Information and Privacy Commissioner,
Ontario, Canada

Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-2791

Appeal MA11-72-2

City of Markham

September 20, 2012

Summary: The appellant requested records pertaining to a complaint against him. The City identified responsive records and relying on sections 12 (solicitor-client privilege) and 14(1) (invasion of privacy) denied access to a portion of them. As the records contained the personal information of the appellant the possible application of sections 38(a) and 38(b) was added as issues in the appeal at the mediation stage of the appeal process. In addition, during mediation the appellant also took issue with the reasonableness of the City's search for responsive records. This order finds that the City conducted a reasonable search for responsive records and upholds its decision to deny access to the withheld portions of the records.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1), 12, 14(2)(d), 14(2)(f), 17, 38(a) and 38(b).

OVERVIEW:

[1] The City of Markham (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) for access to information pertaining to a specified complaint against the requester relating to matters that took place at a swimming pool. In particular, the requester sought access to:

1. A copy of a "complaint report",

2. Any internal communication among City staff, emails, conversations or reports about the incident from the pool on-duty staff and the City's Aquatic Coordinator, a recreation department Program Manager, the Assistant City Solicitor and "the lady",
3. the City's recommendation and action taken to avoid "future humiliating experience[s]",
4. the "City's action against the lady and action in protecting me in the pool."

[2] The City failed to respond to the request within the time frame set out in section 19 of the *Act* and the requester filed a deemed refusal appeal. Accordingly, appeal file number MA11-72 was opened. That file was closed when the City issued its access decision letter, which was accompanied by an Index of Records. The City granted partial access to the records it viewed as responsive to the request, upon payment of a fee. It relied on sections 12 (solicitor-client privilege) and 14(1) of the *Act* (invasion of privacy) to deny access to those portions of the responsive records that it withheld. The City also indicated on the Index of Records that a number of records it had located were not responsive to the request.

[3] The requester (now the appellant) appealed the City's decision and this appeal file (MA11-72-2) was opened.

[4] At the outset of mediation, the mediator contacted both the appellant and the City's Public Services and Records Coordinator (the Coordinator) to discuss the outstanding issues in this appeal. The mediator initially sought clarification regarding a number of records that were listed on the Index of Records as non-responsive to the request. Ultimately, the appellant advised the mediator that he did not wish to receive a copy of any records that were indicated as being non-responsive, and accordingly, the responsiveness of these records is not an issue in this appeal.

[5] However, the appellant advised the mediator that he believed there should be additional records responsive to his request, such as notes and recordings from telephone conversations and meetings about him. He noted that many of the emails he received contained references to telephone conversations that had occurred and he therefore believed there should be supporting notes of these conversations. The mediator relayed the appellant's concerns to the City and the Coordinator advised the mediator that everything pertaining to the appellant was contained in his file and all responsive records had been located. However, he was willing to go back to all the "relevant individuals involved in this matter" to request a secondary search for additional records.

[6] The Coordinator then sent the appellant a letter setting out the results of the supplementary search advising the appellant that no additional responsive records were located.

[7] The Coordinator's letter also advised the appellant that since his request was for access to his own information, it should not have charged him for the search time required to locate the responsive records. Accordingly, the City enclosed a cheque in the amount of $15.00, which represented a full refund of the search fees that were paid by the appellant.

[8] In a follow-up discussion with the mediator, the appellant confirmed that the fee is not an issue in this appeal. However, he advised the mediator that he still believed there should be additional responsive records. In particular, he referred to the string of emails comprising Record 29 where an identified individual wrote to another identified individual that "I will send an email with details." The appellant asked why he was not provided with this "email with details". The appellant also referred to another email where an identified individual indicated that "I have attached the staff report". The appellant believed that this report had been received electronically but he had not been provided with the email that had the staff report attached.

[9] After further discussion with the mediator the City's Coordinator agreed to "canvass the relevant individuals" with respect to these two particular items. He subsequently advised the mediator that there were no additional responsive emails. He further advised the mediator that the identified individual had received a hard copy of the staff report directly from the author of the report.

[10] The appellant was not satisfied with the City's explanation and maintained his position that there should be additional records responsive to his request. Accordingly, the reasonableness of the City's search for responsive records was added as an issue in the appeal.

[11] Finally, as the records remaining at issue appeared to contain the appellant's personal information, the mediator added the possible application of sections 38(a) (discretion to refuse requester's own information) and 38(b) (personal privacy) as issues in the appeal.

[12] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeal process where an adjudicator conducts an inquiry under the *Act*.

[13] I commenced the inquiry by sending a Notice of Inquiry setting out the facts and issues in the appeal to the City and a party whose interests may be affected by disclosure (the affected party). Both the City and the affected party provided representations in response.

[14] I then sent a Notice of Inquiry along with the City's non-confidential representations to the appellant. In order to address the affected party's confidentiality concerns, I summarized their representations in the Notice of Inquiry sent to the appellant. The appellant provided responding representations.

[15] In the discussion that follows, I reach the following conclusions:

- the search for responsive records conducted by the City was reasonable
- the records contain the personal information of the appellant
- Record 30 contains the personal information of the appellant and an affected party
- all of the records at issue, except for Record 30, qualify for exemption under section 38(a), in conjunction with section 12
- the withheld portions of Record 30 qualify for exemption under section 38(b)

RECORDS:

[16] The records remaining at issue consist of record numbers 1, 3-6, 9-10, 12-16, 21 and 30, as outlined on the City's Index of Records.

ISSUES:

A. Did the City conduct a reasonable search for responsive records?

B. Do the records contain personal information?

C. Do the records contain information that is subject to solicitor-client privilege so as to qualify for exemption under section 38(a) of the *Act*?

D. Does the discretionary exemption at section 38(b) apply to the withheld information in Record 30?

E. Did the City properly exercise its discretion?

DISCUSSION:

A. Did the City conduct a reasonable search for responsive records?

[17] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.[1] If I am satisfied that the

[1] Orders P-85, P-221 and PO-1954-I.

search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[18] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[2] To be responsive, a record must be "reasonably related" to the request.[3]

[19] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[4]

[20] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[5]

[21] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[6]

[22] In support of its position that it conducted a reasonable search for responsive records the City refers to an affidavit of the Coordinator describing the steps he took to locate responsive records.

[23] The Coordinator deposes that in his initial search he asked the City's Pool Supervisor, Aquatics Coordinator, the Assistant City Solicitor and a recreation department Program Manager for records responsive to the request. In response, he received confirmation that all the records that were responsive to the request had been provided to the Assistant City Solicitor, who forwarded the legal file to him. He deposes that the Assistant City Solicitor advised him that all the records that were in her possession were contained in the legal file and that she had identified any record that was subject to solicitor-client privilege.

[24] In addition, during the course of this initial search he was advised by the Administrative Assistant to the City Clerk, that all the records that were in her possession were contained in an insurance claim file relating to the appellant and an incident at a swimming pool.

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[2] Orders P-624 and PO-2559.
[3] Order PO-2554.
[4] Orders M-909, PO-2469, PO-2592.
[5] Order MO-2185.
[6] Order MO-2246.

[25] The Coordinator deposes that he reviewed the records in both the insurance file and the legal file and determined that all of the records in the insurance file were copies of those in the legal file. He states that he listed all of the records contained in the legal file in the Index of Records that the City provided to the appellant along with its initial access decision letter.

[26] The City submits that during the mediation of this appeal the Coordinator conducted a second search for responsive records. The Coordinator deposes that in response to a telephone conversation with the Mediator assigned by this office, he emailed the City's Pool Supervisor, the Aquatics Coordinator, the Assistant City Solicitor, the recreation department Program Manager and the Administrative Assistant to the City Clerk requesting that they conduct a second search for responsive records. The City's Pool Supervisor, the Aquatics Coordinator, and the recreation department Program Manager confirmed that all responsive records in their possession had been provided to the Assistant City Solicitor. The Coordinator deposes that the Assistant City Solicitor and the Administrative Assistant to the City Clerk confirmed that they had provided all the records in their possession to him.

[27] The Coordinator then sent the appellant a letter setting out the results of the second search, as discussed above. In the letter, the Coordinator stated that he asked each of the City Staff who may have been involved in the subject matter of the request to search their records and provide any additional records, including the following:

> Voicemails, transcripts of voicemails, or notes about voicemails received; notes of telephone conversations; and/or notes of meeting related to the file. Please note that handwritten notes and electronic recordings are records and must be included and that these relate to both communications between City Staff and between City Staff and External Parties.

[28] In the letter, the Coordinator advised the appellant that the supplementary search located no additional records created on or before the date of the request.

[29] Furthermore, as set out in the City's representations, after the receipt of the Notice of Inquiry, the City conducted a third search for responsive records. This time the City located additional responsive records and issued a supplementary decision letter granting partial access to them. The City relied on the exemption at sections 38(a) and 38(b) of the *Act* to deny access to the portion it withheld. Those records are not the subject of this appeal.

[30] The appellant challenged the adequacy of the City's search for responsive records, but did not file any representations to provide an evidentiary basis to refute it. As set out above, in order to satisfy its obligations under the *Act*, the City must provide sufficient evidence to show that it has made a reasonable effort to identify and locate

responsive records within its custody and control.[7] In my view, based on the evidence before me and considering that it has now conducted three separate searches for responsive records, I am satisfied that the City has now made a reasonable effort to locate responsive records that are within its custody or control.

[31] I therefore find that the City has provided sufficient evidence to establish that it has conducted a reasonable search for responsive records within its custody and control.

B. Do the records contain personal information?

[32] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except where they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

[7] Orders P-624 and PO-2559.

> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[33] Sections (2.1) and (2.2) of the *Act* also relate to the definition of personal information. These sections state:

> (2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[34] 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.[8]

[35] 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.[9]

[36] Having carefully reviewed the records at issue and the representations, I conclude that all of the records at issue contain the appellant's personal information, including his name, and the views of other individuals about him. Some of the records also contain the personal information of the affected party.

[37] Addressing Record 30 in particular, the majority of which was disclosed to the appellant, I find that in the circumstances of this appeal, disclosing the withheld portion of that record would disclose the affected party's personal information, as well as reveal something of a personal nature about them. I am, therefore, satisfied that the record contains the personal information of the affected party, within the meaning of the definition of personal information at section 2(1) of the *Act*.

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[8] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[9] Orders P-1409, R-980015, PO-2225 and MO-2344.

C. Do the records contain information that is subject to solicitor-client privilege so as to qualify for exemption under section 38(a) of the *Act*?

[38] Section 36(1) of *MFIPPA* gives individuals a general right of access to their own personal information held by an institution. Sections 38(a) and (b) of *MFIPPA* provide a number of exemptions to this general right of access. Section 38(a) states:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, **12**, 13 or 15 would apply to the disclosure of that personal information [emphasis added];

Solicitor-Client Privilege

[39] Section 12 states as follows:

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

[40] Section 12 contains two branches as described below. Branch 1 arises from the common law and branch 2 is a statutory privilege. The institution must establish that one or the other (or both) branches apply.

Branch 1: common law privilege

[41] Branch 1 of the section 12 exemption encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. In order for branch 1 of section 12 to apply, the institution must establish that one or the other, or both, of these heads of privilege apply to the records at issue.[10]

Solicitor-client communication privilege

[42] Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice.[11]

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[10] Order PO-2538-R; *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 257 (S.C.C.) (also reported at [2006] S.C.J. No. 39).
[11] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

[43] The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation.[12]

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

> . . . Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach.[13]

[45] The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice.[14]

[46] Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication.[15]

Litigation privilege

[47] Litigation privilege protects records created for the dominant purpose of litigation, actual or contemplated.[16]

[48] In *Solicitor-Client Privilege in Canadian Law* by Ronald D. Manes and Michael P. Silver[17], the authors offer some assistance in applying the dominant purpose test, as follows:

> The "dominant purpose" test was enunciated [in *Waugh* v. *British Railways Board*, [1979] 2 All E.R. 1169] as follows:
>
> > A document which was produced or brought into existence either with the dominant purpose of its author, or of the person or authority under whose direction, whether particular or general, it was produced or brought into existence, of using it or its contents in order to obtain legal advice or to conduct or aid in the conduct of litigation, at the time of its production in reasonable prospect, should be privileged and excluded from inspection.

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[12] Orders MO-1925, MO-2166 and PO-2441.
[13] *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.)
[14] *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.
[15] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.).
[16] Order MO-1337-I; *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); see also *Blank v. Canada (Minister of Justice)* (cited above).
[17] Butterworth's: Toronto, 1993), pages 93-94.

> It is crucial to note that the "dominant purpose" can exist in the mind of either the author or the person ordering the document's production, but it does not have to be both.
>
> . . . . .
>
> [For this privilege to apply], there must be more than a vague or general apprehension of litigation.

Branch 2: statutory privileges

[49] Branch 2 is a statutory exemption that is available in the context of counsel employed or retained by an institution giving legal advice or conducting litigation. The statutory exemption and common law privileges, although not necessarily identical, exist for similar reasons.

Statutory solicitor-client communication privilege

[50] Branch 2 applies to a record that was "prepared by or for counsel employed or retained by an institution for use in giving legal advice."

Statutory litigation privilege

[51] Branch 2 applies to a record that was prepared by or for counsel employed or retained by an institution "in contemplation of or for use in litigation."

[52] Records that form part of the Crown brief, including copies of materials provided to prosecutors by police, and other materials created by or for counsel, are exempt under the statutory litigation privilege aspect of branch 2 [Order PO-2733]. Termination of litigation does not affect the application of statutory litigation privilege under branch 2.[18]

The Representations

[53] The affidavit of the City's Public Services and Records Coordinator states that all of the records which the City claims were subject to section 12, originated from the Assistant City Solicitor's legal file.

[54] The City submits that:

- the emails listed in the index as Records 1, 3 to 5, 9, 10, 14 and 21 are part of the continuum of confidential communication related to legal

[18] *Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer),* (cited above).

advice pertaining to the Assistant City Solicitor's investigating the matter and collecting information regarding the incident from City staff

- the emails listed as Records 6 and 12 consist entirely of legal advice from the Assistant City Solicitor to City staff comprising legal opinion and litigation strategy

- the email listed as Record 13 arose out of the City's retainer of a claims adjuster to further investigate the matter. This record contains litigation strategy as well as instructions between the Assistant City Solicitor and the claims adjuster

- the memorandum listed as Record 15 provides litigation recommendations

- The email listed as Record 16 is a communication regarding the merits of the appellant's legal claim

[55] The City submits that the above-referenced records are subject to both Branch 1 and 2 of section 12, as follows:

> Each document for which privilege is claimed arises from the involvement of a City lawyer directly communicating with City staff and the claims adjuster retained to investigate the claim of the defendant with respect to the defense of the lawsuit. All of these communications were made in confidence between City staff, the City lawyer and the claims adjuster.
>
> In addition, the dominant and sole purpose of these documents was litigation. All documents arise as a result of the appellant's claim against the City in Small Claims Court and after the City lawyer was involved in order to investigate the matter and provide a legal opinion. As such, litigation privilege applies.
>
> The statutory solicitor-client privilege also applies as all of the records save Record 30 arise from the involvement of the City lawyer in defending the [appellant's] Small Claims Court claim. Counsel for the City was and is employed by the City and communications include counsel investigating the matter and providing legal opinions. As such, the records can be characterized as records that were "prepared by or for counsel employed by an institution for use in giving legal advice."
>
> With respect to these records there have been no actions taken by the City, their employees or representatives which would constitute waiver of solicitor/client or litigation privilege.

[56] After stating that his access request was submitted the day before the day indicated in the City's supporting affidavit, the appellant submits that the following militates against a finding that the records are subject to solicitor-client privilege:

- the City was initially in a "deemed refusal" situation
- the City initially stated that all responsive records had been identified when there were "at least two" subsequent further searches for responsive records
- the civil action was commenced after the communications at issue took place

[57] The appellant submits therefore, that "based on the pattern" of the City "refusing to disclose" the requested information any reason given for withholding the information "has no credibility at all."

[58] Furthermore, the appellant submits that the communications at issue are similar in nature to the emails that were disclosed. He asserts that they were simply for the purpose of updating the individuals with respect to the underling incident and do not fall within the scope of solicitor-client privileged communications.

Analysis and finding

[59] I have carefully gone through each of the records that were withheld under section 12 and I am satisfied that they form part of the continuum of communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice and qualify for exemption under Branch 1 of section 12. I find that there has been no waiver of privilege with respect to these records.

[60] Accordingly, all of the records, except Record 30 are exempt under section 38(a) in conjunction with section 12 of the *Act*.

D. Does the discretionary exemption at section 38(b) apply to the withheld information in Record 30?

[61] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exceptions to this general right of access, including section 38(b). Section 38(b) introduces a balancing principle that must be applied by institutions where a record contains the personal information of both the requester and another individual. In this case, the City must look at the information and weigh the appellant's right of access to their own

personal information against another identifiable individual's right to the protection of their privacy.

Section 38(b)

[62] Section 38(b) states:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > if the disclosure would constitute an unjustified invasion of another individual's personal privacy

[63] In determining whether the exemption in section 38(b) applies, sections 14(1), (2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the affected person's personal privacy. Section 14(2) provides some criteria for the ministry to consider in making this determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2)(d), 14(2)(f) and 14(2)(h)

[64] The City and the affected party submit that releasing the information would constitute an unjustified invasion of the affected party's personal privacy. The affected party objects to the disclosure of any of their personal information and states that the appellant has been provided with a properly redacted incident report.

[65] The City refers to the factors at sections 14(2)(f) and (h) in support of its decision to withhold information. The City also discusses why the factor favouring disclosure at section 14(2)(d) does not apply.

[66] Sections 14(2)(d), (f) and (h) 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,
>
> > (d) The personal information is relevant to a fair determination of rights affecting the person who made the request;
> >
> > (f) The personal information is highly sensitive;

> (h) the personal information has been supplied by the individual to whom the information relates in confidence.

[67] The City states that the personal information severed from Record 30 consists of highly sensitive personal information within the meaning of section 14(2)(f). In addition, the City states that the information in Record 30 was supplied in confidence. Finally, the City submits that this is not a situation where failure to disclose the affected party's name and contact information restricts the appellant's ability to obtain a "fair determination of rights".

[68] The appellant's representations do not specifically address the application of section 38(b) or the factors at section 14(2)(d), (f) or (h).

[69] As indicated above, all of the withheld portions of Record 30 contain the personal information of the affected party, only. In my view, the information remaining at issue is of such a character and quality to be "highly sensitive" within the meaning of section 14(2)(f). I am not satisfied that the factor at section 14(2)(d) applies in the circumstances of this appeal, nor are there any other factors favouring disclosure. As a result, it is not necessary for me to also consider whether any other factors favouring non-disclosure, such as section 14(2)(h) should apply. Accordingly, I find that this information is exempt under section 38(b) as its disclosure would result in an unjustified invasion of another individual's personal privacy.

E. Did the City properly exercise its discretion?

[70] The exemptions at sections 38(a) and 38(b) are discretionary and permit an institution to disclose information despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so. In addition, 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

[71] In any of these cases, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[19] However, pursuant to section 43(2) of the *Act*, this office may not substitute its own discretion for that of the institution.

[72] In its representations on the exercise of discretion, the City sets out the factors and circumstances that were considered in the exercise of discretion.

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[19] Order MO-1573.

[73] Given the circumstances and nature of the information at issue, I find that only relevant and proper considerations were relied upon in making the decision to not disclose the withheld information. Accordingly, I uphold the exercise of discretion and will not disturb it on appeal.

ORDER:

1. I uphold the City's decision denying access to the withheld portions of the responsive records at issue in this appeal.

2. I find that the City conducted a reasonable search for responsive records.

3. The appeal is dismissed.

Original Signed by: September 20, 2012
Steven Faughnan
Adjudicator