this appeal. The record remaining at issue is the chart (Attachment 2).

Attachment 2 lists one property with tax arrears of \$500,000 or more that is owned by a named individual “in trust.” This chart contains information under the following headings: Assessed Address, Ward, Mailing Address, Ownership Information (property owner’s name), Property Classification (residential, commercial or industrial), Outstanding Taxes (amount in taxes owing), CVA 2007 (current value assessment in 2007), Comments & Collection Efforts Taken, and Use of Bailiff for the Arrears.

In her initial representations, the appellant argued that the following transparency interests are at stake in this appeal:

The public has a right to know how the City has or has not worked to collect money owed to the City. Also included should be details about the property, whether it is residential or industrial, and how long the owner has been in arrears. As well, I believe there is an overwhelming right to know what efforts the City has taken to recoup what is owed, including any consideration to seize the property. If this information is not disclosed, then how can residents be assured that the City has acted in the best interest of its citizens?

In Interim Order MO-2511-I, I upheld the City’s decision to withhold the following information from Attachment 2 under the personal privacy exemption in section 14(1) of the *Act*: Assessed Address, Mailing Address, Ownership Information and CVA 2007. I found that disclosing this information would constitute an unjustified invasion of the property owner’s personal privacy.

However, where a record contains exempt information, section 4(2) of the *Act* requires an institution to consider whether it can “reasonably be severed” to facilitate the disclosure of information. I found that once the Assessed Address, Mailing Address, Ownership Information and CVA 2007 are severed from Attachment 2, the remaining information (Ward, Property Classification, Outstanding Taxes, Comments & Collection Efforts Taken, and Use of Bailiff for the Arrears) is no longer about an identifiable individual and does not constitute “personal information” under section 2(1) of the *Act*. This remaining information cannot, therefore, be

withheld under the personal privacy exemption in section 14(1) of the *Act*, because that exemption only applies to “personal information.”

The City also claimed that Attachment 2 is exempt under the discretionary exemption in section 6(1)(b) of the *Act*. This provision allows an institution to refuse disclosure of a record that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public. I found that the City had established that Attachment 2 is exempt under section 6(1)(b), because disclosure of this record would reveal the substance of deliberations of a closed meeting of the Government Management Committee on October 21, 2008, and section 190(2)(b) (personal matters about an identifiable individual) of the *City of Toronto Act* authorized the Committee to hold that meeting in the absence of the public.

However, the section 6(1)(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. The Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

This office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

In Interim Order MO-2511-I, I found that the City had failed to take all relevant considerations into account in exercising its discretion to deny access to all of the information in Attachment 2. In particular, I stated the following:

In my view, the City’s exercise of discretion with respect to the application of section 6(1)(b) did not adequately consider and balance the transparency and privacy purposes of the *Act*. In particular, it did not adequately consider whether Attachment 2 can be severed in a manner that fulfils both purposes of the *Act*.

In the “Personal Privacy” discussion earlier in this order, I found that the information that falls under the following headings in Attachment 2 qualifies for exemption under section 14(1) of the *Act*: Assessed Address, Mailing Address, Ownership Information (i.e., name of affected party) and CVA 2007. However, I then found that severing this information means that the remaining information, which appears under the following headings, is no longer personally identifiable: Ward, Property Classification, Outstanding Taxes, Comments & Collection Efforts Taken, and Use of Bailiff for the Arrears.

In my view, severing Attachment 2 in this manner would fulfill both the transparency and privacy protection purposes of the *Act*. The majority of the City's individual property owners pay their taxes in full and on time and have a right to expect some transparency from the City with respect to properties owned by other individuals for which significant tax arrears are owing. I have found that the personal privacy exemption in section 14(1) of the *Act* precludes the public from accessing the affected party's personal information, but I agree with the appellant that the public should have the right to access information that is not personally identifiable, including the ward in which the property is located, the type of property (residential, commercial, industrial, etc.), the amount in tax arrears that are owing, and most importantly, what efforts the City is making to collect these arrears.

I then ordered the City to re-exercise its discretion with respect to the application of the section 6(1)(b) exemption to the information in Attachment 2. The order provisions in Interim Order MO-2511-I stated, in part:

3. I order the City, in re-exercising its discretion under section 6(1)(b), to consider whether the information in Attachment 2 can be severed in a manner that fulfils both the transparency and privacy protection purposes of the *Act*.
4. I order the City to advise both the appellant and myself in writing of the results of its re-exercise of discretion no later than **April 23, 2010**. If the City decides, after re-exercising its discretion, to disclose information to the appellant, it must issue a new access decision in accordance with sections 19, 20, 21 and 22 of the *Act*, treating the date of this interim order as the date of the request. If the City decides, after re-exercising its discretion, to continue withholding some or all of the information in Attachment 2 under section 6(1)(b), and the appellant wishes to respond, she must do so within 14 days of the date of the City's correspondence, by providing me with written representations.
5. I remain seized of this appeal to deal with the City's re-exercise of discretion and any related issues that may arise.

DISCUSSION:

In response to Interim Order MO-2511-I, the City considered several factors and re-exercised its discretion in applying the section 6(1)(b) exemption to the information in Attachment 2. In the representations that it submitted to this office, which set out the results of its re-exercise of discretion, the City states that it has decided not to sever Attachment 2 in the manner suggested in Interim Order MO-2511-I and will continue to withhold this record, in its entirety, from the appellant.

I shared a copy of the City's representations with the appellant, who expressed surprise at the City's refusal to disclose any information from Attachment 2. She stated:

I have to say that I am surprised by the city's objection to this disclosure, given that the heart of my argument has, and still remains, that the public has a right to know what efforts the city has taken to recoup what is owed. Without it, how can residents be assured that the city has acted in the best interests of its citizens?

I will now determine whether the City has re-exercised its discretion properly in deciding to continue withholding Attachment 2, in its entirety, under section 6(1)(b) of the *Act*. In accordance with order provision 3 of Interim Order MO-2511-I, the City considered whether the information in Attachment 2 can be severed in a manner that fulfils both the transparency and privacy protection purposes of the *Act*.

Purposes of the *Act*

The first purpose of the *Act*, which is set out in section 1(a) and can be characterized as the transparency purpose of the *Act*, is to provide the public with a right to access to information under the control of institutions in accordance with three principles:

- information should be available to the public,
- necessary exemptions from the right of access should be limited and specific, and
- decisions on the disclosure of information should be reviewed independently of the institution controlling the information.

The second purpose of the *Act*, which is set out in section 1(b) and can be characterized as the privacy protection purpose of the *Act*, is to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

Transparency purpose

With respect to the transparency purpose of the *Act*, the City states that it considered whether the disclosure of any of the information in Attachment 2 would shed light on the operations of government, and concluded that it would not. It states that the right of access in the *Act* is subject to necessary exemptions that are limited and specific and points out that Interim Order MO-2511-I found that the City had properly claimed the section 6(1)(b) exemption with respect to Attachment 2.

In re-exercising its discretion to apply this exemption, the City states that it took into account the "objective of increased transparency," and considered whether disclosing any of the information in Attachment 2 would inform or enlighten the public about the City's activities. It states that the disclosure of any such information "would not add, in any meaningful way, to the information

the public has to make effective use of the means of expressing public opinion or to make political choices.”

To support this argument, the City cites its policy of taking “progressive action” with respect to outstanding property tax arrears, which is available on its website,¹ and states that disclosing the non-personal information in Attachment 2 would add “very little” to the information currently available to the public. It points to the fact that there is already a public report on its website that shows one property owned by an individual with “total accounts receivable of approximately \$0.8 million.”²

The appellant strongly disputes the City’s submission that revealing that there is one individual property owner in arrears of \$0.8 million constitutes sufficient disclosure:

I would argue differently – how is it that there was a property owner in arrears to that amount and the public has no idea whether any attempt was made to collect this money – from calling in the bailiff to seizing the property? We do not even know how long this individual has been in arrears – was it a year or five years or more? How can the public judge whether the city had done all it can to recoup its money – actually, money owed to the taxpayers in this city?

In my view, the City’s claim that none of the information in Attachment 2 would shed light on the operations of government or inform or enlighten the public about the City’s activities, is dubious. The City points to publicly available documents on its website, including its policy of taking “progressive action” with respect to outstanding property tax arrears, to justify its claim that it has already made sufficient information available to the public. However, its “progressive action” policy is simply a general policy document – it does not contain any information about the steps the City has taken to collect the approximately \$800,000 in tax arrears owing with respect to the specific property identified in Attachment 2.

In Interim Order MO-2511-I, I ordered the City to consider disclosing the information in Attachment 2 that appears under the following headings: Ward, Property Classification, Outstanding Taxes, Comments & Collection Efforts Taken, and Use of Bailiff for the Arrears. None of this information is personally identifiable once the property owner’s name and other identifiable information is severed from the record. The information under the headings, “Comments & Collection Efforts Taken” and “Use of Bailiff for the Arrears,” for example, does not reveal the identity of the named individual affiliated with the property, but it provides concrete information about what steps the City had taken to collect the outstanding arrears, as of the date of Attachment 2 (June 30, 2008).

I agree with the appellant that the City’s refusal to disclose this information means that the public has no idea whether the City has taken adequate steps to recover the outstanding tax arrears for the specific property that is the subject of Attachment 2. In such circumstances, I have great

¹ “Property Tax Arrears: Collection Process” at www.toronto.ca/taxes/property_tax/taxarrears.htm

² “Largest Property Tax Debtors with Tax Arrears Greater than \$500,000 as at December 31, 2008” at www.toronto.ca/legdocs/mmis/2009/gm/bgrd/backgroundfile-20222.pdf

difficulty accepting the City's claim that none of the information in Attachment 2 would shed light on the operations of the City or inform or enlighten the public about the City's activities.

In my view, the information under the headings, "Comments & Collection Efforts Taken" and "Use of Bailiff for the Arrears" would clearly shed light on whether the City was taking adequate steps to collect the outstanding tax arrears on behalf of the public, as of June 30, 2008.³

Privacy protection purpose

With respect to the privacy protection purpose of the *Act*, the City states that it has considered whether Attachment 2 can be severed in the manner suggested in Interim Order MO-2511-I.

In the "Personal Privacy" discussion in Interim Order MO-2511-I, I stated the following:

... The information that falls under the following headings in Attachment 2 clearly constitutes the affected party's "personal information": Mailing Address and Ownership Information (i.e., the affected party's name). In addition, given the fact that the property assessment rolls and land registry information in Ontario are open for public inspection and can be easily searched, I find that it is reasonable to expect that the affected party may be identified if the information that falls under the following headings in Attachment 2 is disclosed: Assessed Address and CVA 2007. I find that all of this information constitutes the affected party's "personal information" under section 2(1) of the *Act* and for the reasons cited above, I find that it qualifies for exemption under section 14(1).

However, once this information is severed from Attachment 2, the remaining information is no longer personally identifiable. It does not constitute "personal information" under section 2(1) of the *Act* and cannot, therefore, qualify for exemption under section 14(1). This information appears under the following headings in Attachment 2: Ward, Property Classification, Outstanding Taxes, Comments & Collection Efforts Taken, and Use of Bailiff for the Arrears.

The City states that Interim Order MO-2511-I does not mention whether an "assiduous inquirer" could take this non-personal information and use other publicly available information, such as the City's zoning maps, court records or documents showing ward boundaries, to identify the property owner. In the circumstances of this case, however, the City states that it accepts "the Adjudicator's determination that the above information would not lead to the disclosure of the personal information about the identifiable individual listed in [Attachment 2] ..."

However, the City then goes on to say that it provides reports to City Council on a semi-annual basis about individuals (and corporations) who owe more than \$500,000 in property tax arrears. Attachment 2, which deals with the tax arrears owed by a named individual "in trust," was

³ The City likely has other records in its custody and control that set out what steps, if any, it has taken since June 30, 2008 to collect the outstanding arrears. However, such records are not at issue in this appeal.

included with a semi-annual report in 2008 that the City Treasurer submitted to the City Council's Government Management Committee entitled, "Largest Property Tax Debtors with Tax Arrears Greater than \$500,000 as at June 30, 2008."

The City submits that although disclosing the non-personal information in Attachment 2 in this particular case would not reveal personal information about the individual property owner, it is "more than a speculative possibility" that in future cases, an "assiduous inquirer" could link non-personal information from these reports with publicly available information to reveal the personal information of the individual property owners.

The City submits, therefore, that not taking a "principled" approach in the current case would run contrary to the privacy protection purpose of the *Act*:

... failure to withhold access with respect to information in a principle[d] fashion to ensure the protection of the personal information of an individual that was the substance of deliberations of a legislatively authorized *in camera* meeting would not further the privacy protection purpose of [the *Act*]. Therefore, exercising the policy of severance suggested in [Interim Order MO-2511-I] would in fact not further the privacy protection purpose of the *Act*.

The appellant's characterizes the City's position as both unfair and implausible:

At the heart of the city's argument for not disclosing any information regarding this case is that "an assiduous inquirer" could use other publicly available information such as property tax assessment rolls, zoning maps, court records or documents to identify the personal information. I find this to be a patently unfair argument – I should not be denied information simply because there may [be] other public information available.

Simply put, this is a separate case that should be considered on its merits, unrelated to whatever public information exists.

The city also objects to releasing the ward in which the property is located. I will point out that there are 44 wards in Toronto – and there must be hundreds of thousands of properties, so disclosing that there is a property in ward X would not reveal the individual or address.

In addition, I would argue that gaining such private information would be near-impossible give that court records require, at the very least, a name or address. Similarly, the property tax assessment rolls require an address to do the search.

Whether an "assiduous inquirer" could take the non-personal information in Attachment 2 (e.g., ward, property classification, etc.) and then use publicly available information tools, such as zoning maps or court records, to track down a property owner's name and other personal information, is not at issue here. The City has stated that it accepts "the Adjudicator's determination that the above information would not lead to the disclosure of the personal

information about the identifiable individual listed in [Attachment 2] ...” Consequently, I am not prepared to address the issue of the “assiduous inquirer,” let alone whether this is even the proper test to apply in such circumstances.

In my view, the current case should be assessed on its own merits. This is a fundamental principle of administrative law.⁴ The City’s re-exercise of discretion in this case should not be based on speculation about future cases or a need to withhold information “in a principle[d] fashion.” I find that the City’s approach amounts to a fettering of its discretion in the current case, which constitutes an error in re-exercising its discretion in applying section 6(1)(b) of the *Act*.

Other factors

In Interim Order MO-2511-I, I ordered the City, in re-exercising its discretion under section 6(1)(b), to consider whether the information in Attachment 2 can be severed in a manner that fulfils both the transparency and privacy protection purposes of the *Act*. I did not ask the City to consider any other factors. However, the City’s representations also refer to several other factors that it took into account when it re-exercised its discretion in applying the section 6(1)(b) exemption to Attachment 2. I will provide a brief summary of the City’s representations on these additional factors.

- ***The historic practice of the City in relation to the requested materials***

The City states that it has an historic practice of disclosing records deliberated upon at a closed door meeting if the interests that were sought to be protected are no longer present. It further states that the purposes for which the information in Appendix 2 was considered *in camera* remain present. It submits, therefore, that its refusal to disclose any information from Attachment 2 is consistent with its historic practice with respect to similar information.

- ***The wording of the relevant exemptions and the interests the exemptions seek to protect***

The City states that it has examined the purposes of section 6(1)(b) and the interests this exemption seeks to protect. It acknowledges that although it may wish, in interests of transparency, to exercise its discretion to disclose information which is exempt under section 6(1)(b) of the *Act*, it states that it “can find no such advantage to the democratic process in the current situation.” It submits that it has determined that there is no interest present in the current case that would justify disclosing any information from Attachment 2, which was the subject of a legislatively authorized *in camera* meeting.

- ***Whether there is a sympathetic or compelling need for the appellant to receive the information***

⁴ See D.P. Jones & A.S. de Villars, *Principles of Administrative Law*, 4th ed. (Toronto: Thomson-Carswell, 2004) at 192: “... [T]here must necessarily be some limit on the extent to which the exercise of a discretionary power can be fettered by the adoption of an inflexible policy, by contract, or by other means. After all, the existence of discretion implies the absence of a rule dictating the results in each case; the essence of discretion is that it can be exercised differently in different cases. Each case must be looked at individually, on its own merits.”

The City submits that there is an insufficient public, sympathetic or compelling interest to support the disclosure of any information from Attachment 2 to the appellant.

- ***The age of the information***

The City submits that although the information is now “somewhat dated,” the privacy issues which prompted the Government Management Committee to deliberate upon Attachment 2 in a closed meeting remain a concern.

In response, the appellant submits that the City’s statement that the information in Attachment 2 is now “somewhat dated” raised a red flag for her. Consequently, she contacted the City to ask whether there were any individuals who owe property tax arrears of \$500,000 or more and learned that there are currently none. She then questions why the City is so strenuously opposed to disclosing any information from Attachment 2:

... [T]hrough the passage of time, the situation has changed – and I do not know why – and the city remains adamant in its refusal to disclose information. I will probably be required to file another request to get more information on this case to determine if the taxes were paid as a result of the city’s seizure of property. I wonder whether the city has deliberately thwarted my efforts to get basic information.

- ***Whether the disclosure will increase public confidence in the operation of the City***

The City submits that any potential increase in the public’s confidence in the operation of the City that would result from the disclosure of information from Attachment 2 would be “greatly outweighed” by the decrease in public confidence in the City’s operations that would result from the City disclosing the substance of the Government Management Committee’s *in camera* deliberations concerning an individual’s property tax arrears.

CONCLUSION

In Interim Order MO-2511-I, I found that the City had established that Attachment 2 is exempt under section 6(1)(b) of the *Act*, because disclosure of this record would reveal the substance of deliberations of a closed meeting of the Government Management Committee on October 21, 2008, and section 190(2)(b) (personal matters about an identifiable individual) of the *City of Toronto Act* authorized the Committee to hold that meeting in the absence of the public.

However, the section 6(1)(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. The Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations

- it fails to take into account relevant considerations.

I found that the City's exercise of discretion with respect to the application of section 6(1)(b) did not adequately consider and balance the transparency and privacy purposes of the *Act*. In particular, it did not adequately consider whether Attachment 2 can be severed in a manner that fulfils both purposes of the *Act*. Consequently, I ordered the City to re-exercise its discretion in applying section 6(1)(b) and to consider whether the information in Attachment 2 can be severed in such a manner.

Specifically, I ordered the City to consider disclosing the information in Attachment 2 that appears under the following headings: Ward, Property Classification, Outstanding Taxes, Comments & Collection Efforts Taken, and Use of Bailiff for the Arrears. None of this information is personally identifiable once the property owner's name, her mailing address, the address of the assessed property and the property's CVA in 2007 are removed from the record.

In response to Interim Order MO-2511-I, the City considered the purposes of the *Act* and other factors and then re-exercised its discretion in applying the section 6(1)(b) exemption to the information in Attachment 2. In the representations that it submitted to this office, which are summarized above, the City states that it has decided not to sever Attachment 2 in the manner suggested in Interim Order MO-2511-I and will be continuing to withhold this record, in its entirety, from the appellant.

I am surprised by the City's decision. Interim Order MO-2511-I set out a balanced way of severing the record that would provide the public with basic information about the relevant property and the City's efforts to collect the outstanding tax arrears, but would simultaneously protect the privacy of the individual who owes these arrears. Unfortunately, after re-exercising its discretion under section 6(1)(b), the City has opted not to disclose any information from this record.

The City's position that there is "no advantage to the democratic process" in disclosing any information from this record, including non-personal information, is debatable. In my view, many Toronto taxpayers would strongly disagree with the City's position, particularly given the current public debate about the best way to manage the City's finances. As I stated in Interim Order MO-2511-I, the majority of the City's individual property owners pay their taxes in full and on time and have a right to expect some transparency from the City with respect to properties owned by other individuals for which significant tax arrears are owing.

The City's claim that none of the information in Attachment 2 would shed light on the operations of government or inform or enlighten the public about the City's activities, is also dubious. It points to publicly available documents on its website,⁵ including its policy of taking "progressive action" with respect to outstanding property tax arrears, to justify its claim that it has already made sufficient information available to the public. However, its "progressive action" policy is simply a general policy document – it does not contain any information about the steps the City

⁵ *Supra* notes 1 and 2.

has taken to collect the approximately \$800,000 in tax arrears owing with respect to the specific property identified in Attachment 2.

By contrast, the information under the headings, “Comments & Collection Efforts Taken” and “Use of Bailiff for the Arrears,” in Attachment 2 would clearly shed light on whether the City was taking adequate steps to collect the outstanding tax arrears on behalf of the public, as of June 30, 2008. The information under these two headings does not contain the individual property owner’s name or any other personal information about her. It simply sets out the steps the City had taken to collect the property tax arrears owing. However, for the reasons set out in its representations, which place a heavy emphasis on protecting records deliberated upon at closed door meetings, the City is continuing to deny access to the non-personal information in Attachment 2.

Clearly, I disagree with many of the City’s arguments and particularly the low weight that it ascribes to the transparency purpose of the *Act*. It is important to emphasize, however, that even though I may disagree with the City’s position, section 43(2) of the *Act* precludes me from substituting my discretion for that of the City with respect to a properly claimed exemption.

In the circumstances of this appeal, I can only intervene if the City has erred in re-exercising its discretion in applying section 6(1)(b) to Attachment 2. If the City has not erred, I must uphold its decision and dismiss the appeal. However, if I find that the City has erred in re-exercising its discretion, I may send the matter back to the City for another re-exercise of discretion based on proper considerations.

In my view, the City’s re-exercise of discretion with respect to the application of section 6(1)(b) to Attachment 2 has not been conducted in bad faith or for an improper purpose. However, I find that the City fettered its discretion when it considered whether this record can be severed in a manner that fulfils both the transparency and privacy protection purposes of the *Act*.

In Interim Order MO-2511-I, I ordered the City to consider disclosing the information in Attachment 2 that appears under the following headings: Ward, Property Classification, Outstanding Taxes, Comments & Collection Efforts Taken, and Use of Bailiff for the Arrears. In the circumstances of this case, the City states that it accepts “the Adjudicator’s determination that the above information would not lead to the disclosure of the personal information about the identifiable individual listed in [Attachment 2] ...”

However, it then goes on to say that it provides reports to City Council on a semi-annual basis about individuals (and corporations) who owe more than \$500,000 in property tax arrears. Attachment 2, which deals with the tax arrears owed by a named individual “in trust,” was included with a semi-annual report in 2008 that the City Treasurer submitted to the City Council’s Government Management Committee entitled, “Largest Property Tax Debtors with Tax Arrears Greater than \$500,000 as at June 30, 2008.”

The City submits that although disclosing the non-personal information in Attachment 2 in this particular case would not reveal personal information about the individual property owner, it is “more than a speculative possibility” that in future cases, an “assiduous inquirer” could link non-

personal information from these reports with publicly available information to reveal the personal information of the individual property owners.

It further states that “failure to withhold access with respect to information in a principle[d] fashion to ensure the protection of the personal information of an individual that was the substance of deliberations of a legislatively authorized *in camera* meeting would not further the privacy protection purpose of [the *Act*].”

I find that the City’s approach amounts to a fettering of its discretion in the current case, which constitutes an error in the re-exercising of its discretion in applying section 6(1)(b) of the *Act*. Consequently, I have decided to send this matter back to the City for another re-exercise of discretion. In particular, I will be ordering the City to consider the current case on its own merits, without reference to future cases or a need to withhold information “in a principle[d] fashion.”

RECONSIDERATION REQUEST

In response to Interim Order MO-2511-I, the City also submitted a two-part reconsideration request to me. Although I found that the records at issue qualify for exemption under section 6(1)(b) of the *Act*, the City asked me to reconsider a part of my analysis with respect to this exemption in which I found that section 190(2)(a) (security of the property) of the *City of Toronto Act* did not authorize the Government Management Committee to close part of its meeting of October 21, 2008 to consider the records.

In particular, the City stated:

The City respectfully requests that the portion of Order MO-2511-I dealing with the interpretation of section 190(2)(a) of [the] *City of Toronto Act, 2006* be stricken in its entirety and that the IPC requests submissions on and undertakes a full consideration of the following two issues:

- (A) whether the subject matter of the meeting in question addressed property owned by the City, as well as the real property owned by an individual other than the City and,
- (B) the effect of Order MO-2468-F on the interpretation of section 190(2)(a) of the *City of Toronto Act, 2006*.

I have decided to invite the City to provide representations on these two issues.

ORDER:

1. I order the City to re-exercise its discretion under section 6(1)(b) of the *Act* and to again consider whether the information in Attachment 2 can be severed in a manner that fulfils both the transparency and privacy protection purposes of the *Act*.

2. I order the City, in re-exercising its discretion, to consider the current case on its own merits, without reference to future cases or a need to withhold information “in a principle[d] fashion.”
3. I invite the City to provide representations on the two issues set out in its reconsideration request.
4. I order the City to provide me with representations on its re-exercise of discretion and its reconsideration request by **November 1, 2010**. If the City decides, after re-exercising its discretion, to disclose information to the appellant, it must issue a new access decision in accordance with sections 19, 20, 21 and 22 of the *Act*, treating the date of this interim order as the date of the request.
5. I may share the City’s representations with the other parties to this appeal unless they meet the confidentiality criteria identified in *Practice Direction Number 7*. If the City believes that portions of its representations should remain confidential, it must identify these portions and explain why the confidentiality criteria apply to the portions it seeks to withhold.
6. I remain seized of this appeal to deal with the City’s re-exercise of discretion, its reconsideration request and any related issues that may arise.

Colin Bhattacharjee
Adjudicator

October 8, 2010