Information and Privacy Commissioner,
Ontario, Canada

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

INTERIM ORDER MO-3192-I

Appeals MA13-355 and MA13-527

City of Toronto

May 5, 2015

Summary: The city received a request under the *Act* for access to all records relating to sewer discharge at or stemming from an identified property during a specified time period. The city located over 300 pages of records and, after notifying an affected party, granted the requester partial access to them. Access to some parts of the records was denied on the basis of the exemptions in sections 8(1)(c) and (i) (law enforcement), 8(2)(a) (law enforcement report), 10(1) (third party information) and 13 (danger to health and safety). A number of records, or portions thereof, were identified as not responsive to the request. Both the requester and affected party appealed the city's decision.

This order determines that certain records identified as not responsive by the city are, in fact, responsive to the original request. The city is ordered to issue an access decision respecting these records. In addition, the exemptions in sections 8(1)(c) and (i), 8(2)(a), 10(1) and 13 of the *Act* are found to not apply to the records. Some of the records that the city claimed to be exempt under sections 8 and/or 13 contain information that may relate to the affected party appellant. The affected party appellant was not provided with copies of these records during notification. As such, the adjudicator remains seized of these records. The city is ordered to disclose the remainder of the records.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 8(1)(c) and (i), 8(2)(a), 10(1), 13 and 17

Orders and Investigation Reports Considered: M-1109, MO-2181, MO-3089, PO-1730, PO-1959

OVERVIEW:

[1] The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records, including but not limited to notes, inspection reports, emails, related to sewer discharge at or stemming from an identified property between January 1, 2011 and August 24, 2012.

[2] In its decision, the city advised the requester that there were extensive internal consultations with respect to the records, as well as representations received from an organization whose interests may be affected by disclosure of the records (the affected party). The city granted the requester access, in part, and advised that it withheld some information on the basis of the discretionary exemptions in sections 8(1)(c), (i), 8(2)(a) (law enforcement), 13 (danger to safety or health) and the mandatory exemptions in sections 10 (third party information) and 14 (personal privacy). The city also advised that some information was not responsive to the request.

[3] The affected party (now the affected party appellant) filed an appeal of the city's decision and appeal file MA13-355 was opened. The requester also filed an appeal of the city's decision and appeal file MA13-527 was opened.

[4] During the course of mediation, the requester confirmed that he does not seek access to the information that was severed pursuant to section 14(1) of the *Act*. With that exception, the requester seeks access to all of the records, including the records deemed to be not responsive by the city.

[5] Mediation did not resolve the appeals and both files were moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. The adjudicator originally assigned to the appeal decided to conduct one inquiry for both appeals and sent a Notice of Inquiry, setting out the facts and issues on appeal, to the city and the affected party appellant. Both parties submitted representations.

[6] The adjudicator originally assigned to the appeal then invited the requester to make submissions in response to the Notice of Inquiry and the non-confidential portions of the city and affected party appellant's representations, which were shared pursuant to the IPC's *Code of Procedure's Practice Direction Number 7*. The requester did not submit representations.

[7] Following the completion of the inquiry, this appeal was transferred to me to complete the order. In the discussion that follows, I find that certain records identified as not responsive by the city are, in fact, responsive to the original request and I will order the city to issue an access decision respecting those records to the requester. In addition, I find that the exemptions in sections 8(1)(c) and (i), 8(2)(a), 10(1) and 13 of the *Act* do not apply to the records. However, I find that some of the records that the

city claimed to be exempt under sections 8 and/or 13 contain information relating to the affected party appellant and the affected party appellant was not provided with the opportunity to review these records. Due to these notification issues, I remain seized of these records. I will order the city to disclose the remaining records.

RECORDS:

[8] The 342 pages of records at issue include complaint reports, service request details, inspection results, staff reports, emails, notes, pictures and various correspondence with attachments.

PRELIMINARY ISSUE – ORDER MO-3089 RECORDS:

[9] In its index of records, the city notes that Records 6-8 (duplicated in Records 98-100 and 116-118), 305-308 and 328-329 have been withheld from disclosure, pending the outcome of Appeal MA12-540, in which the requester in this appeal was the appellant. Records 6-8 and its duplicates 98-100 and 116-118 are the records that were at issue at MA12-540 and were ordered to be disclosed by Adjudicator Frank DeVries in Order MO-3089. Since these records have already been disclosed to the requester pursuant to Order MO-3089, I do not need to consider whether they are exempt from disclosure and will remove them from the scope of this appeal.

[10] With regard to Records 305-308 and 328-329, I have reviewed these records and they appear to be handwritten notes of the meeting that is the subject of the minutes in Records 6-8/98-100/116-118 and reflect the information contained in those records. The city indicated that it withheld Records 305-308 and 328-329 pending the outcome of Appeal MA12-540 and did not claim any other exemptions to this information. Because I find that no mandatory exemption applies to the information contained therein, I will order the city to disclose these records to the requester. As a result, Records 6-8/98-100/116-118, 305-308 and 328-329 are no longer at issue in this appeal.

[11] I note that there are additional records that were noted as "pending the outcome" of Appeal MA12-540 (such as Record 304). However, as these records are withheld under other exemptions, I will consider the application of the exemption(s) claimed for those records in my discussion below.

ISSUES:

A. What is the scope of the request? What records are responsive to the request?
B. Does the mandatory exemption at section 10 apply to the records?
C. Do the discretionary exemptions at section 8(1)(c), (i) and/or 8(2)(a) apply to the records?
D. Does the discretionary exemption at section 13 apply to the records?

DISCUSSION:

A. What is the scope of the request? What records are responsive to the request?

[12] In the Index of Records (the index) the city identified the following records as not responsive to the original request, either in whole or in part: 11, 23-28, 31, 34-35, 37-39, 43, 44, 56, 58, 64-66, 87-94, 130, 155-156, 163, 183, 186, 187, 189-190, 196, 300-302, 304, 309, 323, 324 and 333.

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

> (1) A person seeking access to a record shall,
>
> > (a) make a request in writing to the institution that the person believes has custody or control of the record;
> >
> > (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
>
> …
>
> (2) If the request does not sufficiently describe the record sought, the institution shall information the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[14] 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.[1] To be considered responsive to the request, records must "reasonably relate" to the request.[2]

[15] In its representations, the city states that it determined that the scope of the request was for documents relating to the affected party appellant and confirmed this with the requester. The city submits that it took a broad and liberal interpretation of the scope of the request and interpreted it in his favour. The city states that, in light of a related request submitted by the requester, it interpreted the current request as being related to the same subject matter as the other. The city submits that it is unclear

[1] Orders P-134 and P-880.
[2] Orders P-880 and PO-2661.

whether the requester objected to the city's interpretation of the request as being related to the same subject matter as the other requests. The city submits that the records marked as not responsive reflect notes describing other ongoing investigations, "unrelated in any way to the [affected party appellant] or [its] property or business".

[16] In its representations, the affected party appellant submits that it has noted "numerous instances" where the city has granted the requester access to information that is not responsive to his request. The affected party appellant submits that the request is "clearly and specifically confined by the requester to records about 'sewer discharges at or stemming from [a specified address]' and to documents dated between '[January 1, 2011] and August 24, 2012'".

[17] The affected party submits that the term "sewer discharges" relates to information regarding the flow or emission of effluent and material into the sewer. As such, the affected party appellant submits that the following information is not responsive to the request: names and contact information of staff, information about its facilities and operations, production processes, suppliers or service providers, chemical inputs or cleaning agents and methods prior to discharge and arrangements and meeting notes.

[18] Further, the affected party appellant submits that the request is "clearly and specifically confined by the requester to sewer discharges 'at or stemming from [a specified address]". The affected party appellant states that there are a number of facilities and independent businesses at that municipal address. The affected party appellant submits that while the requester appears to seek access to information relating to the address, there is no indication that he pursues access to information about the facilities or the businesses at the address.

[19] The affected party appellant also submits that information relating to sewer discharge that are not at or near the address identified in the request "cannot be regarded, without conclusive evidence, as information about sewer discharges at or stemming from [the identified address]". The affected party appellant submits that, without conclusive evidence that a discharge from a manhole five kilometres away from the address was from that address, information relating to that discharge should be regarded as not responsive.

[20] Finally, the affected party appellant submits that records that refer to engineering drawings relating to its business and "any drawings and other headings" which do not appear to relate to sewer discharge" should also be found to be not-responsive.

[21] I do not accept the affected party appellant's narrow interpretation of the scope of the request. Previous orders of this office have established that institutions 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 Commissioner Ann Cavoukian in Order PO-1730:

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

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

[23] The request in this appeal is for access to "all records, including, but not limited to notes, inspection reports, emails, related to sewer discharge at, or stemming from the property at [an identified address]" between January 1, 2011 and August 24, 2012.

[24] I have reviewed all of the records at issue and find that the majority of the records clearly fit within the parameters of the request. The affected party appellant submitted an index of the records in which it identifies the records it claims to be not responsive to the request with its representations. In this index, the affected party appellant submits that information such as employee names and their contact information is not responsive to the request. Considering that this information is contained on records that are responsive to the request (for example, an email between the affected party appellant's employee and city staff regarding sewage discharge at the identified address), I find that the employee names and contact information would also be responsive to the record, particularly since in most instances the employees are the authors of the records or are referred to in their professional capacity.

[25] With regard to the affected party appellant's contention that the request relates to only the address identified and not the facilities or businesses which operate at the address, I disagree. As stated above, the purpose and spirit of the *Act* is best served when institutions adopt a broad and liberal interpretation of a request. I find that the affected party appellant's position that the request should be restricted to only records that mention the identified address, but not the facilities or businesses that may be located at that address, is overly narrow. I find that records relating to sewer discharge at or stemming from the property at the identified address would naturally include records relating to sewer discharge at or stemming from the property at the identified address and/or the different facilities or businesses located at that address.

[26] The affected party appellant also submits that information about discharges into sewers that are not at or near the identified address "cannot be regarded, without conclusive evidence" as responsive to the request. Again, I disagree. The records requested include inspection reports, notes, emails and all other records relating to sewer discharge at, or stemming from the property at an identified request. The records that the affected party appellant claims to be not responsive are all responsive

as they relate to the investigation conducted in response to the sewer discharge at the identified address and were produced during the identified period of time.

[27] Therefore, I find that the records that the affected party appellant has identified as not responsive to the request are, in fact, responsive.

[28] Based on my review of the records identified by the city as not responsive, I find that the majority of them are responsive to the original request. For example, the emails in Records 11 (duplicate of Record 163), 31 (duplicate of Record 183), 34-35 (duplicate Records 186-187), 37-38 (duplicate Records 189-190), 39, 196, clearly relate to water or sewage issues at the identified address and potential responses to these issues. I note that the first email in Record 31/183 is not responsive to the request.

[29] In addition, the notes in Records 43-44 (e.g. notation for August 14, 2012), the last entry on page 90, 91-94, the August 7, 2012 entry in Record 300, the August 20, 2012 entry in Record 309 and 323 clearly relate to the water or sewage issues at the identified address and the subsequent investigation into the reported discharge.

[30] Further, there are portions of investigation reports or service detail requests that clearly relate to the original request and are, therefore, responsive to the request, such as Record 58 and 64-66.

[31] I note that Record 56 was withheld as not responsive despite the fact that Record 54, which is identical to Record 56, was released in full. I have reviewed Record 56 and find that it is responsive to the original request. In any case, as its duplicate was released in full, I find that there is no reason why Record 56 should not also be disclosed to the requester.

[32] However, I find that the city properly identified the following records or portions thereof as not responsive to the request: 23-28, the first email in 31 (duplicate of 183), 87-89, 90 (except the final entry), 130, 155-156, the first half of Record 300, 301, 302, 304, 309 (except the August 20, 2012 entry), 324 and 333. As the city indicates, these records, or portions thereof, either relate to other investigations or contain information that is otherwise unrelated to the original request.

[33] With regard to the handwritten notes, I find that the citations with regard to the author's personal activities, such as the time lunch was taken or the time of arrival/departure to or from work, are not responsive to the request and may be severed from the records that are ultimately disclosed to the requester.

[34] Based on my review, I find that the following records, or portions thereof, that were identified by the city as not responsive to be, in fact, responsive to the request: 11, 31 (except the first email, duplicate in 183), 34-35, 37-39, 43, 44, 56 (identical to 54, which was disclosed), 58, 64-66, the final entry of 90, 91-94, 163, 186-187, 189-

190, 196, the August 7, 2012 entry on Record 300, the August 20, 2012 entry on 309 and 323. I will order the city to issue an access decision with regard to these pages, below.

B. Does the mandatory exemption at section 10 apply to the records?

[35] The city and the affected party appellant take the position that the following pages of the records qualify for exemption under section 10(1) of the *Act*: 36, 73-77, 101-106, 109, 110, 112-113, 121-129, 133-141, 153, 161-162, 166-168, 184-185, 188, 192-194, 195, 197, 267, 276, 302, 318, 319-321, 322, 323, 330-332, 333-335 and 336.

[36] Section 10(1) reads, in part:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,
>
> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
>
> (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

[37] Section 10(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[3] Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.[4]

[38] For section 10(1) to apply, the city and/or the affected party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and

[3] *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.).
[4] Orders PO-1805, PO-2018, PO-2184 and MO-1706.

2. the information must have been supplied to an institution in confidence, either implicitly or explicitly; and

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b) and/or (c) of section 10(1) will occur.

[39] I will now review the records claimed to be exempt under section 10(1) and the representations of the parties to determine if the three-part test under section 10(1) has been established.

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

Part 3: Harms

[41] To meet this part of the test, the party resisting disclosure must provide "detailed and convincing" evidence to establish a reasonable expectation of harm.[5] Evidence amounting to speculation of possible harm is not sufficient.[6]

[42] The failure of a party resisting disclosure to provide detailed and convincing evidence will not necessarily defeat the claim for exemption where harm can be inferred from other circumstances. However, only in exceptional circumstances would such a determination be made on the basis of anything other than the records at issue and the evidence provided by a party in discharging its onus.[7]

[43] The city submits that the information it has withheld under section 10(1) is "specific technical information relating to chemicals present in wastewater testing". The city submits that it has the power and authority to sample water discharged by businesses into the city's sewer system and wastewater treatment plant under the Sewers by-law. The city states that the affected party appellant is a leading manufacturer of personal care products with highly protected company formulas and expects that the city will not release the sample results of the wastewater leaving the site as this could aid its competitors in re-engineering their products and cause harm to the company.

[44] In addition, the city submits that the records at issue include information relating "to private service connections, blueprints, drawings, private manhole locations, information regarding treatment systems and set up information, which in the wrong

---

[5] See *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31.

[6] *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

[7] Order PO-2020.

hands, could have competitors cause unnecessary harm to the [affected party appellant] or aid competitors in re-engineering layouts or treatments systems that are specific to the [affected party appellant]." The city submits that the disclosure of this information "could take away the [affected party appellant's] competitive edge in this specific market".

[45] Additionally, the city submits that "competitors may wish to hire the consultant used by the [affected party appellant] to gain an edge in this field." Finally, the city notes that the affected party appellant did not consent to disclosure and the information at issue was supplied with an expectation of confidentiality. The city states that while it may "sample businesses that discharge wastewater to the City sewer system and wastewater treatment plant, there is no basis to suggest that all parties consented to the disclosure of these tests to the world including their competitors to allow the exploitation of the information in question."

[46] In its representations, the affected party appellant agrees with the city's application of section 10(1) of the *Act* and identifies additional records that should also be exempt under that section. The affected party appellant submits that the disclosure of the records may cause harm to its business as they may be "misinterpreted or purposely mischaracterized." The affected party appellant submits that the "incorrect statements, unproven allegations, contradictory data that are without scientific or technical support are prejudicial to [its] reputation and adversely affects [its] brand image." As well, the affected party appellant submits that the alleged spill identified in the request has "never been reasonably linked to" its company and the disclosure of the records "would inappropriately and incorrectly imply that such alleged spill was somehow linked to or proven to be caused by [the affected party appellant] when in fact no reasonable proof exists."

[47] In addition, the affected party appellant submits that the disclosure of the records would allow competitors to understand its infrastructure, drainage systems and its production treatment processes, resulting in "competitive prejudice". The affected party appellant also submits that the disclosure of the records would potentially equip its competitors with "valuable commercial intelligence about [its] production methods, product line up and levels of production, from which capacity and market share could be estimated with relative accuracy, all to the competitive prejudice of [the affected party appellant]."

[48] The affected party appellant also claims that the disclosure of the records would reveal its production line up to a competitor, the ingredients and formulations of its products and the relative volumes of production. The affected party appellant submits that this information would prejudice its competitive position as it will allow its competitors "to better plan its own market strategy and to identify product demand for which they can then start to compete".

[49] Finally, the affected party appellant submits that disclosure of information about its business operations and dealings with the city will result in further information of a similar nature not being supplied by it to the city. The affected party appellant submits that if the details of its working relationship and exchanges with the city are disclosed, it will, "by necessity, limit its communications with and supply of information to the City significantly, to only that which is compelled by applicable laws." The affected party appellant submits that this would impose an "unhelpful chill on relations" between itself and the city.

[50] Upon review of the city's and affected party appellant's representations, I am not satisfied that the disclosure of the information identified as exempt under section 10(1) would result in the harms identified by that section of the *Act*. Specifically, I have not been provided with sufficiently detailed or convincing evidence to satisfy me that disclosure of these portions of the records could reasonably be expected to prejudice significantly the affected party appellant's competitive position or interfere significantly with its contractual or other negotiations, result in similar information no longer being supplied to the city where it is in the public interest that similar information continue to be so supplied or result in undue loss or gain to any person. Neither the city nor the affected party appellant provided me with representations that address how the disclosure of the specific information that was withheld under section 10(1) could reasonably be expected to result in the harms contemplated by that section.

[51] I accept the city and affected party's position that some of the records withheld under section 10(1) contain technical information, such as the Lab Analysis report in Record 33 (duplicate at Record 184-185), the Sample Results Report in Records 101-106, the Material Safety Data Sheet in Records 161-162 and portions of the city staff's notes/correspondence from the inspections in Records 109, 110, 153, 195 (duplicate at 197), 302, 318-323 and 330-336. However, I do not accept the city and the affected party appellant's claims that disclosure of this particular information could result in the reverse engineering of the affected party's products or that the harms in sections 10(1)(a) or (c) could reasonably be expected to result from disclosure. Neither the city nor the affected party appellant has provided me with sufficiently detailed evidence that the disclosure of this information would result in these specific identified harms.

[52] Further, while I acknowledge that some of the information withheld under section 10(1) is of a scientific or technical nature, I find that I have not been supplied with sufficient evidence to demonstrate that the harms contemplated by that section could reasonably be expected to occur if they were disclosed. For example, upon review of the sample results report in Records 101-106, I find that I have not been provided with sufficient evidence by the city to demonstrate how these sample results or the "strength" of wastewater could be used by the affected party appellant's competitors to reverse engineer the affected party appellant's products and then result in the harms contemplated in section 10(1). The sample results report in Records 101-106 itemizes the sample location, the substance found and the result of the sample. It

is not evident to me, and there are no representations that would demonstrate, that the report contains a complete list of chemicals or ingredients used by the affected party appellant to create their products or other proprietary information such as product formulations or volumes of production or relative volumes of production. Further, the affected party appellant did not explain how this information may be used by other parties to damage its reputation. In my view, all that this sample results report reveals is the amount of a particular substance found in a particular location. In sum, I am not satisfied that there is sufficient evidence to demonstrate that disclosure of the information withheld in Records 101-106 would result in the harms listed in section 10(1).

[53] Similarly, I have reviewed the Lab Analysis report in Record 33 (duplicated at Record 185), the Material Safety Data Sheet in Records 161-162 and portions of the city staff's notes/correspondence from the inspections in Records 109, 110, 153, 195 (duplicated at 197), 302, 318-323 and 330-336 and find that they contain technical information that is quite general in nature. In the circumstances, given the information contained in these records and the city's representations, I find that the disclosure of this information could not reasonably be expected to result in the identified harms.

[54] I note that the city withheld photographs of manholes and the location of the discharges at Records 73-77, 112-113, 121-129, 133-141, 166-168 and 192-194, from disclosure under section 10(1). While these photographs may have been supplied by the affected party appellant in the course of the investigation, I do not accept the city or the affected party appellant's representations that the disclosure of this specific information could result in the harms contemplated by section 10(1) of the *Act*. Upon review, I find that the photographs only reveal what these manholes and the discharge that is the subject of the request look like; there are no descriptions of their structure or of the substance found. In my view, there is no information contained in these photographs that would, if disclosed, result in the harms contemplated by section 10(1).

[55] With regard to the building plans in Record 36 (duplicate in Record 188), I find that the city and the affected party appellant have not provided me with sufficient evidence to demonstrate that the harms listed in section 10(1) could reasonably be expected to occur if they are disclosed. The city's only submission is that these plans, "in the wrong hands, could have competitors cause unnecessary harm to the [affected party appellant] or aid competitors in re-engineering layouts or treatment systems that are specific to the [third party appellant]." Based on my review of these plans, it is unclear how the information contained therein could be used by competitors to cause the third party appellant the harms identified in section 10(1). Therefore, I find that this record is not exempt under section 10(1) the *Act*.

[56] With regard to the affected party appellant's submissions regarding the application of 10(1)(b), I am not satisfied that the disclosure of the records withheld

under section 10(1) could reasonably be expected to result in similar information no longer being supplied to the city where it is in the public interest that similar information continue to be supplied. In its representations, the affected party appellant submits that if the details of its working relationship and exchanges with the city are disclosed, it will, "by necessity, limit its communications with and supply of information to the City significantly, to only that which is compelled by applicable laws." In the circumstances, I disagree with the affected party appellant's submission. The majority of the records were created and generated in response to complaint filed to the city regarding sewer discharge originating at or near the affected party appellant's business. It appears that it is in the best interest of the affected party appellant to cooperate fully with these types of investigations and to continue to do so.

[57] In addition, I note that the affected party's submission on section 10(1)(b) focus on the disclosure of information relating to its "business operations and dealings with the City", including "the details of [its] working relationship and exchanges with the city on a day to day basis". The affected party appellant did not identify which portions of the records reveal this type of information. Based on my review of the records, I find that they do not contain specific details regarding the affected party appellant's business operations or its "working relationship" with the city. While the records contain details regarding the city's investigation, such as evidence collected and notes from interviews conducted with regard to the discharge, they do not contain information that relates to the affected party appellant's business operations as a whole or its working relationship with the city. As a result, I am not satisfied that the harms in section 10(1)(b) could reasonably be expected to result from the disclosure of this information.

[58] Therefore, I find that the records claimed to be exempt under section 10(1) do not qualify for exemption under that section. I will order the city to disclose these records to the requester.

C. Do the discretionary exemptions at section 8(1)(c), (i) and/or 8(2)(a) apply to the records?

[59] The city takes the position that the discretionary exemptions at sections 8(1)(c), (i) and/or 8(2)(a) of the *Act* apply to the following records, or portions thereof: 1-9, 12-13, 15-21, 29-30, 40-42, 44, 45-53, 55, 57, 59-63, 67-77, 87-97, 101-107, 111-115, 120-153, 155-156, 164-170, 175-180, 189-194, 202-205, 207-261, 264-278, 280-299, 302-304, 310-318, 322, 323 and 330-340.

[60] Sections 8(1)(c) and (i) read as follows:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,

(c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

(i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure.

[61] Section 8(2)(a) of the *Act* reads:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law.

[62] The term "law enforcement" is defined in section 2(1) of the *Act* as follows:

(a) policing

(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or

(c) the conduct of proceedings referred to in clause (b)

[63] The term "law enforcement" has been found to apply in the following circumstances:

- a municipality's investigation into a possible violation of a municipal by-law[8]

[64] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[9] However, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm".[10] Evidence amounting to speculation of

---

[8] Orders M-16 and MO-1245.

[9] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

[10] In the recent decision of the Supreme Court of Canada in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)* 2014 SCC 31, the Court discussed the standard of proof required to establish the risk of harm from disclosure under access to information legislation, and provided general guidance on the application of exemptions that are based on risk of harm. The Court concluded that there should be one consistent formulation of the standard, requiring that a party resisting disclosure provide evidence establishing a "reasonable expectation of probable harm". While proposing this single formulation, the Court also recognized that there was "no practical difference" between it and the formulation applied by the IPC in previous decisions (at para 53).

possible harm is not sufficient.[11] It is also not sufficient for an institution to take the position that the harms under section 8 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfillment of the requirements of the exemption.[12]

Representations and Findings

[65] The city submits that the IPC has consistently found that the enforcement of municipal regulations and by-laws can be considered "law enforcement" for the purposes of the *Act*. The city submits that Toronto Water Division was engaged in the enforcement of the city's regulations concerning water, for which a penalty could be imposed before a tribunal. For example, the city states that Chapter 851 of the *City of Toronto Municipal Code* contains regulations to prohibit contamination of waterworks and establishes that violations of these prohibitions are offenses for which penalties may be imposed. The city also refers to Chapter 681 of the *City of Toronto Municipal Code* which prohibits the "spilling" of chemicals into municipal sewers and imposes penalties for such access. Therefore, the city submits that its actions, specifically that of Toronto Water Division, which are described in the records that have been withheld under section 8 are "law enforcement" as this term has been defined in the *Act*.

[66] As noted above, the term "law enforcement" has been found to apply to a municipality's investigation into a possible violation of a municipal by-law.[13] In the circumstances of this appeal, I accept the city's position that the enforcement of the municipal regulations and by-laws addressed in the records at issue is "law enforcement for the purpose of section 8 of the *Act*.

[67] The city provided separate representations on the application of sections 8(1)(c), (i) and 8(2)(a). Neither of the other parties to the appeal made submissions on the application of the law enforcement exemptions. I will review each law enforcement exemption claimed in turn.

Section 8(1)(c) – investigative techniques and procedures

[68] In order to meet the "investigative technique or procedure" test, the city must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public.[14]

---

[11] Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).
[12] Order PO-2040, *Ontario (Attorney General) v. Fineberg*, *supra* note 11.
[13] Orders M-16 and MO-1245.
[14] Orders P-170, P-1487, MO-2347-I and PO-2751.

[69] The city takes the position that the disclosure of the records withheld under section 8(1)(c) could reasonably be expected to reveal an investigative technique or procedure currently in use or likely to be used in law enforcement by the city. The city submits that the disclosure of one particular technique or procedure could reasonably be expected to hinder or compromise its effective utilization. The city submits that "while elements of the technique or procedure may be known to members of the public in the abstract, it cannot be said that the technique or procedure as a whole, nor that the utility of the technique, is generally known to the public." The city states that the investigation technique and plan used by the city to monitor sewage is used for the industrial discharge coming from a site or multiple sites. The city submits that "it is possible for [companies] to find ways around the City's monitoring process if this information was made public".

[70] In addition, the city identifies a second technique or procedure that is contained in the records and submits that the disclosure of this technique would similarly hinder or compromise its effective utilization. The city submits that this second technique is not generally known to the public and that its disclosure could reveal techniques and procedures used by the city to identify industry sewer connections. The city submits that companies may refuse the city access to this technique, thereby causing delays in enforcement of the by-law. Further, the city submits that the disclosure of this technique to the public would "allow parties to be able to undertake preventative steps to foil the effectiveness of these techniques".

[71] Based on my review of the records, I note that a number of them do not contain information revealing any investigative techniques or procedures, such as Records 17-19, 229-236 and 257. Therefore, I find that section 8(1)(c) does not apply to these records.

[72] With regard to the remaining records withheld under section 8(1)(c), I am not satisfied that this exemption applies. In Order MO-3089, Adjudicator Frank DeVries considered similar arguments to Records 6-8, which contain references to the techniques or procedures that are referred to in the records at issue in this appeal. In that decision, Adjudicator Devries found that "although I accept the city's submission that the records contain references to particular investigative techniques, I do not accept its position that these investigative techniques are not generally known. It appears to me that these referenced techniques are widely known." I adopt Adjudicator DeVries' findings for the purposes of this appeal. Based on my review of the records, the techniques or procedures that have been withheld are the same as those withheld in Order MO-3089 and I agree with Adjudicator DeVries' finding that these investigative techniques are "widely known".

[73] Therefore, I am not satisfied that the exemption in section 8(1)(c) applies to the records or portions for which it was claimed.

Section 8(1)(i) – security of a building, vehicle, system or procedure

[74] Although this provision is found in a section of the *Act* dealing specifically with law enforcement matters, its application is not restricted to law enforcement situations but can be extended to any building, vehicle or system which reasonably requires protection.[15]

[75] In its representations, the city submits that it has applied this exemption to "prevent disclosure that could endanger the security of the City's wastewater system." The city submits that the harms to the security of its wastewater system are not a frivolous or exaggerated expectation of risk to health and safety. The city is particularly concerned that the disclosure of the location of its Sanitary Trunk sewer could result in various dangers, including "danger to the public through terrorism, or through individuals attempting to introduce contaminants to damage the reputation of the [affected party appellant]". The city also submits that the disclosure of the location of Toronto Water infrastructure "may risk the security of the City's water supply and wastewater system" and the disclosure of the records may provide individuals with sufficient information to access and endanger the city's waste and wastewater system and, potentially, the general public.

[76] In addition, the city identifies other possible harms that could result from the disclosure of the information withheld under section 8(1)(i). These include the following:

- encouraging individuals to access and facilitate their access to the city's underground sewer infrastructure for the purposes of exploring (an activity known as "urban spelunking" or "urban exploration"), which would pose significant risks to these individuals and emergency personnel who may be called to rescue them, and which may result in damage to the city's underground infrastructure;
- knowledge of the entrance to the sewer system may cause injury to the individuals who wish to gain access out of personal interest;
- encourage individuals to engage in "urban exploration", which constitutes trespassing and breaking and entering and is prohibited under the city's Municipal Code

[77] The city also identifies a number of harms that are more generally associated with the wastewater and sewer system. For example, the city notes that one of the "biggest dangers" faced by individuals that enter the wastewater system is "confined spaces", which contain many atmospheric dangers, such as air hazards. Additionally, the city states that municipal and other sewer workers face conditions that may be immediately dangerous to life when they enter sewer systems for repair and

[15] Orders P-900 and PO-2461.

maintenance work, such as potentially toxic and explosive gases and vapours. The city also submits that there is a "constant danger of oxygen deficiency" in these sewer systems and "potential for illness from viral, bacterial or parasitic microorganisms". Finally, the city notes that drowning is also a serious threat at wastewater facilities.

[78] In addition to the dangers of entering the wastewater and sewer system, the city states that, with respect to the concern about terrorism related to the disclosure of information facilitating access to sewer systems, the U.S. National Counterterrorism Center (NCC) warns that photographs shot by urban explorers could pose a national security by aiding terrorists in their surveillance and planning.

[79] Order 188 articulated the principle that establishing one of the exemptions in section 8 of the *Act* requires that the expectation of one of the enumerated harms coming to pass, should a record be disclosed, not be fanciful, imaginary or contrived, but rather one that is based on reason.[16] This requirement that the expectation of harm must be "based on reason" means that there must be some logical connection between disclosure and the potential harm which the institution or affected party seeks to avoid by applying the exemption.[17]

[80] I have reviewed the city's representations on the application of section 8(1)(i) and find that I have not been provided with sufficient evidence to satisfy me that there is a logical connection between the disclosure of the records at issue and the possible harms it identified. I make this finding primarily on my review of the information withheld under section 8(1)(i). In Order MO-3089, Adjudicator Frank DeVries considered substantially similar arguments made by the city with respect to severed portions of Records 6-8 (duplicated in Records 98-100 and 116-118) of this appeal. Upon his review of the city's representations, Adjudicator DeVries found as follows:

> To begin, I accept the city's position that its sewer system is a system which reasonably requires protection. I also accept that some of the concerns identified by the city, including the possibility of acts of terrorism, contamination of potable water, or illegal access to the system for various purposes, are the sorts of harms that section 8(1)(i) is designed to protect against. If the withheld portions of the record at issue included information which, if disclosed, could reasonably be expected to result in these actions taking place, I may well have found that section 8(1)(i) would apply to this type of information.
>
> However, notwithstanding the city's lengthy and detailed representations, I am not satisfied that the disclosure of the withheld portions of the records could reasonably be expected to reveal any information that would assist parties in undertaking the actions identified by the city.

[16] See also Order PO-2099.
[17] Orders 188 and P-948.

> ….
>
> In these circumstances, I am not satisfied that the withheld portions of the record are sufficiently connected with the protection of the sewer system such that their disclosure could reasonably be expected to result in the endangerment section 8(1)(i) seeks to prevent. The information contained in the record relating to the sewer system is simply too general, and not sufficiently detailed, to reasonably expect that its disclosure could result in the harms identified in section 8(1)(i).[18]

[81] I adopt the above analysis for the purposes of this appeal. I agree that the city's sewer system reasonably requires protection and recognize that some of the concerns the city identified (i.e. possible terrorism, the harms resulting in illegal access) are the types of harms contemplated by section 8(1)(i). However, I am not satisfied that the disclosure of the records withheld under section 8(1)(i) could reasonably be expected to reveal any information that would assist in undertaking such activities as possible terrorism or "urban spelunking".

[82] I note that the city's representations do not refer to the specific information in specific records withheld under this exemption and how the disclosure of this information would result in the harms identified in section 8(1)(i). I have reviewed the records at issue and am not satisfied that the exemption in section 8(1)(i) would apply to the information which they contain. For example, the city has withheld a number of photographs of various manholes or structures from disclosure (such as Records 15-16, 40-42, 73-77, 112-113, 121-129, 133-141, 148-151, 166-168, 192-194, 229-236, 264-266). Upon review, I find that there is nothing in these photographs that would reveal any information that would assist in the actions identified by the city. In fact, I find that all of these photographs are of poor quality and do not reveal anything specific to a particular location or unusual with regard to the structure. The photographs of the manholes or other structures could be photographs of any number of structures and the images could be easily accessed or created by any individual. Further, I note that a number of the photographs are of the discharge that was investigated. I am not satisfied and have not been provided with sufficient evidence to demonstrate that photographs of discharge at a public location could, if disclosed, result in the harms contemplated by section 8(1)(i).

[83] In addition to photographs, the city has withheld portions of various administrative reports and correspondence, such as Records 52-53, 153, 155-156, 188-189, 191, 202, 208-213, 214-221, 222-225, 228, 237-240, 241-244, 247-256, 258-261, 267, 268-278, 280-282 and 336. The city has also withheld portions of handwritten notes, such as 302, 310, 317, 318, 322, 323, 330-332 and 333-335. I have reviewed

---

[18] Paras. 79-82.

these severances and find that they contain very general descriptions of the incident, location and subsequent investigation. These records do not provide any details about the city's sewer system or contain any information that would assist parties in undertaking the actions contemplated by the city in its representations. For example, the information contained in Records 101-106 only reveals locations from which samples of discharge were collected; there is no specific information regarding that location, security standards or protocols in place or any information that could be used by parties interested in accessing the sewer system illegally.

[84] As well, the city has applied section 8(1)(i) to withhold maps, such as those in Records 241, 243, 257, 283-286 and what appears to be geological survey information, such as Records 287-299. I have reviewed these records and am not satisfied that their disclosure could result in the harms identified in section 8(1)(i). They contain none of the information whose disclosure could reasonably be expected to result in the harms that the city has identified.

[85] Finally, I note that the city has withheld Record 188, which is an engineering drawing of a building. I note that Record 188 is a duplicate of Record 36, which the city identified as exempt under section 10(1). The city does not specifically address the application of section 8(1)(i) to these building plans. However, in Order MO-2181, Commissioner Brian Beamish considered the city's arguments regarding the application of section 8(1)(i) to the building plans to a specified address and found as follows:

> In general, the City's position is that, in a post September 11th environment, all building plans should be subject to restricted access on the basis of a potential risk of endangerment as set out in section 8(1)(i). With respect, I disagree with this interpretation of section 8(1)(i). I acknowledge that some buildings, such as nuclear power plants or sensitive military installations, may by their very nature, give rise to a reasonable basis for believing that endangerment could result from disclosure. However, in the absence of other evidence, this same approach cannot be applied to residential buildings.

[86] I will apply this analysis to the building plans of a commercial building. The city's representations focus on the potential harms to its sewer system and do not refer to the potential harms that may result in the disclosure of this record. In the absence of evidence establishing otherwise, I conclude that there is no reasonable basis for believing that endangerment could result from the disclosure of the engineering plans of a commercial structure. It is not a nuclear power plant or similarly sensitive or highly secure structure and it is not evident that there could be a reasonable potential for risk of endangerment as set out in section 8(1)(i) if these records are disclosed. Therefore, I find that the evidence the city provided to support its position is not sufficient to substantiate denial of Record 188 (duplicate in Record 36) under section 8(1)(i) of the *Act*.

[87] In summary, based on my review of the records withheld under section 8(1)(i), I find that they do not qualify for exemption under that section of the *Act*.

Section 8(2)(a) – law enforcement report

[88] In order for a record to qualify for exemption under section 8(2)(a) of the *Act*, the institution must satisfy each part of the following three-part test:

1. the record must be a report; and

2. the report must have been prepared in the course of law enforcement, inspections or investigations; and

3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.[19]

[89] The word "report" means "a formal statement or account of the results of the collation and consideration of information". Generally, results would not include mere observations or recordings of fact.[20]

[90] The title of a document is not determinative of whether it is a report, although it may be relevant to the issue.[21]

[91] Section 8(2)(a) exempts "a report prepared in the course of law enforcement *by an agency which has the function of enforcing and regulating compliance with a law*" (emphasis added), rather than simply exempting a "law enforcement report." This wording is not seen elsewhere in the *Act* and supports a strict reading of the exemption.[22]

[92] An overly broad interpretation of the word "report" could create an absurdity. If "report" means "a statement made by a person" or "something that gives information", all information prepared by a law enforcement agency would be exempt, rendering sections 8(1) and 8(2)(b) through (d) superfluous.[23]

[93] The city states that, in the circumstances, there is no dispute that the city received a complaint of an apparent violation of its by-laws and that it commenced an investigation in response to that complaint. The city submits that the records claimed to be exempt under section 8(2)(a) "are reports generated as a result of a spill complaint and not during the course of a routine inspection. The report sets out the

---

[19] Orders 200 and P-324.
[20] Orders P-200, MO-1238 and MO-1337-I.
[21] Order MO-1337-I.
[22] Order PO-2751.
[23] Order MO-1238.

observations of the investigating officer including the location of Toronto Water infrastructure and location of foam discharge and, further, sets out conclusions based on those observations."

[94] The city submits that the disclosure of this type of information could compromise the investigation, allowing other parties to use the results and conclusions drawn to further efforts to avoid detection, which would thereby reduce the efficacy of the city's investigations.

[95] In Order PO-1959, Senior Adjudicator Sherry Liang considered whether certain records, including notes of police officers and general occurrence reports, constituted "reports" for the purpose of the provincial equivalent of section 8(2)(a) of the *Act*.[24] Addressing this issue, she wrote:

> [The identified records] consist of either Sarnia Police Service incident reports, supplementary reports, or excerpts from police officers' notebooks. Generally, occurrence reports and similar records of other police agencies have been found not to meet the definition of "report" under [the *Act*], in that they are more in the nature of recordings of fact than formal, evaluative accounts of investigations: see, for instance, Orders PO-1796, P-1618, M-1341, M-1141 and M-1120.

[96] In Order M-1109, former Assistant Commissioner Tom Mitchinson made the following comments about police occurrence reports:

> An occurrence report is a form document routinely completed by police officers as part of the criminal investigation process. This particular Occurrence Report consists primarily of descriptive information provided by the appellant to a police officer about the alleged assault, and does not constitute a "report".

[97] I agree with the approach taken in these previous orders issued by this office, and adopt it for the purpose of my analysis in this appeal. On my review of the records at issue, I am satisfied that they do not meet the definition of a "report" under section 8(2)(a) of the *Act*. Firstly, I find that Record 176-179 does not relate to a law enforcement issue; instead, it appears to relate to the re-naming of an address. With regard to the remainder of the records withheld under section 8(2)(a), I have reviewed them all and find that they can be categorized as follows:

- Complaint Reports (Records 1-3, 49-51, 53, 57, 59-60, 67-68, 111)
- Service Request Details (Records 4-6, 55, 114-115)
- Inspection summaries (Records 6-8, 71-72)

[24] The section at issue in that order was section 14(2)(a) of the *Freedom of Information and Protection of Privacy Act*, which is the provincial equivalent of section 8(2)(a) at issue in this appeal.

- Emails that summarize an investigation (Records 11, 29-30, 62-63, 69-70, 120, 130-132, 142-147, 152, 164, 165, 169-170, 175, 180, 203-204); and
- Handwritten notes of city staff (Records 45-48, 95-97, 303, 311-317, 322, 337-338)

[98] Based on my review of these records, I find that they consist of observations, recordings of fact and collection of information primarily, rather than formal statements of the results of the collation and consideration of information obtained during investigations.[25] Accordingly, I find that section 8(2)(a) of the *Act* does not apply, and the records do not qualify for exemption under that section.

[99] Accordingly, I find that all of the records that the city has applied the discretionary law enforcement exemptions in sections 8(1)(c) and (i) and 8(2)(a) are not exempt under these sections.

D. Does the discretionary exemption at section 13 apply to the records?

[100] In addition to section 8(1)(i), the city takes the position that the following records are exempt from disclosure under section 13 of the *Act*: 15-16, 40-42, 52, 53, 55, 73-77, 101-106, 112-113, 121-129, 133-141, 148-151, 153, 155-156, 166-168, 189-190, 191, 192-194, 208-213, 214-221, 222-225, 228, 229-236, 237-240, 241-244, 245-246, 247-256, 257, 258-261, 264-266, 267, 268-278, 280-282, 283-299, 302, 310, 318, 332, 330-332, 333-335, 336 and 339-340.

Section 13 reads as follows:

> A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

[101] For the section 13 exemption to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result.[26] To meet this test, the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated.[27]

---

[25] See Orders M-1109, MO-2065, PO-1845 and PO-1959.
[26] See note 10 above.
[27] *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.).

[102] The term "individual" is not necessarily confined to a particular identified individual and may include any member of an identifiable group or organization.[28]

[103] In its representations, the city states that the exemption in section 13 applies to records which, if disclosed, could harm an individual. The city also refers to previous decisions of the IPC which have found that the reference to an individual is not necessarily directed at an "identifiable individual". The city then submits:

> As noted [in its representations regarding the application of section 8(1)(i)], the City submits that providing public access to information which facilitates access to the City's wastewater system exposes individuals – who rely on the security of the City's wastewater to a potential risk of harm – for example, the harm resulting from unknown contamination of the City's water supply. This is because disclosure of the redacted portions will allow individuals to who [*sic*] wish to access wastewater system for the purposes of attacking the security of the system with an increased ease of entry, and therefore an increased risk of harm to their intended targets. Additionally, increased ease of unauthorized access to the City's water treatment facilities and system to the members of the public will provide an increased risk to the health and safety to the members of the public who access the system. This is because, as noted above, sewers and the remainder of the wastewater system is a location filled with numerous intrinsic potential dangers that must be guarded against by individuals who enter the system.

[104] In addition, the city submits that "the release of extremely detailed blueprints and disclosure of the location of Toronto Water infrastructure is exempt under subsection 8(1)(i) and 13 of [the *Act*] as its disclosure may risk the security of the City's water supply and wastewater treatment system." Further, the city notes that its wastewater system is subject to "significant sudden surges of water and potential debris" which would put individuals at risk of injury of death. Finally the city notes that the release of the information at issue could put the city at risk from terrorism or damage.

[105] The city applied the exemptions in sections 8(1)(i) and 13 of the *Act* to the same records or portions thereof. I have found above that these records, or portions thereof, do not quality for exemption under section 8(1)(i), primarily because the information contained is simply too general in nature and insufficiently detailed to reasonably expect that its disclosure could result in the harms identified in section 8(1)(i). For the same reasons, I find that the disclosure of the withheld portions of the records could not reasonably be expected to seriously threaten the safety or health of an individual. As a result, I find that they do not quality for exemption under section 13.

---

[28] Order PO-1817-R.

Additional matter

[106] In the analysis above, I found that sections 8 and 13 do not apply to the records. However, based on my review of the records, I find some of them contain information in which the affected party appellant may have an interest but was not provided with copies. The records that contain information that may affect the interests of the affected party appellant are: 57, 62-63, 67-70, 71-72, 95-97, 111, 120, 130, 131, 132, 142, 143, 144, 145, 164, 165, 209, 213, 226-227 and 339-340. As a result of these notification issues, I will remain seized of these records.

[107] I note that, in its index of records, the affected party appellant identified a number of records as "not provided to [it] therefore should not be disclosed". I have reviewed all of these records and find that only those identified above contain information that may affect the affected party appellant's interests if they were disclosed. Therefore, I will only order the city to notify the affected party appellant of those records listed above.

ORDER:

1. I find that sections 8(1)(c), (i), 8(2)(a), 10(1) and 13 do not apply to the records at issue.

2. I uphold the city's decision to deny access to the following records, or portions thereof, withheld as non-responsive: 23-28, the first email in Record 31, 87-89, 90 (except the final entry), 130, 155-156, the first email in Record 183, the first half of Record 300, 301, 302, 304, 309 (except the August 20, 2012 entry), 324 and 333.

3. I find that the following records **are** responsive to the request and order the city to issue an access decision in accordance with the requirements of the *Act*: 11, 31 (except the first email), 34-35, 37-39, 43, 44, 56 (identical to 54, which was disclosed), 58, 64-66, the final entry of 90, 91-94, 163, 183 (except the first email) 186-187, 189-190, 196, the August 7, 2012 entry on Record 300, the August 20, 2012 entry on 309 and 323.

4. I remain seized of any issues relating to the following records due to notification issues as identified above: 57, 62-63, 67-70, 71-72, 95-97, 111, 120, 130, 131, 132, 142, 143, 144, 145, 164, 165, 209, 213, 226-227 and 339-340.

5. I order the city to disclose the remainder of the records to the requester by **June 10, 2015** but not before **June 4, 2015**.

Original Signed By: May 5, 2015
Justine Wai
Adjudicator