

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3065

Appeal MA13-136

Niagara District Airport Commission

June 26, 2014

**Summary:** The commission received a request under the *Act* for records relating to its decision not to communicate with or assist the appellant. The four records at issue in this appeal were withheld by the commission as not responsive to the appellant's request or exempt under section 38(a), in conjunction with section 6(1)(b) (closed meeting) or section 12 (solicitor client privilege), or section 38(b) (personal privacy). The appellant appealed the commission's access decision and also claimed that additional responsive records should exist. This order finds that three of the four records and a portion of the fourth record at issue in this appeal are not responsive to the appellant's request. However, the responsive portions of the fourth record do not qualify for exemption under section 6(1)(b) of the *Act* and the commission is ordered to disclose these portions to the appellant. Finally, the commission's search is upheld as reasonable.

**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), 17 and 38(a)

**Orders and Investigation Reports Considered:** MO-1285, MO-2966-I

**Other Reports Considered:** Ombudsman Ontario, *Investigation into closed meetings held by the Niagara District Airport Commission in May 2012* (Toronto: Ombudsman Ontario, February 2013).

## **OVERVIEW:**

[1] The Niagara District Airport Commission (the commission) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following:

... general records and own personal information relating to instructions made by a board, committee, officer or an employee of the Niagara Airport Commission not to communicate or assist the [requester].

[2] The requester specified the types of records that he felt should be responsive to his request, including committee/board draft notes, staff draft notes, records relating to the commission's policies regarding communication with the public and other types of records documenting its decision.

[3] In response to the request, the commission disclosed the minutes of two commission meetings dated March 19, 2009 and May 3, 2012. The commission also advised the requester that:

Both records refer to agenda items in regards to your land lease inquiries. Instructions given by the Commission to our staff are usually not provided in writing and are not considered public records unless they are reported as part of a motion in the Commission's minutes. There are currently no other records (such as specific policies or reports) regarding our communications with the public.

[4] The requester, now the appellant, appealed the commission's decision on the basis that the commission did not conduct a reasonable search for records.

[5] During the mediation stage of the appeal, the appellant advised that the purpose of his request was to obtain more information regarding the commission's decision to cease any communications with him. The appellant believes that more records supporting the commission's decision should exist.

[6] In response to the appellant's concerns, the commission conducted another search for responsive records and located additional responsive records. The commission sent the mediator a letter, dated June 12, 2013, containing a chronology of its relationship with the appellant and discussed why it decided to not communicate with him further. In this letter, the commission identified records related to this chronology, including communications with its solicitor. The commission advised that access to communications with its solicitor was denied, claiming that the application of the discretionary exemption in section 12 (solicitor client privilege) of the *Act*.

[7] The commission's letter was forwarded to the appellant, with the commission's consent.

[8] As the commission's letter did not constitute a proper decision regarding access to the additional records, the mediator asked the commission to issue a final access decision to the appellant.

[9] The commission issued a decision to the appellant, granting partial access to the additional responsive records referred to in its June 12, 2013 letter. In this decision, the commission granted the appellant full access to an email exchange between an airport manager and the mayor's administrative assistant. However, the commission denied the appellant access to a decision dated May 3, 2012 pursuant to the discretionary exemption in section 6(1)(b) (closed meeting) and the mandatory exemption in section 14(1) of the *Act*. Finally, it denied the appellant access to an email written by a former airport manager pursuant to the mandatory exemption in section 14(1) (personal privacy) of the *Act*. Although the commission's decision letter did not address the communications with its solicitor that were identified as exempt under section 12(1) in its June 12, 2013 letter, the commission confirmed that it continued to apply the exemption in section 12(1) to this record with the mediator.

[10] Following subsequent discussion with the mediator, the commission identified an additional record that it claims to be non-responsive to the appellant's original request. The commission then confirmed that it granted the appellant access to three letters addressed to him, a bank document and the commission's meeting minutes dated February 21, 2013.

[11] The appellant confirmed that he seeks access to the withheld records and the record claimed to be not responsive to his request. The appellant also believes that additional responsive records should exist to show why the commission made its decision to cease communications with him.

[12] As mediation did not resolve all of the issues in this appeal, it was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. During mediation, the mediator raised the possible application of section 38(a) to the records withheld under sections 6(1)(b) and 12 and section 38(b) for the records withheld under section 14(1). However, upon review of the records, I have decided to remove section 38(a) from the section 12 claim for Record #1 because this record does not appear to contain the personal information of the appellant.

[13] I began my inquiry by seeking representations from the commission and an individual whose interests may be affected by the records (the affected party), who both submitted representations. I then invited the appellant to make representations in response to the issues raised in the Notice of Inquiry and the commission and affected party's arguments, which were shared in accordance with section 7 of this office's *Code*

*of Procedure* and *Practice Direction* number 7. The appellant submitted representations. I then sought reply representations from the commission, which submitted representations in response to the appellant's submissions.

[14] In the discussion that follows, I find that three of the four records and a portion of the fourth record at issue in this appeal to be not responsive to the appellant's request. As a result, it is not necessary for me to determine whether the exemptions in sections 12 and 38(b) apply to these records. However, I find that the responsive portions of the fourth record do not qualify for exemption under section 6(1)(b) of the *Act* and order the commission to disclose them to the appellant. Finally, I uphold the commission's search as reasonable.

## **RECORDS:**

[15] The records that remain at issue consist of the following:

- Record #1: March 26, 2009 email from a law firm, withheld under section 12(1)
- Record #7: May 3, 2012 Special Meeting Minutes, withheld under sections 38(a), in conjunction with section 6(1)(b), and 38(b)
- Record #8: Email dated April 26, 2012, withheld under section 38(b)
- Record #10: Email dated January 10, 2013, identified as not responsive to the appellant's request

## **PRELIMINARY MATTER**

### **Conflict of Interest or Bias**

[16] The appellant submits that the Chairman of the commission's (the chairman) correspondence and submissions made on behalf of the commission demonstrates that the chairman is acting as an advocate for the commission and her own personal political position. The appellant cites Interim Order P-524, which states that it is "a well-established principle of natural justice that a decision-maker must not be biased as 'no one shall be a judge in his own cause'."

[17] In Order MO-1285, Adjudicator Laurel Cropley discussed the factors to consider when addressing whether a conflict of interest exists. She wrote:

Previous orders of this office have considered when a conflict of interest may exist. In general, these orders have found that an individual with a personal or special interest in whether the records are disclosed should

not be the person who decides the issue of disclosure. In determining whether there is a conflict of interest, these orders looked at (a) whether the decision-maker had a personal or special interest in the records, and (b) whether a well-informed person, considering all of the circumstances, could reasonably perceive a conflict of interest on the part of the decision-maker (see, for example: Order M-640).

[18] Beyond making his assertion, the appellant did not provide me with evidence demonstrating that there is a conflict of interest with respect to his request or appeal. Reviewing the records and the circumstances of this appeal, I find that there is no evidence before me that the chairman of the commission had a special or personal interest in the records at issue in this appeal. In my view, there is nothing before me to substantiate a finding that the chairman was in a conflict of interest with respect to the appellant's request and/or appeal under the *Act*.

[19] I will now turn to the other issues in this appeal.

## **ISSUES:**

- A. What is the scope of the request? What records are responsive to the request?
- B. Does Record #7 contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- C. Does the discretionary exemption at section 38(a) in conjunction with the section 6(1)(b) exemption apply to Record #7?
- D. Does the discretionary exemption at section 12(1) apply to Record #1?
- E. Did the commission conduct a reasonable search for records?

## **DISCUSSION:**

**A. What is the scope of the request? What records are responsive to the request? Specifically, is the email of April 26, 2013 responsive to the request?**

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

- (1) A person seeking access to a record shall,

- (a) make a request in writing to the institution that the person believes has custody or control of the record;
- (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

...

- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[21] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.<sup>1</sup>

[22] To be considered responsive to the request, records must "reasonably relate" to the request.<sup>2</sup>

[23] The commission submits that the records at issue are not responsive to the appellant's request. The commission submits that its interpretation of the scope of the request was based on the instructions, explanations and directions provided by IPC staff during intake and mediation. The commission advises that it interpreted the request as including only "information leading to the decision not to communicate with [the appellant]". With respect to Record #10, the commission submits that this record does not relate to the appellant at all and does not concern him in any way. The commission submits that Record #10 concerns another individual and that individual's behaviour, and does not involve the appellant, either directly or indirectly. Although the commission submits that the records at issue are not responsive, it did not make specific representations explaining why Records #1, #7 and #8 are not responsive to the appellant's request.

[24] In his representations, the affected party submits that Record #8 is not responsive to the appellant's original request. The affected party advises that he reviewed the appellant's request, as reproduced in the Notice of Inquiry, and submits that Record #8 is outside the scope of the request and is, therefore, not responsive. The affected party states that the email is a statement of events from his perspective, describing what occurred when he was invited out of a meeting and into a personal discussion about his presence at a public meeting. The affected party states that he was not part of a board, committee or an officer or employee of the commission at the

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<sup>1</sup> Orders P-134 and P-880.

<sup>2</sup> Orders P-880 and PO-2661.

time he wrote the email. The affected party states that he only made three short references to the appellant in the email that do not relate to the appellant's request. Finally, the affected party submits that

... there is not one scintilla of information in this email relating to instructions made by a board, committee, officer or an employee of the [commission] not to communicate or assist [the appellant]. Neither is there any "own information" related to [commission] communication policies or instructions in this email.

[25] The appellant did not make representations on whether the records at issue were responsive to his request. However, in supplementary submissions, the appellant states that the previous commission chair advised him that the reason for the appellant's rejection was that the appellant "repeatedly acted against the Niagara District Airport's interests, procedures and even its recent infrastructure funding." As a result, the former commission chair advised the appellant that the commission "will therefore not consider any of [the appellant's] 'proposals' and has directed [its staff] to no longer respond to [the appellant's] inquiries." The appellant submits that all records based on this decision provided by the previous commission chair are responsive to his request, including records relating to infrastructure funding.

[26] In addition, the appellant makes a number of general submissions with regard to the IPC's interpretation of the term "reasonably related", in relation to the commission's search and the fact that it located a small number of records that were responsive to this request out of a large volume of records accumulated over nearly two decades that relate to him. The appellant submits that it is improper of the commission to unilaterally decide records are not related or are not responsive, as the "request itself sets out the boundaries of relevancy, not the institution."

[27] Based on my review of the records at issue, I find that Records #8 and #10 are not responsive to the appellant's original request. As stated by the affected party, the appellant's original request is for records "relating to instructions made by a board, committee, officer or an employee of the Niagara Airport Commission not to communicate or assist [the appellant]." Neither Record #8 nor Record #10 relate to the commission's instructions or decision not to communicate with or assist the appellant. Although the appellant is referred to in passing, Record #8 relates entirely to an incident involving the affected party and does not relate in any way to the commission's decision not to communicate with or assist the appellant. With regard to Record #10, I agree with the commission that the record does not relate to the appellant or the commission's instructions not to communicate with or assist him.

[28] Additionally, I find that Record #1 is not responsive to the appellant's request. The record is an email to the commission dated March 26, 2009 from a law firm. Based on my review of the record, I find that it does not "reasonably relate" to the appellant's

request as it does not contain information relating to the commission's instructions not to communicate with or assist the appellant.

[29] With regard to Record #7, I find that portions of that record are not responsive to the appellant's request. Two paragraphs on the first page and one paragraph on the second page address items unrelated to the appellant that were considered by the commission on that date. Upon review, I find that these paragraphs do not "reasonably relate" to the appellant's request as they do not contain information relating to the commission's instructions not to communicate with or assist the appellant. As a result, I find that they are not responsive to the request.

[30] Therefore, I find that Records #1, #8 and #10 and portions of Record #7 are not responsive to the appellant's request and are, accordingly, outside the scope of this appeal. I will not consider Records #1, #8 and #10 and the non-responsive portions of Record #7 further in this decision.

[31] With regard to the appellant's submission that records relating to infrastructure funding are reasonably related to his request, I disagree. The appellant's request was for records relating to the commission's instructions not to communicate with or assist the appellant. The appellant provided the following excerpt from a letter from the previous commission chair:

Over the past eight years you have failed to establish a serious and trustworthy relationship with any of the previous and current Airport Commissions and have repeatedly acted against the Niagara District Airport's interests, procedures and even its recent infrastructure funding.

Your history with the Airport Commission no longer warrants taking any of your propositions seriously and your relentless advances are perceived as frivolous. The Airport Commission will therefore not consider any of your "proposals" and has directed [two staff members] to no longer respond to your inquiries.

[32] Based on this excerpt, the appellant submits that all records based on this decision are also responsive records, including records relating to infrastructure funding. I disagree. It appears from the text of the former commission chair's letter that the appellant's actions against the commission resulted in its decision to cease communicating with or assisting the appellant. It is unclear, and the appellant's submissions do not clarify, how records that relate to the commission's projects or funding would relate to its decision not to communicate with or assist the appellant. Reviewing the appellant's supplementary submissions, I do not find that records that relate to infrastructure funding or other projects "reasonably relate" to his request for records relating to instructions not to communicate with or assist the appellant.



Therefore, I find that the types of records described in the appellant's supplementary representations are not within the scope of his original request.

[33] With regard to the appellant's submission that, of the numerous records located that relate to him, there should be more records reasonably related to this request, I disagree. As discussed above, the appellant requested records relating to the commission's decision and instructions not to communicate with or assist him further. I agree with the appellant's submission that the request sets out the "boundaries of relevancy" and not the institution. However, upon review of the commission's representations and the records that the commission found to be responsive to the appellant's request, I find that the commission located the records that were reasonably related to the appellant's request and was not overly limited in their search. I find support for this position in the fact that I have found a number of the records that the commission located and identified to be within the scope of this appeal to be not responsive to the appellant's request, which suggests that the commission interpreted the appellant's request broadly. Therefore, I find that the commission conducted its search and made the determination that records were responsive in a reasonable manner.

**B. Does Record #7 contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[34] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain "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 where 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;

[35] 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.<sup>3</sup>

[36] Sections (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 (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.

[37] 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.<sup>4</sup>

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<sup>3</sup> Order 11.

<sup>4</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

[38] 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.<sup>5</sup>

[39] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>6</sup>

[40] In its representations, the commission submits that the minutes of the special meeting contains "personal information" about an individual who is not the appellant and the information reveals things of a personal nature about that person, who may be identified if the information is disclosed.

[41] The appellant does not address whether the records at issue contain "personal information" within the meaning of section 2(1) of the *Act*.

[42] Based on my review of the portions of Record #7 that remain at issue, I find that it contains the appellant's personal information, as that term is defined in section 2(1) of the *Act*. The information at issue contains the appellant's name where it appears with other personal information relating to him or where the disclosure of his name would reveal other personal information about him, which falls within paragraph (h) of the definition of "personal information" in section 2(1) of the *Act*.

[43] I find that none of the information that remains at issue contains the personal information of any other individual. Accordingly, it is not necessary to consider whether section 38(b) applies to exempt this information, namely, the responsive portions of Record #7.

[44] As I have found that Record #7 contains the personal information of the appellant, I will consider whether the portions that remain at issue qualify for exemption under the discretionary exemption at section 38(a) in Part II of the *Act*.

**C. Does the discretionary exemption at section 38(a) in conjunction with the section 6(1)(b) exemption apply to Record #7?**

[45] Section 36(1) gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from that right.

[46] Section 38(a) reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

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<sup>5</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>6</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

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.

[47] The commission takes the position that Record #7 is exempt from disclosure under section 6(1)(b). That section 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.

[48] 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.<sup>7</sup>

[49] I will review each part of this three-part test to determine whether the record qualifies for exemption under this section.

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

[50] The commission states in its representations that it held a closed meeting on May 3, 2012. The commission submits that it believed that the meeting was held in accordance with section 239(2)(b) of the *Municipal Act*, which allows for a closed meeting where “personal matters about an identifiable individual, including municipal or local board employees” are the subjects being considered. In the circumstances, I am satisfied that the meeting took place, and that Part 1 of the three-part test under section 6(1)(b) has been met.

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<sup>7</sup> Orders M-64, M-102 and MO-1248.

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

[51] In support of its position that this part of the three-part test is established, the commission states that it believed that the meeting of May 3, 2012 was closed to the public in accordance with provision 239(2)(b) of the *Municipal Act*, which reads:

A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

personal matters about an identifiable individual, including municipal or local board employees

[52] The commission submits that the appropriate resolution, stating the general nature of the subject matter and the subsections under which the meeting was to be closed, was passed prior to going in camera. The commission also states that the meeting notice was published on the airport's website at least 48 hours in advance of the meeting and that the "identifiable individual" that was the subject of the meeting was not the appellant. The commission states that it is unable to disclose the closed meeting record because the commission did not begin keeping minutes of closed meetings until shortly after the May 3, 2012 meeting. As such, the commission states that a commission record of that in camera discussion does not exist, and never existed.

[53] The commission provided me with a copy of a Report of the Ombudsman of Ontario (the Ombudsman's Report) dated February 2013, which addresses the issue of whether the commission properly held two closed meetings, including the May 3, 2012 meeting. The Ombudsman's Report found that the "commission's discussion in closed session at the May 3 meeting under the 'personal matters about an identifiable individual' exception [in section 239(2)(b) of the *Municipal Act*] did not fit within the parameters of that or any exception"<sup>8</sup>. The Ombudsman's Report concludes that the commission held an illegal closed meeting on May 3, 2012.

[54] In his representations, the appellant refers to the Ombudsman's finding that there was no legislative authority to hold the closed meeting on May 3, 2012 and that the commission cannot rely on section 6(1)(b) to deny access to the meeting minutes.

[55] In Interim Order MO-2966-I, Adjudicator Frank Devries considered the application of section 6(1)(b) of the *Act* to records that the Township of Tiny claimed were being discussed in-camera in accordance with section 239 of the *Municipal Act*. During the course of that inquiry, the parties to the appeal were made aware of a Report of the Ombudsman that found that the portion of the meeting during which the

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<sup>8</sup> Ombudsman Ontario, *Investigation into closed meetings held by the Niagara District Airport Commission in May 2012* (Toronto: Ombudsman Ontario, February 2013) at 7.

records at issue in the appeal were discussed was improperly closed to the public. In the Notice of Inquiry, Adjudicator Devries referred to that Report of the Ombudsman and asked the township to address the report's impact on the claim that section 6(1)(b) applies to the records. The township did not address this issue in its representations. In the absence of representations from the town on the issue, Adjudicator Devries found as follows:

... I accept the findings of the Ombudsman and find that Part 2 of the three-part test has not been established, as section 239(2)(f) of the *Municipal Act, 2011* does not authorize the township to hold the meeting to discuss the records at issue (the Report and Appendix A) in the absence of the public.<sup>9</sup>

[56] I adopt the above analysis for the purposes of this appeal. In the absence of representations challenging or rebutting the Ombudsman's findings, I accept them and find that Part 2 of the three-part test has not been established, as section 239(2)(b) of the *Municipal Act, 2011* does not authorize the commission to hold the May 3, 2012 meeting in the absence of the public.

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

[57] 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<sup>10</sup>
- "substance" generally means more than just the subject of the meeting<sup>11</sup>

[58] The commission did not make submissions on whether disclosure of the record would reveal the actual substance of the deliberations of the meeting.

[59] Reviewing the record, even if the township was authorized to hold the meeting under section 239(2)(b) of the *Municipal Act, 2011*, it would be open to me to consider whether the portions that remain at issue in Record #7 meet Part 3 of the test for exemption. The Divisional Court has confirmed that, even when a public body is authorized to discuss a matter in-camera, the portions of the record which do not relate

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<sup>9</sup> Interim Order MO-2966-I, para 20.

<sup>10</sup> Order M-184.

<sup>11</sup> Orders M-703 and MO-1344.

to that matter, and would not reveal the substance of the deliberations relating to it, can be severed and disclosed.<sup>12</sup>

[60] Applying this approach to the portions of Record #7 that remain at issue in this appeal, I am satisfied that these records would not reveal the substance of deliberations relating to “personal matters about an identifiable individual, including municipal or local board employees”, and that Part 3 of the test has also not been met.

[61] Accordingly, I am satisfied that the portions of Record #7 that remain at issue do not qualify for exemption under section 6(1)(b) of the *Act*.

#### **D. Does the discretionary exemption at section 12(1) apply to Record #1?**

[62] As I have already determined that Record #1 is not responsive to the appellant’s request, it is not necessary for me to determine whether section 12(1) applies to exempt the record from disclosure.

#### **E. Did the commission conduct a reasonable search for records?**

[63] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.<sup>13</sup> If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution’s decision. If I am not satisfied, I may order further searches.

[64] 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 made a reasonable effort to identify and locate responsive records.<sup>14</sup> To be responsive, a record must be “reasonably related” to the request.

[65] 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.<sup>15</sup> 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.<sup>16</sup>

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<sup>12</sup> *St. Catharines (City) v. Ontario (Information and Privacy Commissioner)*, 2011 ONSC 2346 (Div. Ct.). In that decision, the Divisional Court found that the city was authorized to proceed in-camera to discuss the sale of land under section 239(2)(c) of the *Municipal Act, 2001*, but also determined that the portions of the record that did not qualify for exemption under Part 3 of the test.

<sup>13</sup> Orders P-85, P-221 and PO-1954-I.

<sup>14</sup> Orders P-624 and PO-2559.

<sup>15</sup> Orders M-909, PO-2469 and PO-2592.

<sup>16</sup> Order MO-2185.

[66] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester must still provide a reasonable basis for concluding that such records exist.<sup>17</sup>

[67] In its representations, the commission submits that an experienced employee knowledgeable in the subject matter of the request expended a reasonable effort to locate any and all record that may be reasonably related to the request. The commission submits that this employee has the requisite experience and knowledge to locate responsive records and expended a reasonable and diligent effort.

[68] Additionally, the Chairman of the commission advised that she personally searched the minute books located at the Niagara District Airport from the early 1990s to the present date. The chairman also advised that the Airport Administrator searched the Airport's paper files and computer files, that were all located at the airport, for any document in which the appellant, or any company affiliated with him, were mentioned and provided the chairman with legal file folders and email correspondence. The chairman advises that she reviewed every document provided and found that the vast majority of the two decades worth of records was not responsive to the request that is the subject of this appeal.

[69] Finally, the chairman advised that she is not aware of any written record maintenance policies or retention schedules (other than minutes binders) pertaining to the commission. The chairman advises that the commission is a small operation and its focus is on airport operations.

[70] In his representations, the appellant submits that the commission did not conduct a reasonable search for records and that there should be additional responsive records in its possession. The appellant submits that, in the operation of a publicly licensed aerodrome, the passage of a by-law directing staff to not assist a member of the flying public is a serious matter with the potential of criminal penalties and civil liabilities. As such, the appellant submits that it is highly unlikely that there is no supporting documentation, even under the "poorest administrative conditions".

[71] With regard to the commission's representation's pertaining to its search, the appellant submits that "vaguely or directly referring to extensive amounts of a name, numerous files and sheaves of emails does not satisfy the requirements of a reasonable search for records." The appellant submits that the records that were located, especially those where access is denied, should be individually indexed and, if access is denied, the reasons why the record is withheld should be provided.

[72] In reply, the commission advises that airport staff was never instructed to not assist the appellant in his capacity as a member of the flying public. The commission

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<sup>17</sup> Order MO-2246.



states that it decided only not to further entertain the appellant as a prospective business tenant. Further, the commission submits that its airport administrator is the most experienced airport administrative employee and she expended a reasonable effort to identify any records that might contain information that might be reasonably related to the appellant's requests.

[73] Based on my review of the parties' representations, I am satisfied that the commission has provided sufficient evidence to demonstrate that it discharged its responsibility under the *Act* and made a reasonable effort to identify and locate records responsive to the appellant's request. I find that the searches were conducted by experienced employees knowledgeable in the subject matter of the request, in accordance with the commission's obligations under the *Act*.<sup>18</sup> I find that the commission provided me with sufficient evidence to demonstrate that it made a reasonable effort to locate records responsive to the appellant's request. As noted above, the *Act* does not require an institution to prove with absolute certainty that additional records do not exist. Additionally, the institution is not required to go to extraordinary lengths to search for responsive records. An institution is only required to identify and locate records responsive to the request.

[74] In addition, I am not satisfied that there is a reasonable basis for the appellant's belief that additional records that are responsive to the request that is the subject of this appeal should exist. The appellant makes number of general submissions with regard to the IPC's interpretation of the term "reasonably related", in relation to the commission's search. He also takes issue with the fact that it located a small number of records in response to this request out of a large volume of records accumulated over nearly two decades that relate to him. While the commission has acknowledged that it located a large number of records relating to the appellant, it submits that it conducted a reasonable search for records responsive to this request, as framed by the appellant. I agree. As discussed above, I found that a number of the records that the commission determined to be within the scope of the appeal to be unresponsive to the request, which suggests that the commission interpreted the appellant's request broadly. In light of this fact and the detailed submissions regarding the nature and extent of the searches conducted, I am satisfied that the commission's searches were reasonable.

## **ORDER:**

1. I find that Records #1, #8 and #10 and portions of Record #7 are not responsive to the appellant's request.
2. I find that the responsive portions of Record #7 do not qualify for exemption under section 6(1)(b) of the *Act* and order the commission to disclose these portions to the appellant. For greater certainty, I have attached a copy of Record

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<sup>18</sup> Orders M-909 and PO-1744.

#7 to the order provided to the commission, with the portions that should not be disclosed to the appellant highlighted in yellow. I order the commission to disclose the remainder of the record to the appellant by **July 29, 2014**.

3. I uphold the commission's search as reasonable.

Original Signed By: \_\_\_\_\_ June 26, 2014 \_\_\_\_\_  
Justine Wai  
Adjudicator