Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3100

Appeal MA13-102

City of Ottawa

September 26, 2014

Summary: The City of Ottawa received a request for all records related to an identified property covering a specified time frame. The city located approximately 300 pages of responsive records and denied access to portions of them pursuant to the exemptions at section 7(1) (advice or recommendations), sections 8(1)(a) and (d) (law enforcement), section 12 (solicitor-client privilege) and section 14(1) (personal privacy) of the *Act*. During mediation, the city conducted an additional search and located additional records. Portions of the additional records were denied pursuant to the same exemptions identified in the previous access decision. In this order, the adjudicator finds that some of the records contain the personal information of the appellant and other identifiable individuals, and that the personal privacy exemption at section 38(b) applies to the majority of information for which it was claimed. However, she finds that the absurd result principle applies to several records, which are ordered disclosed. The adjudicator also finds that section 38(a), read in conjunction with sections 7(1) and 12, applies to the information for which it was claimed. Finally, the adjudicator finds that the record claimed to be not responsive, is indeed not responsive to the request and upholds the city's search for responsive records.

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"), 7(1), 8(1), 12, 14(1), 14(2)(f), (g), (h), 14(3)(b), 38(a) and (b).

OVERVIEW:

[1] The appellant filed an access request with the City of Ottawa (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request read, in part, as follows:

> Copies of all letters, correspondence, memos, notes of telephone calls, notes of conversations, email sent or received by [named individual] and employee of the City of Ottawa, concerning [identified address], and especially from [two named individuals] between 2009 and present date.
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> Copies of all letters, correspondence, memos, notes of telephone calls, notes of conversations, email sent or received by [named individual] an employee of the City of Ottawa concerning [identified address] between 2009 and the present date.
>
> Copies of all letters, correspondence, memos or emails to or from the Municipality and anyone concerning [identified address] from 1989 to 2012
>
> Copies of all letters or correspondence, memos, or invoices between [a named law firm] and the Municipality (West Carleton now Ottawa) in 1991 – 1993 concerning [identified address].
>
> The entire property file, if more extensive that the above, for [identified address] between 2009 and the present date.
>
> A copy of the staff response to an enquiry made by [named individual] (Chief Building Inspector for the City of Ottawa) on or about October 10, 2012 concerning staff activities regarding [identified address].

[2] The city located 297 pages of responsive records and issued an access decision granting partial access to them. Access was denied, in full or in part, pursuant to the exemptions at sections 7(1) (advice or recommendations), 8(1)(a) and (d) (law enforcement), 12 (solicitor-client privilege) and 14(1) (personal privacy), taking into consideration the presumption at section 14(3)(f) (financial information) of the *Act.*

[3] The city stated in its decision that an extensive search had been conducted to locate records exchanged between a named law firm and the municipality between 1991 and 1993 concerning the address identified in the request. The city noted that the reference CD-41 (provided by the appellant), was a file name for a working file used in the former Municipality of West-Carleton, and that working files contain copies of documents used by internal staff and have limited retention periods. It indicated that it

had located some documents responsive to the request, but that file CD-41 no longer exists.

[4] The appellant appealed the city's access decision.

[5] During mediation, the appellant advised that he seeks access to all of the information that has been withheld by the city. He noted that the index provided to him was confusing as it did not list the record numbers in sequential order and contained gaps. The city agreed to issue a new index of records, listing the record numbers sequentially.

[6] The appellant also advised that he believes that additional records responsive to the request should exist. The appellant provided a list of specific records that he believed should exist and questioned why record 212, which related to a property other than that identified in the request, had been included in the responsive records.

[7] The city advised that it had conducted an extensive search to locate records responsive to the request which included searching records with the city's legal services branch, as well as outside sources such as the Ottawa Public Archives and other files in the public domain. However, the city agreed to conduct an additional search.

[8] As a result of the additional search, the city located an additional 15 pages of responsive records (pages 298-312). It issued a supplemental access decision granting partial access to them, denying access to portions of pages 301 and 304 pursuant to the exemptions at sections 7(1), 8(1)(a) and (d), 12 and 14(1). In its decision, the city also responded to the appellant's questions regarding the specific records the appellant believed should exist and explained that record 212 had been included as a responsive record as it had been in the file related to an address identified in the request. The city indicated however, that it was now taking the position that record 212 was not responsive to the request.

[9] Together with the supplemental access decision, the city provided the appellant with a CD containing all of the records that were located: (1) as a result of the initial search and originally released to the appellant with the initial access decision, (2) the records that it had not originally released to the appellant because the city considered them to be duplicates, and (2) the records located as a result of the additional search.

[10] The appellant advised that he continued to believe that additional records should exist. He also confirmed that he sought access to all of the information that was withheld from the responsive records, including the information on page 212 which the city claims is not responsive to the request. In response, the city advised that it was of the view that it has conducted a reasonable search.

[11] As a mediated settlement could not be reached, the appeal was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry. I sent a Notice of Inquiry to the parties and received representations that I exchanged in accordance with this office's *Practice Direction 7.*

[12] In its representations, the city submitted that despite its prior claim, records 155, 220 and 243 do not contain the personal information of any individuals other than the appellant. It also submitted that it no longer claims section 8(1)(d) for records 155 and 220. However, it continued to claim the exemption at section 7(1) applied to record 155. As no other exemptions have been claimed for records 220 and 243, I will order the city to disclose them to the appellant.

[13] In this order, I make the following findings:

- Record 212, which the city claimed to be not responsive, is indeed not responsive to the request.
- The city conducted a reasonable search for responsive records.
- Some portions of the records contain the personal information of the appellant, as well as that of other identifiable individuals. The majority of these portions are exempt under the personal privacy exemption at section 38(b). The absurd result principle applies to the remainder of the portions of records at issue, which are ordered disclosed.
- Some portions of the records for which the exemptions at sections 7(1), 8(1) and 12 have been claimed contain the appellant's personal information. These portions are exempt under section 38(a), read in conjunction with sections 7(1) and 12.

RECORDS:

[14] The following records remain at issue:

- Records 27, 94, 98, 136, 137, 138, 151, 152, 155, 187, 196, 197, 205, 206, 212, 219, 222, 248, 249, 252, 259, 261, 262, 263, 278, 292, 295, 296, 301, 304.

ISSUES:

A. Did the city conduct a reasonable search for records responsive to the request?

B. Is record 212 responsive to the request?

C. Do the records contain "personal information" as defined in section 2(1) of the *Act*, and if so, to whom does it relate?

D. Does the discretionary personal privacy exemption at section 38(b) apply to the records?

E. Does the discretionary exemption at section 38(a), read in conjunction with the exemption for advice or recommendation at section 7(1), or the discretionary exemption at section 7(1), on its own, apply to the records?

F. Does the discretionary exemption at 38(a), read in conjunction with the law enforcement exemptions at sections 8(1)(a) and/or (d), apply to the records?

G. Does the discretionary exemption at 38(a), read in conjunction with the solicitor-client privilege exemption at section 12 apply to the records?

H. Did the city exercise its discretion under section 7(1) and sections 38(a) and (b)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

A. Did the city conduct a reasonable search for records responsive to the request?

[15] 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 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.

[16] Although a requester will rarely be in a position to indicate precisely which records that the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[2]

[17] 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.[3]

[18] 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]

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[1] Orders P-85, P-221 and PO-1954-I.
[2] Order MO-2246.
[3] Orders P-624 and PO-2559.

[19] 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]

Representations

[20] As noted above, during mediation the appellant provided the city with a list of questions with respect to additional records that he believed should be responsive to his request, but which had not been identified in the index of records. The city agreed to conduct an additional search and located 15 additional records. It then issued a supplemental decision granting partial access to them. In its decision, the city also responded to a number of questions posed by the appellant regarding the specific records. At the close of mediation, the appellant advised that he continues to believe that additional records responsive to his request should exist.

[21] In its representations, the city submits that it conducted a reasonable search for records responsive to the request as required by section 17 of the *Act*. It submits that the analyst assigned to the file conducted a thorough search by covering all departments of the city that could potentially have information about the records or have custody or control of the records, including the building code services, by-law and regulatory services, real estate, legal services, and information management. The city further submits that she contacted individuals knowledgeable about the property, including staff from the building code services, who were directly involved in the subject matter of the request and had previously dealt with issues related to the appellant's property.

[22] The city submits that during mediation, the analyst returned to each of the respective city departments to ensure that, based on the information provided by the appellant, no further records existed. It submits that, at that time, she reviewed all of the records again to ensure that she had correctly identified all responsive records.

[23] To support its submissions, the city provided an affidavit sworn by the analyst who coordinated the search for records responsive to the request. The analyst reiterates the city's explanation of her search. She identifies the city departments that she contacted and communicated with in respect to the request.

[24] The analyst also states that she was in contact with the appellant during the processing of his request, providing him with updates on the retrieval of records from external law firms and storage. The analyst explains that as a result of information provided by the requester, she contacted an individual who, in the past, worked on zoning issues with the former Township of West-Carleton and learned that additional records might have been archived or stored in information management. She located

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[4] Orders M-909, PO-2469 and PO-2592.
[5] Order MO-2185.

and made copies of any records that were responsive. Specifically, she states that she provided the city's building code services, as well as its legal services, with the complete wording of the request and requested that staff search for responsive records. She also submits that she communicated with legal services about retrieving files from external law firms. Of the three firms that were contacted, legal services advised that only one held records pertaining to the city street identified in the request and that this fact had been confirmed by the lawyer who had carriage of the file in the 1990s. The analyst also submits that legal services advised that the records management system and an old Regional Municipality of Ottawa West-Carleton filing system had been consulted but no records were found relating to the identified address.

[25] The analyst concludes her affidavit by stating that, based on her interactions with city staff throughout the retrieval process, she is satisfied that the individuals with whom she consulted with were all familiar with records in their respective service areas and were, therefore, in a position to locate and retrieve all responsive records.

[26] In his representations, the appellant states that he continues to take the position that the city has not conducted a reasonable search as required by section 17 of the *Act*. He submits generally that the records produced demonstrate that a reasonable search has not been conducted.

[27] The appellant states that the affidavit makes it clear that the analyst relied on departmental staff, but that she subsequently "realized that there were other documents" and "attempted to find them by setting out on her own quest but that task appears to have been beyond her job description."

[28] He submits that he has the results of a search resulting from an earlier access request conducted in 1994 by the city clerk of the former Regional Municipality of Ottawa West-Carleton. He submits that knowing the result of that search leads him to believe that a reasonable search was not conducted and also that the analyst was not in a position to conduct a reasonable search or to judge whether one had been conducted. He submits:

> The analyst could only rely on a narrow selection of staff "**deemed to be experienced employees knowledgeable in the subject matter" BUT** who arguably had a vested interest in the subject matter and the scope of the information. The scope of the information related to their own behaviours and activities. [emphasis in original]

[29] He submits that in his email exchanges with the analyst, the difficulties that she faced are clear. He attached the email exchange with his representations and identified the portions that he submits are relevant by circling and underlining them.

[30] In reply, the city submits that during the processing of the request, it was through back and forth communications with the appellant that the analyst was able to ensure she had properly understood the scope of the request and fulfilled the reasonable search requirements under the *Act*. It acknowledges that the processing of the request presented a challenge due to the evolving information provided by the appellant and his request that it search for pre-amalgamation records going back many years. The city maintains, however, that it contacted the relevant departments including the records management authorities to follow the leads provided by the appellant.

Analysis and finding

[31] On my review of the information before me in this appeal, I accept that the city has provided me with sufficient evidence to demonstrate that it made a reasonable effort to identify and locate records responsive to the appellant's request.

[32] Although the appellant takes the position that the analyst herself was not sufficiently knowledgeable about the records sought, I disagree. In my view, based on the request itself, the information that she collected from the requester during the processing of the request, and her knowledge of where records of the type sought are generally kept, the analyst was sufficiently experienced to coordinate the search by contacting and consulting with other city employees who were perhaps more familiar with the specific records sought by the appellant. Accordingly, I accept that the searches were conducted by experienced employees who are knowledgeable about records held by the city and that they expended a reasonable effort to locate any responsive records sought by the appellant.

[33] As noted above, although a requester will rarely be in a position to indicate precisely which records that the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[6] In the circumstances of this appeal, I find that I have not been provided with a reasonable basis for concluding that additional records responsive to the request exist. Although the appellant suggests that a previous search conducted by the former Regional Municipality of Ottawa West-Carleton for similar information gave rise to information that he believes should have been located in the present search, the appellant provides me with no specific information about the records that he believes exist. The only evidence he has provided with respect to this earlier request is a letter from the city clerk, dated January 5, 1994, advising that she requires clarification on some matters prior to proceeding with the processing of the request. Copies of the records disclosed to him or the final access decision were not provided. In my view, the appellant has not provided me with sufficient evidence to suggest or demonstrate that specific records responsive to his request should exist.

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[6] Order MO-2246.

[34] Additionally, as previously stated, 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 held by the city. In this appeal, the city's search included any records that might exist, that were previously under the custody or control of a different municipality, prior to its amalgamation with the city. Numerous searches, in a variety of different locations, were conducted based on ongoing consultations with the appellant. I accept that I have been provided with sufficient evidence to show that the city has made a reasonable effort to identify and locate records responsive to the appellant's request.

[35] Accordingly, I find that the city has performed a reasonable search for records that are responsive to the appellant's request.

B. Is record 212 responsive to the request?

[36] The city takes the position that record 212 is not responsive to the request. The appellant disputes this position.

[37] Described generally, the request that gave rise to this appeal is for access to all records held by the city with respect to an identified property within a specified time period.

[38] 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.[7]

[39] To be considered responsive to the request, records must "reasonably relate" to the request.[8]

Representations

[40] The city submits that the scope of the request was clear as it was limited to a specific municipal address within a specific period of time. The city takes the position that the analyst assigned to the request correctly interpreted the scope and identified all responsive records.

[41] In a sworn affidavit, the analyst submits that she reviewed all the responsive and non-responsive records provided to her by all the city departments that had been involved in the search. She states:

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[7] Orders P-134 and P-880.
[8] Orders P-880 and PO-2661.

> During my review of all the non-responsive records, I located a legal document that met the description of a record that the appellant claims was missing from his release package. This document that is [record] 212 of the release package was originally deemed non-responsive as the date on the record was outside the requested date range."

[42] In the city's representations, it states that the reference to record 212 in the analyst's affidavit was made in error and that the analyst was actually referring to another record in that paragraph. It submits that record 212 was determined to be non-responsive because it does not address the appellant's property, but rather relates generally to sales of land on the same street as the appellant's property.

[43] The appellant states that all documents affecting his property are responsive. He submits that the analyst did not correctly interpret the scope of the request and did not identify all responsive records. Specifically in response to the clarification made by the city with respect to the analyst's reference to record 212, the appellant submits that "the sworn affidavit must speak for itself, errors and all" and that the representations cannot offer corrections to it. The appellant submits that record 212 was originally found in his property file and that it is "very responsive" to the request. He also submits that the reason for putting it there goes to the heart of the information requested.

Analysis and finding

[44] Having reviewed the record, I accept the city's position that record 212 is not responsive to the appellant's request. As stated, previous orders have established that institution should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Adjudicator Anita Fineberg made the following general statement regarding the approach an institution should take in interpreting a request, which was cited with approval by former Commissioner Ann Cavoukian in Order PO-1730:

> … the purpose and spirit of the freedom of information legislation is best served when government institutions adopt a liberal interpretation of a request.

[45] I adopt these principles, and apply them to the circumstances of this appeal.

[46] Through his access request, the requester sought records related to his property which he identified by municipal address. Record 212 is a letter from a third-party that is addressed to individuals other than the appellant, at an address other than the one identified by the appellant. While other properties are referred to in the letter, no reference is made to the appellant's property. In my view, this record is not responsive

as there is no indication that it relates in any way to the address that the appellant identified in the request.

[47] I acknowledge that the appellant believes records 212 to be responsive to his request and that he submits that it "goes to the very heart of the information requested." In my view, even a liberal interpretation of the original request does not encompass records that relate solely to properties other than the one identified and does not contain any reference to the appellant.

[48] I note from the attachments that the appellant has enclosed with his representations that the appellant already has a copy of record 212 with the names and addresses of other individuals severed. Without making a determination on the matter, as the issue is not before me in this appeal, even if the record could be said to be responsive to the request or if the appellant made a request for this specific record, given that it contains information that might qualify as the personal information of individuals other than the appellant, portions of record 212 may very well fall within one of the personal privacy exemptions enumerated in the *Act*.

[49] Accordingly, I find that record 212 is not responsive to the original request and therefore, it does not fall within the scope of this appeal.

C. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[50] Under the *Act,* different exemptions may apply depending on whether or not a record contains the personal information of the requester.[9] Where records contain the requester's own information, access to the records is addressed under Part II of the *Act* and the discretionary exemptions at section 38 may apply. Where the records at issue contain the personal information of individuals other than the appellant but not that of the appellant, access to the records is addressed under Part I of the *Act* and the mandatory exemption at section 14(1) may apply.

[51] 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 part, in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> …

[9] Order M-352.

> (d) the address, telephone number, fingerprints or blood type of the individual,
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> (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
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> (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;

[52] 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.[10]

[53] 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.[11]

[54] 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.[12]

[55] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[13]

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[10] Order 11.
[11] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[12] Orders P-1409, R-980015, PO-2225 and MO-2344.
[13] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

Representations

[56] The city submits that portions of records 27, 94, 98, 196, 197, 205, 206, 261, 262, 263, 278, 292 (the first and third severances), 295 (second severance), 296, 301, and 304 constitute personal information as defined in section 2(1) of the *Act*. It submits that this information relates to individuals who provided information about a particular property to the city's building code services branch or by-law services department.

[57] The city also submits that portions of records 252 (first and second severances), 292 (second severance), and 295 (first severance) also constitute personal information. It submits that this information includes the name and mailing address of an individual in their personal capacity.

[58] The city further submits that the licence plate numbers that have been severed from records 248, 249 and 252 (third severance) constitute personal information. It submits that previous orders have established that licence plate numbers belonging to identifiable individuals can be considered the "personal information" of that individual as it qualifies as "an identifying number…assigned to the individual" as defined in paragraph (c) of the definition of personal information at section 2(1) of the *Act*.[14]

[59] The appellant's representations on this issue do not directly address whether or not the information at issue might qualify as "personal information" as defined by the *Act,* but rather focus on the appellant's position on why any personal information found in the records should be disclosed to him. I will consider his representations to this effect in my analysis of whether disclosure of any personal information found in the records amounts to an unjustified invasion of personal privacy of the individuals' to whom it relates.

Analysis and finding

[60] Having reviewed the records closely, I accept the city's position that the severed portions of records 27, 94, 98, 196, 197, 205, 206, 252, 261, 262, 263, 278, 292, 295, 296, 301 and 304 constitute personal information. The severed information consists of the names and contact information of individuals, including those who complained about the appellant's property, which qualifies as "personal information" as defined in paragraphs (c) and (d) of the definition of that term in section 2(1) of the *Act*. In all circumstances, it is clear that the individuals were acting in their personal capacities.

[61] With respect to the severances made to the licence plate numbers on pages 248, 249, and 252, in accordance with previous orders issued by this office,[15] I accept that licence plate numbers qualify as "personal information" as they can be described as an

[14] Orders MO-1863 and MO-1917.
[15] Orders MO-1863 and MO-1917.

"identifying number … assigned to the individual" as contemplated by paragraph (c) of the definition of that term.

[62] Finally, I note that many of the records contain the appellant's own personal information. Specifically, records 27, 94, 136, 137, 138, 151, 152, 155, 187, 196, 197, 205, 206, 248, 249, 252, 259, 261, 262, 263, 278, 292, 295, 296, 301 and 304. This includes information such as his address (paragraph (d)) and his name, along with other personal information relating to him (paragraph (h)).

[63] Given that all of the records that contain the personal information of identifiable individuals other than the appellant also contain the appellant's personal information, as explained above, Part II of the *Act* applies to them. Therefore, rather than considering whether the mandatory exemption at section 14(1) applies to them, I must consider whether the severed information is exempt from disclosure under the discretionary personal privacy exemption at section 38(b). In reviewing the possible application of exemptions, the analysis is conducted on a record-by-record basis.[16]

D. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?

[64] 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 exemptions from this right. Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.[17]

[65] Sections 14(1) to (4) are considered in determining whether the unjustified invasion of personal privacy threshold in section 38(b) is met. The exceptions in sections 14(1)(a) to (e) are relatively straightforward. None of them apply in this appeal. The exception in section 14(1)(f) (where "disclosure does not constitute an unjustified invasion of personal privacy"), is more complex and requires a consideration of additional parts of section 14.

[66] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Finally, section 14(4) identifies information whose disclosure is not an unjustified invasion of personal privacy.

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[16] See Orders MO-1891, MO-2477 and PO-3259.

[17] See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's discretion under section 38(b).

[67] If the records are not covered by a presumption in section 14(3), section 14(2) lists various factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy, and the information will be exempt unless the circumstances favour disclosure.[18]

[68] For records claimed to be exempt under section 38(b), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.[19] This represents a shift away from the previous approach under both sections 38(b) and 14, whereby a finding that a section 14(3) presumption applied could not be rebutted by any combination of factors under section 14(2).[20]

Absurd result

[69] Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under section 38(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption.[21]

[70] The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement[22]
- the requester was present when the information was provided to the institution[23]
- the information is clearly within the requester's knowledge[24]

[71] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge.[25]

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[18] Order P-239.
[19] Order MO-2954.
[20] As explained by Adjudicator Laurel Cropley in Order MO-2954 (at page 24): "… [I]t is apparent that the mandatory and prohibitive nature of section 14(1) is intended to create a very high hurdle for a requester to obtain the personal information of another identifiable individual where the record does not also contain the requester's own information. On the other hand, section 38(b) is discretionary and permissive in nature, which, in my view, reflects the intention of the legislature that careful balancing of the privacy rights versus the right to access one's own personal information is required in cases where a requester is seeking his own personal information."
[21] Orders M-444 and MO-1323.
[22] Orders M-444 and M-451.
[23] Orders M-444 and P-1414.
[24] Orders MO-1196, PO-1679 and MO-1755.
[25] Orders M-757, MO-1323 and MO-1378.

Representations

[72] The city submits that disclosure of the personal information in records 27, 94, 98, 196, 197, 205, 206, 261, 262, 263, 278, 292 (first and third severances), 295 (second severance), 296, 301, and 304 would result in an unjustified invasion of personal privacy of the individuals to whom the information relates under section 38(b).

[73] The city submits that the presumption at section 14(3)(b) applies because all of the personal information was collected as part of an investigation into a possible violation of law. It submits that the personal information pertains to individuals who provided information to the city about alleged contraventions of the *Building Code Act* and city by-laws. The city submits that this information is similar to by-law complainant information which this office has previously found to fall under the presumption at section 14(3)(b).[26]

[74] The city also submits that the factors listed at sections 14(2)(f) (highly sensitive), (g) (unlikely to be accurate or reliable) and (h) (supplied in confidence) weighing against disclosure are relevant to the determination of whether disclosure of the information would amount to an unjustified invasion of an individuals' personal privacy. It submits that section 14(2)(h) is relevant because the city has an established practice of keeping confidential the names of individuals who provide information to aid an investigation or who register a complaint. It also submits that section 14(2)(f) is relevant because the identifying information is highly sensitive as it relates to neighbourhood disputes and disclosure of personal information may result in unwanted contact resulting in personal distress. The city also submits that none of the factors weighing in favour of disclosure are relevant in the circumstances of this appeal.

[75] The city concedes that the absurd result principle likely applies with respect to the personal information in records 248, 249, 252, 292 (second severance), and 295 (first severance). It submits that the appellant would have received the same correspondence that included the name of the individual that has been withheld from disclosure. In respect of the licence plates on pages 248 and 249, the city submits that the absurd result principle also likely applies because the plates were from vehicles that were parked on the appellant's property.

[76] The appellant submits that any personal information pertaining to himself should be disclosed to him.

[77] The appellant takes the position that:

> …[T]here was no possibility of any violation of law that would have necessitated the city pursing and vexing the appellant Therefore, there is

[26] The ministry refers to Orders MO-2814, MO-2860, and MO-2147.

> no basis to withhold the records. The law contained in the *Planning Act* and in the *Building Code Act* is clear and unambiguous. The city was advised by its own legal counsel that there were no applicable property standards bylaws to investigate.

[78] The appellant also submits that because the names of two individuals have been provided to him, if those names appear on pages 27, 94, 98, 197, 205, 208, 261, 262, 263, 278, 292, 295, 296, 301, and 304, they should be disclosed as the exemption has been waived by the city. He also submits that, for the same reason, if the names of those two individuals appear on records 252, 292 or 295, they should be disclosed as the exemption has been waived by the city.

[79] In response to the city's submissions on the possible application of the absurd result principle, the appellant submits that it can only be confirmed if he can review the unsevered records. The appellant also submits that the licence plate numbers belong to his vehicles. He submits that the city cannot withhold information taken by a professional photographer or withhold the photographer's identity.

Analysis and finding

[80] First, on my review of the records, I accept the city's submission that the absurd result principle applies to records 248, 249, 252, 292 (second severance), and 295 (first severance).

[81] Records 248 and 249 identify licence plate numbers of cars on the appellant's property. In my view, this information is clearly within the appellant's knowledge and it would be absurd to withhold it. Records 252 and 295 are letters addressed to the appellant as well as another identifiable individual. As these letters were sent to and received by the appellant, the information contained in them is clearly within his knowledge and it would be absurd to withhold it. However, record 295 has a handwritten note at the bottom of the page that has been severed. It is clear that this note was not included in the copy that was sent to the appellant. The city does not concede that the absurd result principle applies to this severance and I agree that it does not. Accordingly, the handwritten severance on the bottom of record 295 should not be disclosed to the appellant on the basis of the absurd result principle. Finally, record 292 is a handwritten memorandum. The city has severed the name of another individual who owns the property at issue jointly with the appellant. As the appellant is clearly aware of the identity of the other individual who is the joint owner of his own property, it would also be absurd to withhold this information. In all of these circumstances, in my view, disclosure would not be inconsistent with the purpose of the personal privacy exemption at section 38(b). Accordingly, I find that all of the severances on records 248, 249, and 252, the second severance on record 292 and the first severance on record 295 fall squarely within the absurd result principle and I will order them disclosed to the appellant, if the city has not already done so.

[82] With respect to the remainder of the personal information in the records that, the disclosure of which, the city submits would amount to an unjustified invasion of personal privacy of individuals other than the appellant, I accept that it is exempt under section 38(b), for the following reasons.

Section 14(3) – presumptions

Section 14(3)(b) – investigation into a possible violation of law

[83] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.[27] The presumption can apply to a variety of investigations, including those relating to by-law enforcement.[28]

[84] From my review of the records at issue, they were clearly compiled by the city in the course of investigations into a possible violation of municipal by-laws as well as the *Building Code Act*. Previous orders of this office have consistently found that a municipality's by-law enforcement activities qualify as "law enforcement" and that the disclosure of personal information compiled and identifiable as part of the investigations into these matters would constitute a presumed unjustified invasion of personal privacy under section 14(3)(b) of the *Act.*[29] In keeping with previous orders, in my view, these records are clearly compiled and are identifiable as part of an investigation into a possible violation of law. Accordingly, I find that the information in the records at issue falls under the ambit of the presumption in section 14(3)(b) of the *Act* and its disclosure constitutes a presumed unjustified invasion of the personal privacy of individuals other than the appellant under section 38(b).

Section 14(2) – factors

[85] Section 14(2) provides some factors for the city to consider in making a determination on whether the disclosure of personal information would result in an unjustified invasion of the affected parties' personal privacy. The list of factors under section 14(2) is not exhaustive. The city must also consider any circumstances that are relevant, even if they are not listed under section 14(2).[30] Some of these criteria weigh in favour of disclosure, while others weigh in favour of privacy protection.

[86] In the circumstances of this appeal, the city raised the possible application of the factors at sections 14(2)(f), (g) and (h). Those sections read:

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[27] Orders P-242 and MO-2235.
[28] Order MO-2147, MO-2814, and MO-2860,
[29] Orders MO-1295, MO-2147, MO-2814, and MO-2860.
[30] Order P-99.

> 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,
>
> (f) the personal information is highly sensitive;
>
> (g) the personal information is unlikely to be accurate or reliable;
>
> (h) the personal information has been supplied by the individual to whom it relates in confidence;

[87] There is no evidence before me to suggest that any of the other factors listed at section 14(2) might apply.

Section 14(2)(f) – highly sensitive

[88] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[31] Given the nature of the information that is at issue, I accept that the personal information that has been withheld can be considered to be highly sensitive and that its disclosure could reasonably be expected to result in significant personal distress to the individuals about whom it relates. Accordingly, I find that this factor, weighing against disclosure, is relevant.

Section 14(2)(g) – unlikely to be accurate or reliable

[89] Although it claims that the factor at section 14(2)(g) should be considered, the city did not provide any representations to explain why the information at issue is unlikely to be accurate or reliable. In the absence on representations to support the possible application of this factor weighing against disclosure, I find that it is not relevant in the circumstances of this appeal.

Section 14(2)(h) – supplied in confidence

[90] The factor at section 14(2)(h) weighs in favour of privacy protection. For this factor to apply, both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.[32]

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[31] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[32] Order PO-1670.

[91] In my view, the context and surrounding circumstances of this matter are such that a reasonable person would expect that the information supplied by these individuals to the city would be subject to a degree of confidentiality. Accordingly, in this appeal, I find that the factor in section 14(2)(h) is a relevant consideration that weighs in favour of protecting the privacy of the other identified parties and withholding their personal information.

Summary

[92] In conclusion, I have found that the presumption at section 14(3)(b) applies to the personal information at issue because it consists of, in part, information that was compiled as part of an investigation into a possible violation of law. Accordingly, I find that disclosure of the information at issue is presumed to result in an unjustified invasion of the personal privacy of individuals other than the appellant.

[93] Even if some of the information is not covered by a presumption, there is no evidence to support a conclusion that any of the criteria in section 14(2) which favour disclosure apply in the circumstances. However, I have found that the factors weighing in favour of privacy protection and against disclosure in sections 14(2)(f) and (h) are relevant considerations as the information is highly sensitive and was supplied to city by the individuals to whom it relates in confidence.

[94] As a result, I find that the disclosure of the personal information of individuals other than the appellant that appears in the records, would constitute an unjustified invasion of their personal privacy and the discretionary exemption at section 38(b) applies to it. Accordingly, subject to my discussion below on the exercise of discretion, I will uphold the city's decision not to disclose it.

E. Does the discretionary exemption at section 38(a), read in conjunction with section 7(1), and/or the sections 7(1) exemption, on its own, apply to the records?

[95] The city submits that portions of records 136, 137, 138, 151, 152, 155, 187, 219, and 222 contain advice or recommendations and are exempt from disclosure pursuant to section 7(1). As records 136, 137, 138, 151, 152, 155, and 187 contain the appellant's personal information, for those records the appropriate analysis is under section 38(a), read in conjunction with section 7(1). As records 219 and 222 do not contain the appellant's personal information, the appropriate analysis is under section 7(1), on its alone.

[96] Section 38(a) reads:

> 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]

[97] Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.[33]

[98] Where access is denied under section 38(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

[99] Section 7(1) states:

> A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

[100] The purpose of section 7 is to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.[34]

[101] "Advice" and "recommendations" have distinct meanings. "Recommendations" refers to material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised, and can be express or inferred.

[102] "Advice" has a broader meaning than "recommendations". It includes "policy options", which are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made, and the public servant's identification and consideration of alternative decisions that could be made. "Advice" includes the views or opinions of a public servant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take. [35]

[103] "Advice" involves an evaluative analysis of information. Neither of the terms "advice" or "recommendations" extends to "objective information" or factual material.

[104] Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations

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[33] Order M-352.
[34] *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.
[35] See above at paras. 26 and 47.

- the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.[36]

[105] The application of section 7(1) is assessed as of the time the public servant or consultant prepared the advice or recommendations. Section 7(1) does not require the institution to prove that the advice or recommendation was subsequently communicated. Evidence of an intention to communicate is also not required for section 7(1) to apply as that intention is inherent to the job of policy development, whether by a public servant or consultant.[37]

[106] Section 7(1) covers earlier drafts of material containing advice or recommendations. This is so even if the content of a draft is not included in the final version. The advice or recommendations contained in draft policy papers form a part of the deliberative process leading to a final decision and are protected by s. 7(1).[38]

[107] Examples of the types of information that have been found *not* to qualify as advice or recommendations include

- factual or background information[39]
- a supervisor's direction to staff on how to conduct an investigation[40]
- information prepared for public dissemination[41]

Representations

[108] The city submits that portions of records 136, 137, 138, 151, 152, 155, 187, 219, and 222 are exempt from disclosure pursuant to section 7(1) as they consist of internal discussions amongst city building code enforcement staff, regarding options for the enforcement of the *Building Code Act* and/or steps that may be taken in respect of the building permit application process. The city submits that the exempt portions of these records contain specific advice on how to approach property issues. The city submits that this information is not factual, but rather, an analysis of facts that incorporates corresponding actions that staff may take, including approaches to be taken in response to land owners.

[109] The city also submits that the information that it has severed on records 259 and 261 is also exempt under section 7(1) as the exemption applies to its outside contractors, including legal counsel.

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[36] Order P-1054.
[37] *John Doe v. Ontario (Finance)*, cited above, at para. 51.
[38] *John Doe v. Ontario (Finance)*, cited above, at paras. 50-51.
[39] Order PO-3315.
[40] Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.).
[41] Order PO-2677.

[110] The appellant submits that the city cannot claim section 7(1) applies to internal staff discussion on how to circumvent or break the law as reflected in the *Planning Act* and the *Building Code Act* for the purposes of satisfying the political directives of the local ward councilor, or for the purpose of masking a staff error relating to the issuance of building permits. He submits that staff discussions about factual or background information, analytical information, evaluative information, notifications and cautions, views, draft documents and supervisors direction to staff on how to conduct an investigation do not qualify as advice or recommendations. He also submits that given that solicitations or directives of a political nature coming from the local ward councilor do not qualify as advice or recommendations, notes of meetings with constituents and his communications to staff expressing his political wishes are a legitimate part of his request.

Analysis and finding

[111] Although the city has claimed that the exemption at section 7(1) applies to the severed portions of records 259 and 261, given that those records reflect communications with external legal counsel, in my view they are more appropriately dealt with under the solicitor-client privilege exemption at section 12, which the city has also claimed for the records. Accordingly, I will address those records below.

[112] Based on my review of records 136, 137, 138, 151, 152, 155, 187, 219, and 222 and the city's representations, I accept the city's position that the severed portions of these records contain advice or recommendations provided by city staff. Specifically I find that the severed portions of these records detail either an evaluative analysis of information by city staff or consist of a suggested course of action that will ultimately be accepted or rejected by the person being advised.

[113] None of the exceptions in section 7(2) apply to these records. Accordingly, subject to my review of the city's exercise of discretion, the portions of the records for which the city has claimed section 7(1) fall under the exemption for advice and recommendations. As a result, the severed portions of records 136, 137, 138, 151, 152, 155, and 187 are exempt from disclosure under section 38(a), read in conjunction with section 7(1), and the severed portions of records 219 and 222 are exempt from disclosure pursuant to the application of section 7(1), alone.

F. Does the discretionary exemption at section 38(a), read in conjunction with the law enforcement exemptions at section 8(1)(a) and/or (d) apply to the records?

[114] The city claims that the law enforcement exemptions at sections 8(1)(a) and (d) apply to exempt the severed portions of records 27, 94, 262, 263, 278, 301 and 304. As I have found that the discretionary exemption at section 38(b) applies to exempt all of the information at issue in those records from disclosure, it is not necessary for me to

determine whether the discretionary exemption at section 38(a), read in conjunction with section 8(1)(a) and/or (d) applies to it.

G. Does the discretionary exemption at section 38(a), read in conjunction with the solicitor-client privilege exemption at section 12, apply to the records?

[115] The city submits that records 259 and 261 are exempt from disclosure as they contain information that qualifies as solicitor-client privileged information. As both of these records also contain the personal information of the appellant, the appropriate exemption is section 38(a), read in conjunction with section 12 of the *Act*.

[116] Section 38(a) is outlined above. 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.

[117] 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

[118] 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.[42]

[119] In the circumstances of this appeal, the city submits that records 259 and 261 are exempt from disclosure as a result of the solicitor-client communication privilege under branch 1.

Solicitor-client communication privilege

[120] 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.[43]

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[42] Order PO-2538-R and *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).
[43] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

[121] The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation.[44]

[122] 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.[45]

[123] The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice.[46]

[124] 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.[47]

Representations

[125] The city submits that it has withheld the portions of records 259 and 261 that constitute the confidential solicitation and provision of legal advice between city staff and the city's legal counsel. It describes record 259 as a letter from staff to external counsel retained by a former township that is now part of the amalgamated City of Ottawa and submits that the exempted portions consist of legal questions posed by staff to counsel. It describes the severed portion of record 261 as containing a legal opinion provided by counsel to the city in response to the questions posed in record 259.

[126] The city submits that, due to its content, this information is accurately described as communications of a confidential nature that amount to solicitor-client advice provided for the purpose of responding to specific legal issues faced by the city. It submits that all exchanges were implicitly confidential and that waiver of privilege has not occurred neither adverse nor outside parties were included on them.

[127] The appellant submits that city has not demonstrated that any of the communications were made in confidence. He submits that loss of privilege has occurred and that the city has waived any right to its solicitor-client privilege vis-à-vis its outside counsel.

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[44] Orders PO-2441, MO-2166 and MO-1925.
[45] *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).
[46] *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.
[47] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.).

Analysis and finding

[128] As stated above, the city submits the severed portions of records 259 and 261 are exempt from disclosure under section 12 on the basis of solicitor-client communication privilege. 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.[48] The rationale for this privilege is to ensure that a client may freely confide in his or her lawyer on a legal matter.[49] The privilege covers not only the document containing the legal advice, or the request for advice, but information passed between the solicitor and client aimed at keeping both informed so that advice can be sought and given.[50]

[129] 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.[51] The privilege does not cover communications between a solicitor and a party on the other side of a transaction.[52]

[130] Based on my review of the severed portions of records 259 and 261 and the representations of the parties, I agree with the city that both of these records contain direct solicitor-client communications or form part of a continuum of communication for the purpose of seeking or giving legal advice. Record 259 details legal advice sought by the city and record 261 details specific legal advice provided by the city's outside counsel. Although the appellant asserts that there has been a loss of privilege as a result of waiver by the city, he did not provide any evidence to support his argument that the city has waived its privilege with respect to the information at issue in these records.

[131] Accordingly, I find that records 259 and 261 are subject to the exemption at 38(a), read in conjunction with section 12, as they fall under branch 1, solicitor-client communication privilege. Subject to my review of the city's exercise of discretion, I find that the information at issue in those records are exempt from disclosure under section 38(a).

H. Did the city exercise its discretion under section 7(1) and sections 38(a) and (b)? If so, should this office uphold the exercise of discretion?

[132] The exemptions at section 7(1) and sections 38(a) and (b), are discretionary, and permit an institution to disclose information, despite the fact that it could withhold

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[48] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).
[49] Orders PO-2441, MO-2166 and MO-1925.
[50] *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).
[51] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.
[52] *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.).

it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[133] 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.

[134] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[53] This office may not, however, substitute its own discretion for that of the institution.[54]

[135] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[55]

- the purposes of the *Act*, including the principles that
    - information should be available to the public
    - individuals should have a right of access to their own personal information
    - exemptions from the right of access should be limited and specific
    - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons

[53] Order MO-1573.
[54] Section 43(2).
[55] Orders P-344 and MO-1573.

- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

Representations

[136] The city submits that it has applied the exemptions at sections 7(1) and 12 in accordance with the *Act* to exempt portions of the information at issue. It submits that it carefully considered all relevant circumstances and that its decisions not to disclose this information were not made for improper purposes.

[137] With respect to its application of sections 7(1) to portions of the information, the city submits that it focused on exempting only information that supports the purpose of ensuring that its staff can have frank exchanges of ideas and can internally strategize on how to respond to various issues. Addressing, section 12, the city submits that its application of this section is in accordance with the protection of solicitor-client privilege at common law and is consistent with the purpose of that exemption, which is to ensure that a client may confide in his or her lawyer with respect to a legal matter, without reservation.

[138] Although the appellant does not specifically address the city's exercise of discretion, his representations suggests that he takes the position that the city should not have applied the discretionary exemptions to withhold the information he seeks from the requested records.

Analysis and finding

[139] In this appeal, I must decide whether the city exercised its discretion in a proper manner in deciding to withhold access to the records that I have found subject to the discretionary exemptions at section 7(1), section 38(a), read in conjunction with sections 7(1) and 12, and section 38(b).

[140] Based on my review of the records at issue and the city's representations, I find that it exercised its discretion in a proper manner, taking into account relevant considerations and not taking into account irrelevant considerations. With respect to the information that contains personal information relating to identifiable individuals other than the appellant, I accept that the city considered the fact that the disclosure of this

personal information would give rise to a presumed unjustified invasion of their privacy as the information was compiled as part as an investigation into a possible violation of law. The city also considered the fact that the personal information is highly sensitive and was supplied in confidence, both factors weighing against disclosure. With respect to the information that contains advice or recommendations or information that is solicitor-client privileged, I accept that the city considered the importance of ensuring that city staff are able to freely and frankly advise and make recommendations and also the importance of maintaining the integrity of solicitor-client privilege.

[141] Moreover, given the large number of records that were identified as responsive to the request and the amount of information that was disclosed to the appellant, I find that the city exercised its discretion to withhold only a relatively small amount of information from the appellant. As a result, I accept that the city was acting in good faith.

[142] Accordingly, I am upholding the city's exercise of discretion under section 7(1), section 38(a), read in conjunction with sections 7(1) and 12, and section 38(b) of the *Act* and find that the severed portions to which these exemptions were applied are properly exempt.

ORDER:

1. I uphold the city's search for responsive records.

2. I order the city to disclose to the appellant records 220 and 243 for which no exemption claims remain. The city should disclose these records to the appellant by **October 27, 2014**.

3. I order the city to disclose to the appellant the portions of the records that I have found to be subject to the absurd result principle by **October 27, 2014**. Specifically, the city should disclose records 248, 249, and 252 in their entirety, and the second severances made to records 292 and 295.

4. I uphold the city's decision to deny access to the remaining severed portions of the records.

5. In order to verify compliance with Order Provisions 2 and 3, I reserve the right to require the city to provide me with a copy of the records that are disclosed to the appellant.

Original Signed By: September 26, 2014
Catherine Corban
Adjudicator