

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3433

Appeal MA09-29-2

City of Vaughan

April 28, 2017

Summary: This appeal results from Order MO-2608, in which the IPC ordered the city to conduct a search for records relating to its MuniCard program. The city located responsive records and granted the appellant partial access to them, withholding portions under various discretionary exemptions. The city also charged the appellant a fee of \$271.70, but waived \$133.75. The appellant appealed the city's fee and exemptions claim. The appellant also claimed that additional responsive records should exist, thereby adding the issue of reasonable search. In this decision, the adjudicator upholds the city's fee and search as reasonable. The adjudicator also confirms that section 12 (solicitor-client privilege) and/or section 38(a) (discretion to deny requester's own personal information) apply to a number of the records, but orders the city to disclose three additional portions of the records to the appellant.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1), 12, 17 and 45(1). Regulation 823 sections 6 and 6.1.

Orders and Investigation Reports Considered: MO-2608, MO-3313

OVERVIEW:

[1] The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the City of Vaughan (the city) for access to information. Specifically, the request read as follows:

I would like a copy of the City of Vaughan Policy and any relevant guidelines and/or procedures that address the distribution of information to third parties, before June 2008 and a copy of the revised Policy and any

relevant guidelines and/or procedures after June 2008 and after the noted compliance date of October 16, 2008.

Specifically, I am submitting an FOI request to the City for copies of all policies, both original and revised with regards to [specified complaint number]. I am also requesting a copy of the letter submitted to the IPC for proof of compliance with [specified complaint number].

I would like both the original and revised Policies and Procedures that relate to [specified complaint number], and the IPC ruling. You were instructed by the IPC to do the following: "review and revise its policies and procedures relating to receiving complaints from individuals to ensure that disclosure of personal information to third parties is in accordance with the *Act*." You sent a letter to the IPC that confirmed you have complied with the ruling. I would like a copy of the letter sent to the IPC confirming the compliance, along with all documents.

I would like a copy of the review and revision documents presented to Council with regards to the above, and please give me the reference where this was submitted to Council for their approval. I would also like a copy of any correspondence with regard to the above, with members of staff, and/or Council, and/or the IPC and/or any third parties, such as [MuniCard].

[2] The city located records responsive to the appellant's request and issued a decision to the appellant. The city's decision was the subject of Appeal MA09-29. Following an inquiry, Adjudicator Laurel Cropley issued Order MO-2608. The relevant order provisions stated as follows:

1. I order the City to conduct a further search for records responsive to the portion of the appellant's request that states: "I would also like a copy of any correspondence with regard to the above, with members of staff, and/or Council, and/or the IPC and/or any third parties, such as [MuniCard]."
2. In conducting this search, the City is to review the locations identified in its representations for correspondence between one or more of the parties identified in the appellant's request, including staff, Council, the IPC and any third party, such as MuniCard, regarding the issue of guidelines, policies and/or procedures that address the distribution of information to third parties and/or the Report, that were created prior to July 16, 2008.
3. Prior to conducting its search, the City is to contact the appellant to determine a reasonable time frame, which will form the parameters of search.

[3] The city conducted a search in compliance with Order MO-2608. The city identified 271 pages of records and they were disclosed to the appellant, in part. In its decision, the city advised that portions of the records were withheld under the discretionary exemptions in section 7 (advice or recommendations) and 12 (solicitor-client privilege). The city also provided the appellant with an estimated fee.

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

[5] During mediation, the appellant advised the mediator that she did not agree with the city's fee estimate even though she paid the fee. The appellant took the position that the records responsive to her request contain her personal information. As such, the appellant claimed that the city should not have charged her for search or preparation fees. The city maintained that the records are of a general nature and the search and preparation time were properly applied. The city further noted that it waived 50% of the fee.

[6] The appellant confirmed that she pursues access to all records withheld in part or in full. Furthermore, the appellant stated that she believed that additional records should exist, thereby adding the reasonableness of the city's search as an issue. The city maintained its position that the information at issue was properly withheld and that it conducted a thorough search for responsive records.

[7] Mediation did not resolve the issues under appeal and the file was subsequently moved to adjudication for an inquiry. The adjudicator with carriage of the appeal began his inquiry by seeking representations from the city. The city submitted representations. In its representations, the city submitted that Records 76-78 and 148, which were originally withheld under section 7(1), are more appropriately subject to section 12. As a result, section 7(1) is no longer at issue in this appeal and I will consider whether Records 76-78 and 148 are exempt under section 12.

[8] Upon review of the city's representations, the adjudicator invited the appellant to submit representations in response to the city's representations and the Notice of Inquiry. The city's representations were shared with the appellant in accordance with Practice Direction Number 7 of the IPC's *Code of Procedure*. The appellant did not submit representations.

[9] Following the inquiry, the appeal was transferred to me. In its representations, the city confirms that a "small amount of the records" contain the appellant's personal information, thus raising the possible application of section 38(a) (discretion to deny requester's own information) of the *Act*. In the discussion that follows, I uphold the city's fee and search as reasonable as well as its application of the solicitor-client privilege to the records, in part.

RECORDS:

The records at issue consist of a number of emails.

ISSUES:

- A. Should the city’s fee be upheld?
- B. Did the city conduct a reasonable search for records?
- C. Do the records contain personal “personal information” as defined in section 2(1) and, if so, to whom does it relate?
- D. Does the discretionary exemption at section 38(a), read with section 12, or section 12 apply to the records?

DISCUSSION:

A. Should the city’s fee be upheld?

[10] In its interim access decision, the city provided the appellant with a fee estimate of \$267.50 that was based on a representative sample of responsive records. The city waived half of the fee estimate and the resulting fee was \$133.75. In its final access decision, the city provided the appellant with the following final fee breakdown:

Action	Estimate	Actual
Search – 425 min. at \$7.50/15 min. 6 departments – 20 month period	\$210.00	\$210.00
Preparation (severing) 15 min. @ \$7.50/15 min.	\$7.50	\$7.50
Photocopies @ \$0.20/page Estimate – 250 pages Actual – 271 pages	\$50.00	\$54.20
Total	\$267.50	\$271.70
Fees Waived	(\$133.75)	(\$133.75)
Paid by appellant	(\$133.75)	(\$133.75)
Balance Owing	\$0	\$4.20

[11] Where the fee is \$25.00 or more, the institution must provide the requester with a fee estimate.¹ Previous orders establish that, where the fee is \$100.00 or more, the fee estimate may be based on either

- Actual work done by the institution to respond to the request or
- A review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records.²

¹ Section 45(3)

² Order MO-1699.

The purpose of the fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access. The fee estimate also assists requesters to decide whether to narrow the scope of their request to reduce the fee. In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.³

[12] The IPC may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 823, as set out below.

[13] Section 45(1) requires an institution to charge fees for request under the *Act*. Section 45(1) reads

A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

[14] More specific provisions regarding fees are in sections 6, 6.1, 7 and 9 of Regulation 823. The relevant portions of Regulation 823 read as follows:

6. The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act for access to a record:

- 1. For photocopies and computer printouts, 20 cents per page.
- 3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
- 4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.

6.1 The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act for access to personal information about the individual making the request for access:

- 1. For photocopies and computer printouts, 20 cents per page.

³ Orders P-81 and MO-1614.

I note that section 6.1 of Regulation 823 does not allow an institution to charge a requester fees for manually searching for records containing a requester's personal information or for preparing them for disclosure.

[15] In reviewing the city's fee, I must consider whether it is reasonable, giving consideration to the content of the appellant's request, the circumstances of the appeal and the provisions set out in section 45(1) of the *Act* and Regulation 823. The burden of establishing the reasonableness of the fee and fee estimate rests with the city. To discharge this burden, the city must provide me with detailed information as to how the fee was calculated in accordance with the provisions of the *Act* and produce sufficient evidence to support its claim.

[16] The city submits that it created the fee estimate with assistance from individuals within the responsive departments who are familiar with the records. The city noted that its fee estimate and interim access decision provided the appellant with

- the list of responsive departments it would search
- the anticipated degree of redaction of the records
- potential exemptions to be applied
- estimated search time detailed by the number of departments and date range requested
- estimated preparation time based on a representative sample of records
- estimated number of copies

The city also notes that it waived 50% of the fee estimate.

[17] The city submits that the search ordered by the IPC was for communications exchanged between identified city staff and other individuals relating to the MuniCard program. The city submits that the search was not for the appellant's personal information. The city submits that the subject matter of the search, which was defined by Order MO-2608, did not mention the appellant as being part of the search.

[18] The city submits that a small number of the records located in its search contain the appellant's personal information. The city submits that a search for general records that result in locating a "small amount of material" that contains the requester's personal information should not trigger the application of section 6.1 of Regulation 823 for the entire search.

[19] The city states that it located nearly 300 pages of records responsive to the request. Of those pages, the city submits that a "small percentage" contain personal information, such as the email address, of the appellant. The city further notes that many of the records that contain the appellant's personal information are in duplicate form.

[20] The city submits that preparation of the documents resulted in it redacting 20 pages in full and 13 pages in part. The city states that it charged a preparation fee for the partially redacted records, but not the records that were withheld in full.

[21] The appellant did not submit representations. However, during mediation, the appellant advised the mediator that the city should not have charged search or preparation fees because the records contain her personal information.

[22] Having reviewed the fee and considered the city's representations and the fact that it waived 50% of the fee, I uphold the city's fee.

[23] As set out above, the city charged the appellant a photocopying fee, search fee and preparation fee. Although the appellant did not take issue with the fee charged for photocopies, I reviewed the fee and find that the city calculated it in accordance with the provisions of the *Act* and Regulation 823. Therefore, I uphold the city's photocopying fee.

[24] The appellant disputes the fees charged for search and preparation of records. The appellant advised the mediator that she believes that some of the records contain her personal information and so, the city is not permitted to charge search or preparation fees for those records under section 6.1 of Regulation 823.

[25] The city's position is that even though a small number of the records located contain some of the appellant's personal information, the request itself cannot be characterized as being for her personal information. As such, the city submits that it should be entitled to charge search time as set out in section 6 of Regulation 823. Adjudicator Catherine Corban considered the same arguments in Order MO-3313 and found as follows:

I disagree with the city's approach which, in my view, runs contrary to previous orders issued by this office as well as to the legislature's intent in differentiating between fees to be charged for access to general records versus for access to records containing a requester's own personal information.

...

Section 6.1 does not stipulate that the subject matter of the request itself has to be able to be characterized as specifically for the individual's personal information. The section simply identifies the fees to be charged for "access to personal information about the individual making the request for access." Additionally, in differentiating between the fees that can be charged for the processing of general government records as opposed [to] those which contain the personal information of the requester, in my view, the intent of the legislature is to ensure that a

requester is charged lower fees to exercise their right of access to their own personal information.⁴

Taking a record-by-record approach to charging the fees set out in previous IPC jurisprudence⁵, Adjudicator Corban reviewed each record at issue and reduced the city's fee in proportion to the number of records at issue that contained the appellant's personal information.

[26] I adopt the principles articulated above for the purpose of this analysis. Given the principles articulated in Order MO-3313, I find that the city was not entitled to base its fee on section 6 of Regulation 823 for all the records. A portion of the records the city located contain the appellant's personal information. Therefore, the city was not entitled to charge the appellant for the search and preparation of the records that can be characterized as containing her personal information.

[27] However, in this case, the city waived 50% of its fee. Upon review of the records, I accept the city's claim that only a small percentage of the 300 pages located contain the appellant's personal information. I note that the appellant did not dispute the city's claim. Given the city's reduction of the fee by 50% and the small percentage of the records that can be characterized as containing the appellant's personal information, I uphold the city's fee of \$137.95, which constitutes the 50% deposit paid by the appellant plus the additional \$4.20 charged for photocopying. Therefore, I find that the balance the appellant owes to the city for its processing of her request is \$4.20.

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

[28] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution conducted a reasonable search for records as section 17 of the *Act* requires.⁶ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the city's decision. If I am not satisfied, I may order further searches.

[29] The *Act* does not require an institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it made a reasonable effort to identify and locate responsive records.⁷ To be responsive, a records must be *reasonably related* to the request.⁸

[30] 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

⁴ Order MO-3313 at para. 27-29.

⁵ Order M-514, followed in Order MO-2528.

⁶ Orders P-85, P-221 and PO-1954-I.

⁷ Orders P-624 and PO-2559.

⁸ Order PO-2554.

are reasonably related to the request.⁹

[31] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it made a reasonable effort to identify and locate all of the responsive records within its custody or control.¹⁰

[32] 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.¹¹

[33] Order MO-2608 defined the parameters of the search to be conducted by the city, with the exception of the start date. The city submits that it had discussions with the appellant regarding the time frame of the search. The parties agreed that the search should be conducted for records created between December 3, 2006 and July 16, 2008.

[34] After defining the search period, the city states that it issued search memos to a number of departments and individuals, including the City Clerk, the City Manager, the Director of Economic Development, the Commissioner of Legal and Administrative Services and the Director of Financial Services. Four of these departments provided affidavits that describes the searches conducted. The City Clerk advised that he conducted a search of his own and his predecessor's files, his email inbox and the closed session record. The City Clerk advised that he also contacted the city's former Records Manager who conducted a search through the records of the relevant Council members. The Access & Privacy Officer conducted a search of emails. The Executive Director of the City Manager's Office advised that he conducted a search of emails, filing cabinets and shared department files for responsive records. Finally, the Executive Assistant to the City Manager advised that the City Manager's office conducted a search of the City Manager's emails and hard copy files and provided all of the responsive information to the Access and Privacy Office. All of these affidavits were shared with the appellant

[35] The city submits that the search conducted in accordance with Order MO-2608 was reasonable. The city states that its position is based on the appellant's confirmation of the search parameters, the provision to the appellant of the list of individuals/departments proposed to be searched and the subsequent searches that are detailed in the affidavits provided.

[36] The appellant did not make submissions, but during mediation, she claimed that many additional records should exist. Specifically, the appellant claimed that additional correspondence between various council members, correspondence between the city and MuniCard and further correspondence between the city and the IPC should exist.

⁹ Orders M-909, PO-2469 and PO-2592.

¹⁰ Order MO-2185.

¹¹ Order MO-2246.

[37] In the circumstances of this appeal and upon review of the evidence before me, I accept that the city conducted a reasonable search for records responsive to the appellant's request. I accept that a number of different experienced employees, in different areas of the city, expended reasonable efforts to locate records reasonably related to the search ordered by Order MO-2608. I accept that these individuals were familiar with the subject matter to which the records relate, as well as with the city's information management systems.

[38] As previously stated, in appeals involving a claim that additional records exist, the *Act* does not require the city to prove with absolute certainty that further records do not exist. However, the city is required to provide sufficient evidence to demonstrate that it made a reasonable effort to identify and locate responsive records. In the circumstances of this appeal, having considered the city's representations regarding the searches conducted, I accept that the city's efforts were reasonable.

[39] The appellant takes the position that additional records should exist. However, while a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester must still provide a reasonable basis for concluding that such records exist. In the absence of substantive representations in support of the appellant's position that additional records should exist, I find that I have not been provided with sufficient evidence to find that the city's search for records was not reasonable.

[40] Therefore, I accept that the city's search for records ordered by Order MO-2608 was reasonable.

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

[41] Under the *Act*, different exemptions may apply depending on whether a record at issue contains or does not contain the personal information of the requester.¹² Where the records contain the requester's own personal information, access to the records is addressed under Part II of the *Act* and the discretionary exemptions at section 38 may apply. In order to determine which sections of the *Act* may apply, I must decide whether the record contains *personal information* and, if so, to whom it relates. That term is defined in section 2(1) of the *Act*

"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,

¹² Order M-352.

(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,

(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

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.¹³

[42] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.¹⁴

[43] The issue of whether the records contain *personal information* was not originally included in this inquiry. However, in its representations, the city confirmed that some records contain the personal information of the appellant.¹⁵ Upon review of the records, I find that a small number of them contain the personal information of the appellant. Specifically, I find that Records 70, 79, 80, 88, 105 and 177 contain the appellant's name in addition to information that may relate to her in a personal capacity.

[44] I find that the records do not contain any other personal information relating to any other identifiable individual.

¹³ Order 11.

¹⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

¹⁵ The appellant did not provide representations in response to the city's position.

Issue C: Does the discretionary exemption at section 38(a), read with section 12, or section 12 apply to the records?

[45] The city applied the solicitor-client privilege exemption in section 12 to withhold the following records from disclosure, in full: 41, 42, 46-52, 76-78, 159, 160, 177, 178, 190, 279, 287 and 288. The city also withheld portions of the following records under the solicitor-client privilege exemption: 70, 79, 81, 88, 105, 146, 148, 153, 158, 188, 189, 191 and 192. Because I found that Records 70, 79, 80, 88, 105 and 177 contain the appellant's personal information, I will consider whether the information at issue in these records is exempt under section 38(a), read with section 12, of the *Act*. I will consider whether the remainder of the information withheld under section 12 is exempt under that section.

[46] 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.

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 own personal information.¹⁶

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

[48] In this case, the city relies on the section 12 and in the case of Records 70, 79, 80, 88, 105 and 177, section 38(a), read in conjunction with section 12, to deny access to the records, either in whole or in part. Section 12 reads

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.

[49] Section 12 contains two branches. Branch 1 ("subject to solicitor-client privilege") is based on the common law. At common law, solicitor-client privilege encompasses two types of privilege: (1) solicitor-client communication privilege and (2) litigation privilege.

[50] Branch 2 is a statutory privilege. It is applied where the records were "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." The statutory and common law privileges, although not identical, exist for similar reasons.

¹⁶ Order M-352.

[51] For section 12 to apply, the city must establish that one or the other (or both) branches apply. In the circumstances, the city submits that the records are covered by solicitor-client communication privilege.

[52] 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 providing legal advice.¹⁷ The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation.¹⁸ This privilege applies to a *continuum of communications* between a solicitor and client:

... Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach.¹⁹

The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice.²⁰

[53] 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.²¹

[54] The city submits that the information subject to its section 12 claim relate to a *continuum of communications* between a solicitor and a client and were prepared by or for counsel for use in giving legal advice. The city submits that the privilege was not waived. Finally, the city submits that the records were prepared by the city's legal counsel and external counsel retained by the city.

[55] The appellant did not submit representations.

[56] I have reviewed the information subject to the city's solicitor-client privilege claim and I am satisfied that the majority of it is exempt under section 12 or section 38(a), read with section 12. All of the records at issue consist of email correspondence between various city staff, city legal counsel and/or external legal counsel hired by the city. Based on my review, I find that the majority of the records contain written communications of a confidential nature between a client (i.e. the city or its staff) and a legal advisor, either the city's internal legal counsel or its external counsel, that is directly related to seeking, formulating or giving legal advice.²²

[57] However, there are a few exceptions to my finding that section 12 or 38(a) read with section 12 applies. First, I find that certain information in Records 81 and 88 is

¹⁷ *Decôteaux v. Mierzwinski* (1982), 141 DLR (3d) 590 (SCC).

¹⁸ Orders MO-1925, MO-2166 and PO-2441.

¹⁹ *Balabel v. Air India* [1998] 2 WLR 1036 at 1046 (Eng CA).

²⁰ *Susan Hosiery Ltd. v. Minister of National Revenue* [1969] 2 Ex CR 27.

²¹ *General Accident Assurance Co. v. Chrusz* (1999) 45 OR (3d) 321 (CA).

²² See *Decôteaux v. Mierzwinski*, *supra* note 16.

administrative in nature even though it is part of communications between city counsel and city staff. Specifically, while I find that the last sentence of the first email in Records 81 (duplicated in Record 88) to be covered by solicitor-client privilege, the remainder of the email relates to administrative matters. This administrative information does not relate to seeking, formulating or providing legal advice. Similarly, the first email contained in Record 88 is administrative in nature and does not relate to seeking, formulating or providing legal advice. Therefore, I find that section 38(a), read with section 12, does not apply to the administrative information contained in Records 81 and 88. I will order the city to disclose that information to the appellant.

[58] Second, Record 79 contains what appears to be the appellant's professional biography. I note that section 4(2) of the *Act* obliges institutions to disclose as much any responsive records as can reasonably be severed without disclosing material which is exempt. Upon review of Record 79, while the first sentence of the email relates to seeking or providing legal advice, the second paragraph relates solely to the appellant and her professional background. Given the information contained in this paragraph, I find that it can be severed and disclosed to the appellant without disclosing materials that would be exempt otherwise. Therefore, I find that section 12 does not apply to the appellant's professional biography and will order the city to disclose it the appellant.

[59] Considering the nature of the information that I found to be exempt under section 12 or section 38(a), in conjunction with section 12, I am satisfied that the city exercised its discretion to withhold the information at issue in good faith and for a proper purpose taking into account all relevant factors. The information I found to be exempt can be properly characterized as solicitor-client communication privileged information and I accept that the city did not err in exercising its discretion to deny the appellant access to this information.

[60] As a result, I uphold the city's application of section 12 or section 38(a), read with section 12, to the remainder of the information.

ORDER:

1. I order the city to disclose the following information to the appellant:

- The second paragraph of the first email contained in Record 79
- The entire email at issue in Record 81, with the exception of the last full sentence
- Both emails at issue in Record 88, with the exception of the last full sentence of the second email

The portions identified above are not exempt from disclosure under section 12 or section 38(a), read with section 12, of the *Act*. I order the city to disclose this

information by **May 29, 2017** and upon payment of the remaining fee by appellant.

2. I uphold the city's decision to deny the appellant access to the remaining information at issue.

Original signed by _____
Justine Wai
Adjudicator

_____ April 28, 2017