Information and Privacy Commissioner,
Ontario, Canada

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

# ORDER MO-3212

Appeal MA14-12

City of Toronto

June 29, 2015

**Summary:** The appellant sought access to records containing any communications between city staff about an issue involving his property. The city located responsive records, including email communications and legal opinions, and denied access to several of them under section 12 (solicitor-client privilege), disclosing the remainder. The appellant appealed this decision and argued that additional responsive records ought to exist. In this order, the adjudicator upholds the application of section 38(a), in conjunction with section 12, and section 12 alone, to the withheld records. He also upholds the city's search for responsive records as reasonable in its nature and scope.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, definition of 'personal information' in section 2(1), sections 38(a) and 12.

**Cases Considered:** *Liquor Control Board of Ontario v. Magnotta Winery Corporation*, 2010 ONCA 681.

## OVERVIEW:

[1] The appellant submitted an access request to the City of Toronto (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

> . . . any document or record in the City of Toronto File Number A0576/07TEY and OMB Case No. PL070945/and OMB file No. V070461 including any record involving or relating to communications between Marilyn Miller and any of the following people or any one on their behalf: Colleen Paige, Christopher Paige, Susan Rogers and Andrew Ferancik and Angelo Fantozzi (Building Inspector), from September 2007 to date, in relation to the properties at [a specified address in the city].

[2] The city located 222 pages of responsive records and provided partial access to them. The city denied access to pages 18-23 in full, claiming the application of the solicitor-client privilege exemption in section 12 of the *Act*. It also denied access to portions of pages 3, 47, 55, 57, 59-62, 64, 67-70, 75-77, 142, 160 and 180 based on the mandatory personal privacy exemption in section 14(1) of the *Act.*

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

[4] During mediation, the appellant argued that additional records ought to exist and described certain records which were missing. In response, the city agreed to conduct a further search and located 237 additional pages of records, granting partial access to them. It denied access in full to records 319, 322, 346-348, 384-387, 444-446 and 453-455 on the basis that they are also subject to the section 12 exemption. The city further indicated that it was denying access, in part, to records 376, 378, 410, 431 and 433, based on section 14(1). It also indicated that it had severed certain parts of the records on the basis that they were not responsive to the request.

[5] The city also confirmed that record 324 in its entirety, and portions of records 323, 340, 341, 354, 357, 358 and 359 contained information that was not responsive to the request. Because the withheld information related to other properties, the appellant agreed that this information is no longer at issue in this appeal.

[6] The appellant advised that the city's search remains an issue on the basis that the request was for the appellant's *entire* file. The appellant contends that additional records ought to exist. Specifically, he cites correspondence between the appellant and Mr. Christopher Dunn (Ms. Miller's predecessor) as one example of the records that ought to have been produced from the appellant's file. Finally, the appellant argues that any solicitor-client privilege which may have existed in the records has been waived and also withdrew his appeal with respect to the information that was subject to the section 14(1) claim.

[7] Because it appeared that the records may contain the personal information of the appellant, I raised the possible application of the discretionary exemption in section 38(a) to the records which are claimed to be exempt under section 12. Further mediation was not possible and the appeal was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*.

[8] I sought and received the representations of the city, a severed version of which was shared with the appellant. Portions of the city's representations were withheld on the basis that they contain confidential information. I also received representations from the appellant, which were shared in turn with the city, which also submitted reply representations.

[9] In this decision, I uphold the city's decision to deny access to the records on the basis that they are exempt under either section 38(a), in conjunction with section 12, or section 12 alone. I also find that the city's search for responsive records was reasonable.

## RECORDS:

[10] Records 18-23, 319, 322, 346-348, 384-387, 444-446 and 453-455 remain at issue in this appeal.

## ISSUES:

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

B. Does the discretionary exemption at section 38(a) in conjunction with the section 12 exemption, apply to the information at issue in records 347 and 348?

C. Does the discretionary exemption in section 12 operate to exempt the remaining information at issue from disclosure?

D. Did the city exercise its discretion under sections 12 and 38(a)? If so, should this office uphold the exercise of discretion?

E. Did the city conduct a reasonable search for records?

## DISCUSSION:

### Issue A: Do the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

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

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

[12] 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.[1]

[13] Sections 2(2.1) and (2.2) also relate to the definition of personal information. These sections state:

> (2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (2.2) For greater certainty, subsection (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.

[14] 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.[2] 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.[3]

[15] The city submits that the records "were prepared by the city in the context of a larger legal dispute concerning municipal land-use regulations" and that the information is primarily about the property in question, and not its owner.

[16] The appellant argues that because all of the records were prepared as part of the city's response to a minor variance application which ultimately was the subject of an application before the Ontario Municipal Board (the OMB), they all include information that qualifies as his personal information. He submits that the information relates to him in his personal capacity as the owner of the property in question.

[17] I have reviewed the records at issue and find that records 320 and 322 contain information that qualifies as the personal information of an individual other than the appellant within the meaning of paragraph (h) of the definition of that term in section 2(1). The appellant has indicated that he is not seeking access to the personal information of any other individuals. Accordingly, the personal information in this portion of records 320 and 322 is not at issue and I will not address it further.

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[1] Order 11.
[2] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[3] Orders P-1409, R-980015, PO-2225 and MO-2344.

[18] In addition, records 347 and 348 contain information about the appellant which qualifies as his personal information. None of the other records contain information about an "identifiable individual" and they cannot, therefore, qualify as "personal information" for the purposes of the definition in section 2(1).

**Issue B: Does the discretionary exemption at section 38(a), in conjunction with the section 12 exemption, apply to the information at issue in records 347 and 348?**

[19] 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 this right. 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. [my emphasis]

[20] 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.[4]

[21] Where access is denied under section 38(a), the city 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. In this case, the city relies on section 38(a) in conjunction with section 12 to exempt records 347 and 348. It relies on section 12 alone to exempt all of the remaining records. I will now go on to determine if the records qualify for exemption under the discretionary solicitor-client exemption in section 12.

**Issue C: Does the discretionary exemption in section 12 operate to exempt the remaining information at issue from disclosure?**

[22] 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.

[4] Order M-352.

[23] Section 12 contains two branches. Branch 1 ("subject to solicitor-client privilege") is based on the common law. Branch 2 ("prepared by or for counsel employed or retained by an institution…") is a statutory privilege. The institution must establish that one or the other (or both) branches apply.

[24] The city argues that records 20-23, 319, 322, 346-348, 384-387, 444-446 and 453-455 are exempt on the basis that they are subject to solicitor client communication privilege under both branch 1 and branch 2 of section 12 while records 18-19 qualify for exemption under the litigation privilege aspect of branch 2 of section 12.

**Branch 1: common law privilege**

[25] At common law, solicitor-client privilege encompasses two types of privilege: (i) solicitor-client communication privilege; and (ii) litigation privilege.

***Solicitor-client communication privilege***

[26] 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.[5] The rationale for this privilege is to ensure that a client may freely confide in his or her lawyer on a legal matter.[6] 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.[7]

[27] The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice.[8]

[28] 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.[9] The privilege does not cover communications between a solicitor and a party on the other side of a transaction.[10]

**Branch 2: statutory privilege**

[29] Branch 2 is a statutory privilege that applies where the records were "prepared by or for counsel employed or retained by an institution for use in giving legal advice or

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[5] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).
[6] Orders PO-2441, MO-2166 and MO-1925.
[7] *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.)
[8] *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.
[9] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.
[10] *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.)

in contemplation of or for use in litigation." The statutory and common law privileges, although not identical, exist for similar reasons.

### *Statutory solicitor-client communication privilege*

[30] Like the common law solicitor-client communication privilege, this privilege covers records prepared for use in giving legal advice.

### *Statutory litigation privilege*

[31] This privilege applies to records prepared by or for counsel employed or retained by an institution "in contemplation of or for use in litigation." It does not apply to records created outside of the "zone of privacy" intended to be protected by the litigation privilege, such as communications between opposing counsel.[11]

[32] The statutory litigation privilege in section 12 protects records prepared for use in the mediation or settlement of litigation.[12] In contrast to the common law privilege, termination of litigation does not end the statutory litigation privilege in section 12.[13]

### *Representations of the parties*

[33] The city submits that all of the records, with the exception of records 18 and 19, are "correspondence between solicitors employed by the City of Toronto and other employees or officers of the City of Toronto relating to the provision of legal advice". It goes on to submit that some of the records contain "working notes" in relation to "various legal documents prepared in relation to the legal dispute" which is reflected in their contents.

[34] With respect to records 18 and 19, the city submits that these records "involve another party . . . requiring the City to undertake actions - and are in fact a resolution of the issue between the City and this party concerning a tribunal matter (which has been noted to be captured as a litigation matter for previous decisions)."

[35] The appellant objects to the claim by the city that records 18 and 19 and 319-321 and 384-387 represent confidential communications between its staff and counsel. The appellant asserts that these documents were shared with another party to the litigation and that they were not, as a result, confidential communications passing between a solicitor and his or her client.

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[11] See *Ontario (Attorney General) v. Big Canoe*, [2006] O.J. No. 1812 (Div. Ct.); *Ontario (Ministry of Correctional Service) v. Goodis*, cited above.
[12] *Liquor Control Board of Ontario v. Magnotta Winery Corporation*, 2010 ONCA 681.
[13] *Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer)*, cited above.

[36] In its reply representations, the city responded to the appellant's allegation that the contents of records 319-321 and 384-387 were shared with counsel for another party to the dispute. The city explained that the contents of the fax cover pages at records 318 and 383 were not, in fact, shared with outside parties and that they remained strictly within the zone of confidentiality maintained by the city respecting these documents.

[37] Also in its reply submissions, the city submits that records 18 and 19 are subject to litigation privilege on the basis that they fall within the ambit of settlement privilege as recognized by the Divisional Court in the decision in *Magnotta*[14] despite the fact that the documents may have been shared with an opposing party to the dispute.

### *Analysis and findings*

[38] Based on my review of the records, I am satisfied that records 20-23, 319, 322, 346-348 and 453-455 all represent confidential communications passing between a solicitor and his or her client pertaining to the seeking or giving of legal advice about a legal issue. These communications took place between various staff within the city and legal counsel during the course of the preparation for an Ontario Municipal Board hearing involving the appellant. Records 384-387, 444-446 and 453-455 are various versions of the same legal opinion which was communicated from the Director of the city's Planning and Administrative Tribunal Law Department to staff within the city's Planning Department which addressed a specific legal issue.

[39] Based on my review of the contents of each of these records, I find that they qualify for exemption because they represent confidential, solicitor-client communications which are privileged under branch 1 of section 12. Because records 347 and 348 contain the appellant's personal information, they qualify for exemption under section 38(a), in conjunction with section 12. I conclude that the remaining information in records 20-23, 319, 322, 346, 384-387, 444-446 and 453-455 is exempt under section 12.

[40] I also find that records 18 and 19 are also exempt from disclosure under section 12 as they are subject to litigation privilege under branch 2 of section 12. These documents represent documents relating to the settlement of a dispute arising out of litigation and as such are exempt on that basis, in accordance with the decision in *Magnotta*. I further find that the privilege that exists in these records was not lost with the conclusion of the litigation which they pertain to.[15] In conclusion, I find that all of the records which the city claimed to be exempt under section 38(a) or section 12 qualify for exemption under those sections.

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[14] Ibid.
[15] *Ontario (Attorney General) v. Big Canoe*, [2006] O.J. No. 1812 (Div. Ct.)

**Issue D: Did the city exercise its discretion under sections 12 and 38(a)? If so, should this office uphold the exercise of discretion?**

[41] The section 12 and 38(a) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[42] 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.

[43] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[16] This office may not, however, substitute its own discretion for that of the institution.[17]

***Relevant considerations***

[44] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[18]

- 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

[16] Order MO-1573.
[17] Section 43(2).
[18] Orders P-344 and MO-1573.

- 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
- 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***

[45] The city has outlined in both its representations and its reply submissions the considerations which it took into account in exercising its discretion not to disclose the subject records that are exempt under sections 12 and 38(a) to the appellant. It indicates that it considered:

- the purposes of the *Act;*
- the wording of the section 12 exemption and the fundamental interests which it seeks to protect;
- that the information being sought does not qualify as the appellant's "own information" since it relates instead to property;
- the appellant has not stated a sympathetic or compelling need for the information;
- the "potential relationship" between the appellant and the city;
- the fact that disclosure will not increase public confidence in the city, as well as the lack of a public benefit should disclosure occur;
- the fact that other information pertaining to this matter has been disclosed to the appellant;
- the sensitivity of the information to the city and the fact that it is relatively recent; and
- the historic practice of the city of not disclosing information that is subject to solicitor-client privilege.

[46] The city submits that it made its decision in good faith and that it considered that the public interest would be best served by maintaining the confidentiality of the records in question.

[47] The appellant takes issue with the city's characterization of the records as pertaining only to the appellant's property and not to himself, personally. He argues that the city did not properly consider the fact that the records relate to him alone and is "significant to [his] assessment of how justly he and his renovations were treated by staff at Toronto building, City Planning and Heritage Preservation Services." The appellant also suggests that since the Ontario Municipal Board proceeding which is addressed in the records has been completed, any sensitivity that may have existed in the records has diminished.

[48] Finally, the appellant argues that the city's reliance on the section 12 exemption is "overly protective of sections 12's purpose" because the city's representative played only a limited role in the Ontario Municipal Board proceeding. The appellant urges me to require the city to consider a departure from its usual policy of refusing to disclose solicitor-client privileged information as its default "historic practice."

### *Analysis and findings*

[49] In this appeal, the city has applied the section 12 exemption, along with section 38(a) to two records containing references to the appellant, to documents which contain specific legal advice provided by counsel to a city staff person in response to a legal question. The legal advice sought and the advice given relates in only the most peripheral way to the legal proceeding in which the appellant was involved. The question posed did not concern the city's position in the litigation involving the appellant, nor did it address his rights in any way. For this reason, I find that the appellant's concerns about fairness and transparency in the city's decision making around the disclosure of these records are not particularly compelling.

[50] The city has provided me with a number of the considerations which it took into account in making its decision not to disclose these records to the appellant. I note that as a result of making this request, the appellant has received a substantial number of records relating to the Ontario Municipal Board proceeding involving his property. The disclosure mechanisms available to him through that proceeding would have also provided the appellant with a significant number of records relating to that process.

[51] In my view, based on the submissions made by both parties, I am satisfied that the city took into account relevant factors in deciding whether to grant access to the records which it felt were exempt under sections 12 and 38(a). As a result, I uphold the city's exercise of discretion with respect to this information.

**Issue E: Did the city conduct a reasonable search for records?**

[52] 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.[19] 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.

[53] 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.[20] To be responsive, a record must be "reasonably related" to the request.[21]

[54] 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.[22]

[55] 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.[23]

[56] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[24]

***Representations of the parties***

[57] The city's initial representations set out in detail the steps taken to identify responsive records held by its Building Division, Planning Division (Heritage Preservation Services) and Committee of Adjustment. An affidavit sworn by the Manager, Access and Privacy for the city sets forth the nature and extent of the searches which she requested be undertaken by staff within each of the divisions where records might reasonably be expected to be located. The affidavit indicates that multiple searches were undertaken by staff within the city's Building Department, Heritage Preservation Services and Planning Department. Records 1-16 and 223-314 were located within the Building Department, records 17-41 and 315-459 were found in the record holdings of Heritage Preservation Services and that records 42-222 were identified from records maintained by the Planning Department.

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[19] Orders P-85, P-221 and PO-1954-I.
[20] Orders P-624 and PO-2559.
[21] Order PO-2554.
[22] Orders M-909, PO-2469 and PO-2592.
[23] Order MO-2185.
[24] Order MO-2246.

[58] In addition, the city provided a second decision letter with respect to records that may have been archived electronically by Heritage Preservation Services for the period 2007 to May 2011. In that decision, the city provided the appellant with a fee respecting the time required to restore and then search those record-holdings for responsive records. The appellant has appealed that decision to this office and Appeal MA14-12-2 has been opened to address the issues raised respecting the fee estimate provided to the appellant. This issue will be addressed in a later decision of this office, if the appellant proceeds with the fee estimate appeal.

[59] The appellant takes issue with the thoroughness of the searches undertaken and questions whether the Manager properly instructed the staff who conducted the searches in each Division as to the scope and nature of the records sought. He also raises concerns about the experience and expertise of these individuals, without providing any basis for those concerns.

[60] The appellant is of the view that notes taken by staff as a result of or in the course of certain telephone conversations with him and others involved in this matter ought to exist. He refers specifically to telephone conversations that are referred to in some of the records that were disclosed to him as evidence that notes relating to those conversations ought to exist. He also refers to emails which passed between himself and various city staff from September 2007 to October 2008 and argues that these records ought to be recoverable and should have been identified with the original searches, rather than as the subject of the second decision letter which addresses locating these records only upon payment of a significant fee.

[61] In its reply representations, the city points out that the appellant refers to records which he "chose to retain for his own purposes" and that he assumes that these records "would have equal value to the City and therefore also retained by the City." It goes on to suggest that the content of these records which it requires for its purposes "could be contained in other documents reflecting the City's operations, i.e. the records disclosed to the [appellant]."

[62] The city also relies upon its record retention policies respecting the deletion of certain types of email communications, as required in section 200 of the *City of Toronto Act*. Chapter 217 of the Toronto Municipal Code, which relates to corporate recordkeeping, sets forth the treatment of what are described as "transitory records" and other records relating to the business of city government. Similarly, the city argues that notes of telephone conversations, if any notes were taken at all, could have been disposed of as "transitory records" as there was no importance attached to their contents, at least from the city's perspective.

***Analysis and findings***

[63] The appellant has been involved in a lengthy proceeding involving a dispute over permission to proceed with certain construction work on his home. The records at issue in this appeal, and those which the appellant argues ought to have been identified, date from 2007 and 2008. The request which gave rise to this appeal was made in November 2013. This dispute clearly has a long and acrimonious history and has assumed a great deal of importance to the appellant.

[64] In its representations, the city indicates that upon receipt of the request, the Manager of its Access and Privacy Unit instructed staff within the departments where the records could reasonably be expected to be located to conduct searches for any responsive documents. A number of records were identified, and additional searches revealed still more. The majority of these records were disclosed to the appellant. Access to other records was denied on the basis that they fell within the ambit of the section 12 exemption.

[65] The appellant argues that many email communications and notes of telephone conversations were not identified by the city as responsive records. The city's response is that many of the email records sought by the appellant may be located if a search of its backup tapes of deleted emails which it maintains for the years 2007 and 2008 is undertaken. It has provided a fee estimate of the cost of doing so, and that fee estimate is the subject of another appeal, MA14-12-2. The city explains that notes of telephone conversations that may or may not have been taken by city staff in 2007 or 2008 were not maintained or never existed owing to the "transitory nature" of those records or lack of a need to maintain them.

[66] In my view, the city's explanation of the whereabouts of any possible notes of telephone conversations is plausible and adequately addresses any concerns raised about the reasonableness of the searches undertaken for such records. Based on the city's submissions regarding its searches for notes of telephone conversations, I am satisfied that it has conducted a reasonably comprehensive examination of its record-holdings for any such records.

[67] With respect to the emails sought by the appellant, I accept the city's supposition that these record may very well be uncovered in a search of the city's deleted email backup tapes. I find that the city's representations on the nature and extent of the searches undertaken for these and any other responsive records adequately address the appellant's concerns about the thoroughness of the efforts put into locating any such records.

[68] On this basis, I find that the city has provided me with sufficiently detailed representations pertaining to the searches undertaken and I dismiss this aspect of the appeal.

## ORDER:

1. I uphold the city's decision to deny access to the records at issue on the basis that they are exempt under section 38(a), in conjunction with section 12, or section 12 alone.

2. I uphold the city's search for responsive records and dismiss this aspect of the appeal.

Original signed by: June 29, 2015
Donald Hale
Adjudicator