Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3061

Appeal MA12-608

City of Greater Sudbury

June 24, 2014

Summary: The city received a request for assessment information about certain properties, some of which was considered at two closed meetings of City Council. The city denied access to the records based on the exemptions in sections 6(1)(b) (closed meetings), 10(1) (third party information), 11 (economic or other interests) and 14(1) (personal privacy). The city's decision to deny access under section 6(1)(b) to the presentations made in the closed meetings, and the minutes of those meetings, is upheld. However, the exemptions in section 6(1)(b), 10(1) and 11 are not upheld for two appraisals made by a consultant, and these records are ordered disclosed. An addendum to the two appraisals, which contains the personal information of the consultant, is found to be exempt under section 14(1).

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of personal information), 6(1)(b), 10(1)(a), (b) and (c), 11(c) and (d) and 14(1).

Orders Considered: MO-1392.

OVERVIEW:

[1] The City of Greater Sudbury (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the "fair market value (FMV) property assessment-evaluation reports submitted to Sudbury Municipal

Council…." This was to include the formula(s) determining FMV for the sale of certain properties to an identified entity. The request also referred to certain particular reports.

[2] The city identified four responsive records and denied access to them on the basis of the exemptions in sections 6(1)(b) (closed meeting), 10(1) (third party information) and 11 (economic and other interests).

[3] The appellant appealed the city's decision.

[4] During mediation the appellant took the position that further responsive records exist (specifically, a third party's evaluation reports). The city indicated that it had interpreted the request as being for the records submitted to Council only, but agreed to conduct a search for the evaluation reports.

[5] As a result of a further search, the city identified two additional records prepared by a professional appraiser described as a "Consulting Report" and a "Supplementary Consulting Report" (hereafter "the appraisals"). It advised that partial access was granted to the two appraisals, and that access to portions of them was denied on the basis of the exemptions in sections 10(1), 11 and 14(1) (personal privacy) of the *Act*. The city also stated that third parties/individuals whose interests may be affected by the release of the appraisals were being notified of the request and asked to provide their views on disclosure. The city subsequently confirmed its decision to grant partial access to the two appraisals.

[6] Also during mediation, certain non-responsive information was identified, and the appellant advised that this non-responsive information is not at issue in this appeal.

[7] In addition, during mediation the appellant identified his view that there exists a public interest in the disclosure of the requested information, raising the possible application of section 16 of the *Act*.

[8] Mediation did not resolve this appeal and it was transferred to the inquiry stage of the appeals process. I sent a Notice of Inquiry, identifying the facts and issues in this appeal to the city and two affected parties, initially. The city provided me with representations, as well as an attached affidavit. The affected parties did not provided representations.

[9] I then sent the Notice of Inquiry, along with a copy of the representations of the city, and the non-confidential portions of the affidavit, to the appellant. The appellant also provided representations in response.

[10] In this order I find that Records 1 through 4 are exempt from disclosure under section 6(1)(b) of the *Act*. I also find that, except for one part of the appraisals containing personal information, the withheld portions of the two appraisals (Records 5 and 6) do not qualify for exemption under the *Act*, and I order that they be disclosed to the appellant.

RECORDS:

[11] The records remaining at issue consist of Council meeting minutes (Records 2 and 4), presentations (Records 1 and 3), and the withheld portions of two appraisals (Records 5 and 6).

ISSUES:

A. Do the records qualify for exemption under section 6(1)(b) of the *Act*?

B. Does the mandatory exemption at section 10(1) apply to the withheld portions of Records 5 and 6?

C. Do the discretionary exemptions at sections 11(c) and/or (d) apply to the withheld portions of Records 5 and 6?

D. Does the mandatory exemption at section 14(1) apply to the withheld portions of Records 5 and 6?

E. Did the city properly exercise its discretion?

DISCUSSION:

Issue A. Do the records qualify for exemption under section 6(1)(b) of the *Act*?

[12] The city takes the position that Records 1 through 4 are exempt from disclosure on the basis of the exemption in section 6(1)(b) of the *Act*. It states that Records 2 and 4 consist of the meeting minutes of two closed sessions of council (held on August 14, 2012 and September 11, 2012), and that Records 1 and 3 consist of the electronic presentations made at those two closed meetings.

[13] In addition, in its representations the city takes the position that Records 5 and 6 (the two appraisals) are also exempt from disclosure under section 6(1)(b).

[14] Section 6(1)(b) states:

> A head may refuse to disclose 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.

[15] For this exemption to apply, the institution must establish that

1. a council, board, commission or other body, or a committee of one of them, held a meeting

2. a statute authorizes the holding of the meeting in the absence of the public, and

3. disclosure of the record would reveal the actual substance of the deliberations of the meeting.[1]

[16] I will review each part of this three-part test to determine whether the records qualify for exemption under this section.

Part 1 - a council, board, commission or other body, or a committee of one of them, held a meeting

[17] The city states that the two closed meetings were held on August 14, 2012 and September 11, 2012, and refers to the minutes of these meetings in support of its position.

[18] The appellant does not dispute that the in-camera meetings were held. In the circumstances, I am satisfied that the two meetings took place, and that Part 1 of the three-part test under section 6(1)(b) has been met.

Part 2 - a statute authorizes the holding of the meeting in the absence of the public

[19] In support of its position that this part of the three-part test is established, the city states that the two meetings were closed to the public in accordance with the provisions of section 239(2)(c) of the *Municipal Act, 2001*, which reads:

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[1] Orders M-64, M-102, MO-1248.

> A meeting or part of a meeting may be closed to the public if the subject matter being considered is,
>
> > a proposed or pending acquisition or disposition of land by the municipality or local board;

[20] The city states that the two closed meetings were held "to address the disposition of property, to inform council members of the developments in that regard and to assist council members in arriving at a final decision relating to the disposition of the property."

[21] The appellant does not directly address this part of the test.

[22] In the circumstances of this appeal, and based on the representations of the city, I am satisfied that the subject-matter under consideration at the in-camera meetings involved "a proposed or pending acquisition or disposition of land" by the city within the meaning of section 239(2)(c) of the *Municipal Act, 2001*. Accordingly, I am satisfied that a statute authorized the holding of the meetings in the absence of the public, and that Part 2 of the test under section 6(1)(b) of the *Act* has been established.

Part 3 - disclosure of the record would reveal the actual substance of the deliberations of the meeting

[23] Under Part 3 of the test set out above, previous orders have found that:

- "deliberations" refer to discussions conducted with a view towards making a decision[2]
- "substance" generally means more than just the subject of the meeting[3]

[24] The city's representations on this part of the test state that the records at issue contain information that would reveal the actual substance of the deliberations which took place during the closed meetings. With respect to the minutes of these meetings (Records 2 and 4), the city states:

> [The minutes reveal] the mover and seconder of the motion, the active support of the individuals in the substance of deliberations, the content of the motion which relates to a recommendation regarding the negotiations surrounding the acquisition and disposition of the Property with a third party, a suggested purchase price and the outcome of the motion.

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[2] Order M-184.
[3] Orders M-703, MO-1344.

[25] Regarding the electronic presentations made in the meetings (Records 1 and 3), the city states:

> The electronic presentations would reveal topics of discussions, summaries of financial data and, summaries of opinions and recommended options which were relied upon to make an informed decision regarding the disposition of the Property.

[26] In its representations, the city argues for the first time that the withheld portions of the two appraisals (Records 5 and 6), also qualify for exemption under section 6(1)(b). It states:

> The information presented to Council during these closed meetings is in essence a summary of the reports prepared by [the appraiser] ….
>
> The electronic presentations are a direct result of the [appraisals] prepared by [the appraiser] on behalf of the City. As such, this derivative information should fall within the exemption and such information should not be disclosed.
>
> Both [the appraisals] and the electronic presentations would reveal the substance of deliberations. These records would reveal considerably more than just the subject of the meeting.
>
> These documents were the [basis] upon which discussions were had among council members. Council members shared options about the substance of these documents which ultimately lead to decisions made with regard to the Property.

[27] The appellant's representations do not directly address this issue, but focus more on the reasons why he believes he ought to have access to the records. I address these submissions in my discussion of the city's exercise of discretion, below.

Findings

[28] Based on the city's representations and my review of the records at issue, I am satisfied that the disclosure of the minutes of the two in-camera meetings, as well as the copies of the electronic presentations made in those meetings, would reveal the actual substance of the deliberations of the identified in-camera meetings. The minutes of the in-camera meetings deal directly with the subject matter under discussion, and identify information about the deliberations of that subject matter. In addition, the electronic presentations made in those meetings contain specific information about the nature of the information discussed in the meetings. I am satisfied that disclosure of

those presentations would reveal the substance of the deliberations of the in-camera meetings.

[29] However, I am not satisfied that the disclosure of the two appraisals would reveal the substance of the deliberations of the in-camera meetings.

[30] Based on my review of the appraisals and the electronic presentations, I do not accept the position of the city that the information presented to Council during these closed meetings "is in essence a summary of the reports prepared by [the appraiser]," nor am I persuaded that the electronic presentations "are a direct result of the [appraisals]." Although there is some overlap in some of the information contained in the electronic presentations and the appraisals, I am not satisfied that the information is sufficiently connected or similar such that the disclosure of the appraisals would reveal the substance of the deliberations of the in-camera meeting. As a result, I find that the withheld portions of Records 5 and 6 do not qualify for exemption under section 6(1)(b), and will not review them further under this section.

[31] With respect to Records 1-4, I have also considered whether any portions of the records could reasonably be severed without disclosing the information that falls under the exemption in section 6(1)(b).[4] The decision of the Divisional Court in *St. Catharines (City) v. Ontario (Information and Privacy Commissioner)*[5] has confirmed that even if a full record could be considered *in camera*, severance could be made, and portions disclosed, based on whether disclosing those portions would reveal the substance of the deliberations of the *in-camera* meeting. However, on my review of Records 1-4, I find that they relate directly to the subject matter considered at the in-camera meeting, and that they cannot reasonably be severed without disclosing the information that falls under the exemption in section 6(1)(b).

[32] As a result, I find that all three parts of the three-part test in section 6(1)(b) are met for Records 1-4, and am satisfied that they qualify for exemption under section 6(1)(b) of the *Act*, subject to my review of the city's exercise of discretion, below.

Issue B. Does the mandatory exemption at section 10(1) apply to the withheld portions of Records 5 and 6?

[33] The city takes the position that the withheld portions of Records 5 and 6 (the appraisals), qualify for exemption under sections 10(1)(a), (b) and (c), and it provides representations in support of its position. The affected parties, including the appraiser, did not provide representations in this appeal. The appellant provides representations in support of his view that section 10 does not apply.

[4] See section 4(2) of the *Act* which deals with the severability of a record.
[5] 2011 ONSC 2346 (Div.Ct.).

[34] Section 10(1) states in part:

> 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

[35] Section 10(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[6] 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.[7]

[36] 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.

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[6] *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.).
[7] Orders PO-1805, PO-2018, PO-2184, and MO-1706.

[37] In the circumstances, I will begin by reviewing the application of the third part of the three-part test.

Part 3: harms

[38] To meet this part of the test, the party resisting disclosure must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm." Evidence amounting to speculation of possible harm is not sufficient.[8]

[39] 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.[9]

Section 10(1)(a) and (c)

[40] The city's representations on this part of the test for sections 10(1)(a) and (c) state that releasing the redacted information would result in prejudice to the appraiser's competitive position, and result in undue loss to him. It refers to Order MO-2070, which found that a third party operating in a competitive industry could suffer prejudice to its competitive position where the third party's information would be made available to public scrutiny by competitors. It then states:

> The City sought the specific expertise of a consulting firm [the appraiser] to provide an analysis to the City because it is sophisticated work for which the City required expertise. The consultant was selected for its expertise as a recognized and qualified consultant. Should his work product be made publicly available, it would allow competitors the advantage of knowing or inferring what the consultant's style is thereby giving competitors, particularly less expert competitors, the opportunity to gain expertise by unfair means when the consultant had to develop its approach on its own through practical application, research and development.
>
> Finally, the loss of competitive position that could result from the disclosure of the redacted information would likely result in undue loss to the consultant and its staff members because they are the persons who have honed the specific expertise to make themselves marketable to institutions seeking such advice.

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[8] *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).
[9] Order PO-2020.

Findings

[41] On my review of the representations of the city and the withheld portions of the appraisals, I am not satisfied that the disclosure of the withheld information would result in the harms identified in sections 10(1)(a) and (c). Specifically, I have not been provided with sufficient evidence to satisfy me that the disclosure of the withheld portions of the appraisals could reasonably be expected to prejudice significantly its competitive position or interfere significantly with its contractual or other negotiations, nor that disclosure would result in undue loss or gain to any person.

[42] The city's representations in support of the application of these two sections are general in nature, referring to the expertise of the consultant and the competition it faces in the marketplace. However, the records at issue are the appraisals themselves, the actual work products of the consultant, which were provided to the city. I am not satisfied that disclosure of the withheld portions of these appraisals would result in the identified harms.

[43] Furthermore, on my review of the appraisals, I note that portions of them have been disclosed. It is not clear to me how disclosure of the remaining withheld portions would cause the types of harms contemplated by sections 10(1)(a) and (c) any more than the disclosed portions would. The portions of the appraisals that have been disclosed include information about the manner in which the consultant conducted his appraisals and the methodology used. In that respect, to the extent that any information in the appraisals would reveal the "consultant's style" or "approach," some of this information has already been disclosed.

[44] In these circumstances, I find that the harms in sections 10(1)(a) or (c) have not been established, and that they do not apply to the withheld portions of Records 5 and 6.

Section 10(1)(b)

[45] The city's representations on this part of the test for section 10(1)(b) identify three reasons why the city believes that this section applies.

[46] First, the city argues that consulting firms would have "greater reluctance" to provide such detailed information. The city also argues that consultants may be inclined to share such information in a manner "less easily disclosed, perhaps orally instead of by providing written reports," which may be of less long-term value to the city. Lastly, the city argues that disclosure of the information about the methodology would result in institutions such as the city paying higher prices for the information, in order to compensate the consultants for the disclosure of such information to competitors.

[47] I note that the consultant (the appraiser) did not provide representations in this appeal, despite being invited to do so.

Findings

[48] I am not satisfied that the disclosure of the withheld portions of the consultant's appraisals could reasonably be expected to result in similar information no longer being supplied to the city where it is in the public interest that similar information continue to be so supplied.

[49] The representations of the city are general and speculative in nature, making reference to the possibility that consultants or appraisers who are paid to prepare reports for institutions would be less inclined to do so, or would charge more, if the withheld portions of the appraisals are disclosed. The city does not provide any evidence in support of its statements (such as whether these results have occurred in the past), nor did the appraiser provide any representations supporting this position. In the circumstances, I find that I have not been provided with sufficiently detailed and convincing evidence to establish that section 10(1)(b) applies.

[50] Furthermore, as I also noted above, some information about the methodology or nature of the work conducted by the appraiser has already been disclosed.

[51] In summary, I find that the withheld portions of Records 5 and 6 do not qualify for exemption under section 10(1).

Issue C. Do the discretionary exemptions at section 11(c) and/or (d) apply to the withheld portions of Records 5 and 6?

[52] Section 11 states in part:

> 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;

[53] 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.

[54] 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.[10]

[55] Section 11(c) does not require the institution to establish that the information in the record belongs to the institution, that it falls within any particular category or type of information, or that it has intrinsic monetary value. The exemption requires only that disclosure of the information could reasonably be expected to prejudice the institution's economic interests or competitive position.[11]

[56] 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.[12]

[57] The need for public accountability in the expenditure of public funds is an important reason behind the need for "detailed and convincing" evidence to support the harms outlined in section 11.[13]

[58] In the city's representations in support of its position that disclosure of the records would result in the harms in section 11(c) and (d), the city concedes that the property to which the appraisals relate has been sold. However, the city's position is that disclosure of these appraisals "would prejudice any future land negotiations with other properties in the vicinity." The city states:

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[10] Orders P-1190 and MO-2233.
[11] Orders PO-2014-I, MO-2233, MO-2363, PO-2632 and PO-2758.
[12] *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].
[13] Orders MO-1947 and MO-2363.

> The city holds that a reasonable expectation of harm exists for future land transaction within neighboring properties, in the event that this information is disclosed.
>
> Disclosure could seriously impair the City's ability to obtain a fair market price for other neighboring properties when future negotiations are required.

[59] The city notes that an appraisal for any given parcel of land is viewed as a "guideline" for Council to ensure that the true value is obtained when disposing of public lands, and that it is "at Council's sole discretion to determine the actual purchase price while having due consideration for all the information provided." It then states:

> Under section 268 of the *Municipal Act*, the City has the right to sell at a lower or higher price than any valuation obtained. Council has a discretion to determine the selling price and by revealing the financial information on which the City relied upon to make such decision could seriously impair its ability to obtain a fair market value price for any future negotiations.
>
> Appraised values are confidential because public knowledge of such values by competing interests would result in the City having to pay more to secure lands in question or receive less for dispositions. Future bidders of neighboring properties would benefit from knowing the appraised values by using that information to outbid the City or force the City to pay more than is necessary. This is injurious to the City's financial interests.
>
> In this particular matter, the transaction has closed and is not in the process of negotiation. It is important to note that this is only one of a number of properties in the area in which the City has an interest. If private competitors were aware of the appraised values being used by the City for this particular acquisition/disposition, they could make a logical assumption that the same value or thought process could be used for similar or nearby properties. This could impact the City's ability to negotiate and obtain reasonable prices. The City could end up paying more or receiving less. This is prejudicial to the City's competitive position in the market place.

[60] Lastly, the city states that the appraisals also contain information about other sales of similar or comparable properties, and include other details that identify the basis of the comparison figures used by the consultant. It states that, in view of this connection to the appraisal figure for the subject property, "the information used as comparable figures should qualify for exemption under section 11(c) of the *Act*." It refers to Order MO-2532 in support of its position.

[61] In his representations the appellant questions the position taken by the city. He confirms that the subject property has been sold, and asks:

> What conceivable harm might result … from (others) learning how an assessor/appraiser might conceptually, analytically, quantitatively think of [this type of] property in either a generic sense, or in a more focused manner [ie: the local property].

[62] The appellant also notes that the property in question is unique in shape, and also questions whether there are other vacant lands in the vicinity.

Analysis/findings

[63] On my review of the records at issue and the representations of the parties, I am not satisifed that disclosure of the withheld portions of Records 5 and 6 would result in the harms in section 11(c) and/or (d).

[64] To begin, I accept the position of the city that, if the sale of the property had not yet occurred, disclosure of the appraisals could result in the harms in section 11(c) and/or (d). Previous orders have consistently held that disclosing information about the appraisal of a property prior to the sale of the property could be injurious to the economic interest of an insitution.[14] However, the property that is the subject of the appraisals has been sold.

[65] The city states that, notwthstanding the fact that the property has been sold, disclosure of the appraisals even at this time would result in the harms in sections 11(c) and/or (d), as this would negatively impact the possible sale of similar properties, which have not yet been sold.

[66] Senior Adjudicator David Goodis addressed a similar argument in Order MO-1392. That order involved a request for the appraisal of a property sold by the Toronto and Region Conservation Authority (TRCA). In that appeal, the TRCA similarly argued that, although the property that was the subject of the appraisal had been sold, similar properties had not yet sold. It argued:

> In the specific case under discussion, the deal has closed so revealing the appraisal values will not [affect] the price paid for the property in question. But this is only one [of] a number of similar properties in the area in which the TRCA has an interest . . . If private competitors were aware of the appraised value being used by TRCA for this purchase, they could make the logical assumption that the same value will be used for

[14] See, for example, Orders MO-1228 and MO-1258.

> similar properties. The TRCA would end up having to pay more than it would otherwise have paid. This is prejudicial to TRCA's competitive position as a real estate buyer in the greater Toronto market place.

[67] Senior Adjudicator Goodis rejected this argument, stating:

> I am satisfied that if the appraisal figures in Records 1 and 2 were disclosed at any time prior to the closing of the transaction, disclosure could reasonably be expected to harm the economic interests or competitive position of the TRCA. This finding would be consistent with previous orders of this office …. In these cases, there was evidence of harm with respect to future negotiations. However, I am not persuaded by the TRCA's argument that this type of harm could reasonably be expected to occur *after* the completion of the transaction. In my view, once the actual purchase price is known, the appraisal figures have little or no value to the TRCA's competitors respecting any future negotiations on similar properties.

[68] I accept the reasoning in Order MO-1392, and apply it to the circumstances of this appeal. The subject property has sold, and the purchase price is known. In these circumstances, disclosure of the previous appraisal amounts have little or no value to others for any similar properties that may exist, as the actual purchase price is known. As a result, I find that the disclosure of the withheld information in the appraisals could not reasonably be expected to prejudice the economic interests or the competitive position of the city, nor be injurious to the financial interests of the city.

[69] As a result, I find that the withheld portions of Records 5 and 6 do not qualify for exemption under sections 11(c) and/or (d).

Issue D: Does the mandatory exemption at section 14(1) apply to the withheld portions of Records 5 and 6?

[70] The city takes the position that the resume of the consultant, which is attached as an addendum to Records 5 and 6, qualifies as the personal information of the consultant, and is exempt from disclosure under section 14(1) of the *Act*. The appellant does not address this issue.

[71] In order to determine whether the personal privacy exemption at section 14(1) applies, it is first 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 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,
>
> (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;

[72] 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.

[73] Sections 2(2.1) and (2.2) 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 (3) 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.

[74] 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. 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.

[75] The city submits that the information in the document qualifies as personal information under paragraph 2(1)(b) of the definition as it includes recorded information about the consultant's education or employment history. On my review of this one-page document, I note that although it is not specifically a resume of the consultant, it does contain information that falls within paragraph (b) of the definition of personal information. This information is similar to that found in resumes, which this office has found to be personal information, as defined in section 2(1).[15]

[76] Where a requester seeks the personal information of another individual, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies. The only exception with potential application in the circumstances of this appeal is section 14(1)(f) which reads:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > if the disclosure does not constitute an unjustified invasion of personal privacy.

[77] In order for the section 14(1)(f) exception to the mandatory exemption in section 14(1) to apply, it must be established that disclosure would not be an unjustified invasion of personal privacy. Sections 14(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Section 14(2) provides some criteria for the institution to consider in making this determination; section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy; section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

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[15] See for example Orders MO-2151, MO-2193 and MO-2856.

[78] Where the record contains the personal information of an individual other than the appellant, the only way that such a record can be disclosed is if I find that disclosure would not constitute an unjustified invasion of personal privacy of that individual. The appellant has not provided representations in support of the position that any factors favouring disclosure of the portions of the records at issue apply. Accordingly, in the absence of factors favouring disclosure, I find that disclosure of the one-page addendums to Records 5 and 6, which contain the personal information of an identifiable individual, would constitute an unjustified invasion of that individual's personal privacy. As a result, I find that section 14(1) applies to these addendums.

Issue E. Did the city properly exercise its discretion?

[79] The section 6(1)(b) and 11 exemptions are discretionary; however, I have found that the section 11 exemption does not apply to the records. As a result, I will only review the city's exercise of discretion as it applies to the records which I have found qualify for exemption under section 6(1)(b).

[80] When a discretionary exemption has been claimed, an institution must exercise its discretion in deciding whether or not to disclose the record at issue. On appeal, the Commissioner may determine whether the institution failed to do so.[16]

[81] 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 consideration,
- it fails to take into account relevant consideration.

[82] In such circumstances, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[17] This office, may not, however, substitute its own discretion for that of the institution.[18]

[83] In its representations on the exercise of discretion, the city submits that it considered all of the relevant considerations in exempting the records under sections 6(1)(b). It acknowledges that one of the purposes of the *Act* is that information should be made available to the public and that exemptions from the right of access should be limited and specific. However, with respect to the records at issue, the city states that "… a significant amount of information relating to the acquisition and disposition of the property has already been released to the public through press releases, and press

[16] Orders PO-2129-F and MO-1629.
[17] Order MO-1573.
[18] Section 43(2).

coverage of the transaction," and that a certain level of transparency has been achieved.

[84] The city also identifies a number of factors it considered in exercising its discretion to apply the section 6(1)(b) exemption.

[85] The appellant has provided lengthy representations. He begins by describing in detail some of the history of the development of the property at issue and the surrounding properties, and his views regarding the manner in which certain decisions were made by the city. He ends this narrative portion of his representations by indicating that his request is for information about the sale of the property which occurred a number of months prior to the date of his request.

[86] The appellant then identifies a number of concerns or questions he has about the property and the decisions made by the city. A number of these relate directly or indirectly to the issue of whether the city properly exercised its discretion. These concerns include:

- questions regarding whether proper procedures and processes were followed in declaring the property in question "surplus land;"
- questions about whether the city acted with "due diligence;"
- the appellant's position that there exists a compelling public interest in understanding the assessments of the value of the property; and
- questions about what harm could result from disclosure of the records at this time.

[87] I note that I have found above that the appraisals (except for the addendums to each) are to be disclosed to the appellant. As a result, I must determine whether the city properly exercised its discretion to deny access to the minutes of the in-camera meetings, and the presentations made in those in-camera meetings, which I have found to be exempt under section 6(1)(b).

[88] In these circumstances, considering my finding that the records relate directly to the subject matter considered at the in-camera meeting, based on my review of the records and the evidence provided by the city, I am satisfied that the city properly exercised its discretion to apply the section 6(1)(b) exemption to the records remaining at issue.

[89] I appreciate the appellant's stated interest in the subject matter of the records, and his concerns identified above. However, I note that some of the appellant's concerns appear to relate to decisions made by the city which do not directly concern the subject matter of the records. I also note that, because of my decision that the appraisals are to be disclosed, some of the appellant's concerns regarding the appraisal of the property appear to be addressed. Furthermore, I note that the public interest

override in section 16 of the *Act* does not apply to records which are found to qualify for exemption under section 6(1)(b).

[90] Based on the information provided to me, and on the nature of the records remaining at issue (in-camera minutes and presentations made at those in-camera minutes) I am satisfied that the city properly exercised it discretion in applying section 6(1)(b) to the records, and that it did not do so for an improper purpose.

ORDER:

1. I uphold the city's decision that Records 1, 2, 3 and 4 qualify for exemption under section 6(1)(b) of the *Act*.

2. I find that the Addendums to Records 5 and 6 qualify for exemption under section 14(1).

3. I find that the remaining portions of Records 5 and 6 do not qualify for exemption under sections 6(1), 10(1), 11 or 14(1), and order the city to disclose these remaining portions of Records 5 and 6 to the appellant by **July 30, 2014** but not before **July 25, 2014**.

Original signed by: June 24, 2014
Frank DeVries
Adjudicator