

Information and Privacy Commissioner,  
Ontario, Canada



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

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## INTERIM ORDER MO-3513-I

Appeal MA15-571

The Corporation of the City of Oshawa

October 31, 2017

**Summary:** The city received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for (1) copies of emails and other communications between city staff or councillors and a named investigator retained by the city, and (2) the investigator's dockets. The city granted partial access to the responsive records, citing several exemptions in *MFIPPA*. The city also claimed the application of the confidentiality provisions found in sections 223.5 and 223.22 of the *Municipal Act, 2001*, which prevail over *MFIPPA*. The requester appealed the application of the exemptions and the *Municipal Act* provisions, and raised new issues on appeal: whether the city had conducted a reasonable search for records, whether the public interest override at section 16 applies, and whether the city clerk was in a conflict of interest in making an access decision. In this interim order, the adjudicator finds that the city clerk was not in a conflict of interest in responding to the access request. The adjudicator finds that sections 223.5 and 223.22 of the *Municipal Act* do not apply to the records and that as a result, access to the records is to be decided under *MFIPPA*. She defers consideration of the remaining issues pending notification of additional affected parties.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, s. 53(1), *Municipal Act, 2001*, sections 223.3, 223.4, 223.5, and 223.22.

**Orders and Investigation Reports Considered:** Orders MO-2227, PO-2381, MO-2975-I, MO-2439, MO-2843, MO-3314, MO-2629-R, and MO-1519.

**Cases Considered:** *Wewaykum Indian Band v. Canada*, [2003] 2 S.C.R. 259, *Imperial Oil Ltd. v. Quebec (Minister of the Environment)* [2003] 2 SCR 624, and *McCartney v. The City of Ottawa*, 2010 ONSC 2690 (CanLII).

## **BACKGROUND:**

[1] This interim order addresses the applicability of the confidentiality provisions pertaining to municipal accountability officers found in sections 223.5 and 223.22 of the *Municipal Act* to the records at issue in this appeal.

[2] The appellant submitted a request to the City of Oshawa (the city) pursuant to the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)* for access to the following information:

I am requesting all emails and any other communication (electronic or hard copy ie. texts or voice messages, fax) between [a named investigator] and any and all members of council as well as any members of city staff for the period of May 1, 2013 and September 15, 2013.

I would like a copy of the dockets of all time for all work performed by [the investigator] from May 22, 2013 to Sept. 15, 2013 noted by [the investigator] on invoices July 29 2013 and August 21, 2013 under purchase order 16050.

[3] The city located 107 records responsive to the appellant's request and issued an access decision granting partial access to them. The city withheld some information in the records, citing the discretionary exemption for advice and recommendations at section 7(1) of the *Act*, the discretionary law enforcement exemptions at sections 8(1)(g) and 8(1)(i), the mandatory exemption for third party information at section 10(1)(a), the discretionary exemption for solicitor-client privilege at section 12, the discretionary exemption for health and safety at section 13 and the mandatory personal privacy exemption at section 14(1). The city included an index of records with its access decision.

[4] The appellant appealed the city's access decision to this office. During the mediation stage of the appeal, the appellant advised the mediator that he disputed the applicability of the exemptions claimed by the city to deny access, and also expressed his view that there is a public interest in disclosure of the requested records, thereby raising section 16 of the *Act*. The appellant also contended that further records responsive to his request should exist, such as phone messages, faxes, text messages and emails to and from a named councillor, thereby raising the issue of whether the city had conducted a reasonable search for responsive records. In addition, the appellant asserted that there is a conflict of interest with the city clerk reviewing the access request and deciding whether her own emails should be disclosed.

[5] The appellant's concerns were conveyed to the city, which maintained its decision to deny access to the withheld information. The city also maintained that it had conducted a reasonable search for the records and indicated that phone and text messages are not retained by the city.

[6] The city also conveyed its position that there was no conflict of interest in the city clerk reviewing and deciding on access with respect to her own emails.

[7] Also during mediation, the city took the position that sections 223.22 and 223.5 of the *Municipal Act, 2001* (the *Municipal Act*) apply to the records, as these sections impose a duty to maintain secrecy over matters involving the municipal Auditor General and the Integrity Commissioner. The city issued a revised decision and a revised index of records, reflecting its position on these provisions.<sup>1</sup>

[8] As the appeal was not resolved during mediation, it was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. I began my inquiry by seeking representations from the city, the investigator as an affected party, and an additional affected party. The city filed representations, while the affected parties did not. I then sought and received representations from the appellant, reply representations from the city, and sur-reply representations from the appellant.

[9] Although I did not invite further representations after receiving the appellant's sur-reply representations, the appellant then filed additional representations on the issue of reasonable search, which he informed me he was providing in response to information that the city had provided in its representations in a related appeal, Appeal PA16-83. I decided to allow the representations and invited the city to provide further representations in response, which it did.

[10] In this interim order, I find that the city clerk was not in a conflict of interest in making a decision on the appellant's access request. I find that sections 223.5 and 223.22 of the *Municipal Act* do not apply to the records at issue, with the result that access to the records is to be decided under *MFIPPA*. I defer the remaining issues pending notification of additional affected parties.

## **RECORDS:**

[11] All of the 107 records listed in the revised index of records are at issue, except for five records that were disclosed in full to the appellant. The remainder of the records were either withheld in full, or disclosed with severances. The records consist mainly of emails and attachments.

## **ISSUES:**

[12] This interim order addresses the following issues:

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<sup>1</sup> The revised decision and index also reflect the city's reliance on an additional discretionary exemption, section 6(1)(b) of the *Act* (closed meetings).

- A. Was the city clerk in a conflict of interest position with respect to the city's access decision?
- B. Does the secrecy requirement relating to an Integrity Commissioner in section 223.5 of the *Municipal Act* apply to any of the records? Was the investigator an Integrity Commissioner within the meaning of that section?
- C. Does the secrecy requirement relating to an Auditor General in section 223.22 of the *Municipal Act, 2001* apply to any of the records?

## **DISCUSSION:**

### **Background to the creation of the records at issue**

[13] On May 16, 2013, the city's Auditor General submitted Report AG-13-09 entitled "Independence of the Auditor General" to Council in Committee of the Whole. The report appended attachments, several of which the Auditor General specified as being confidential.

[14] On May 21, 2013, city council held a meeting at which it received the Auditor General's report, and appointed an investigator to investigate the allegations contained in the report. Aside from the confidential attachments, the report was also made publicly available on or about May 21, 2013.

[15] The investigator carried out his investigation beginning in May 2013 and delivered his final report at a council meeting held on September 3, 2013.

[16] As noted above, the appellant seeks records dating from May to September 2013.

### **Issue A: Was the city clerk in a conflict of interest position with respect to the city's access decision?**

[17] The appellant alleges that the city clerk was in a conflict of interest position in making a decision on his access request.

### ***Representations***

[18] The appellant argues that there is a conflict of interest in that the city clerk reports to the city manager, who was one of the main focusses of the investigation. The appellant also states that "as the City Clerk was also named in the Auditor General's report AG-13-09, she has or had a direct conflict in providing transparent and accountable results to an access request that may have shown her past actions to be of questionable conduct, or which may have revealed improprieties with her superior to whom she reports".

[19] The city submits that the city clerk acted within the scope of her responsibilities as clerk in providing logistical and administrative support to the investigator, and was not in any way involved in his decision-making or in creating the investigation report. It submits that the clerk, in responding to the access request, was fulfilling her obligations under the *Act*, and that there is no real or apparent conflict between these roles. The city states that the clerk was not, in fact, named in the Auditor General's report. It submits that the clerk did not have a personal or special interest in the records nor could a well-informed person, considering all of the circumstances, reasonably perceive a conflict of interest. Finally, the city notes that the identity of the city manager has changed.

[20] In reply, the appellant states that according to the investigator's report, the city clerk was one of the individuals explicitly or implicitly criticized in the Auditor General's report. The appellant suspects that some of the records withheld in their entirety are the same records that he has received severed copies of as a result of other access requests. He states that he is concerned that there is a bias, a personal interest or protection, or some other conflict that must explain the difference in access granted to these documents over two or more separate access requests. He also notes that many of the records at issue appear to consist of the clerk's own communications with the investigator, and submits that the clerk was in a conflict in vetting such communications in response to this access request. Finally, he suggests that the records responsive to his request could reveal improper actions in the payment of the investigator, which would subject the city clerk to scrutiny.

### ***Analysis and findings***

[21] In administrative law, there is a presumption, in the absence of evidence to the contrary, that an administrative decision-maker will act fairly and impartially. The onus of demonstrating bias lies on the person who alleges it, and mere suspicion is not enough.<sup>2</sup>

[22] However, actual bias need not be proven. The test is whether there exists a "reasonable apprehension of bias". In Order MO-2227, Senior Adjudicator John Higgins, in addressing an allegation of bias against this office, explained the test as follows:

A recent statement of the law by the Supreme Court of Canada concerning allegations of bias against an adjudicator is found in *Wewaykum Indian Band v. Canada*, [2003] 2 S.C.R. 259. In that decision, the court stated:

In Canadian law, one standard has now emerged as the criterion for disqualification. The criterion, as expressed by de Grandpre J.

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<sup>2</sup> See Blake, S., *Administrative Law in Canada*, (3<sup>rd</sup> ed.), (Butterworth's, 2001), at page 106, cited in Order MO-1519

in *Committee for Justice and Liberty v. National Energy Board*, supra, at p. 394, is the reasonable apprehension of bias:

...the apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is “what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly.

...

*The grounds for this apprehension must, however, be substantial, and I ... refuse to accept the suggestion that the test be related to the “very sensitive or scrupulous conscience”.* [Emphasis added.]

[23] While all administrative decision-makers have a duty of impartiality, the content of that duty can vary depending upon the context. This was explained by the Supreme Court of Canada in *Imperial Oil Ltd. v. Quebec (Minister of the Environment)*:<sup>3</sup>

The appellant’s reasoning thus treats the Minister, for all intents and purposes, like a member of the judiciary, whose personal interest in a case would make him apparently biased in the eyes of an objective and properly informed third party. This line of argument overlooks the contextual nature of the content of the duty of impartiality which, like that of all of the rules of procedural fairness, may vary in order to reflect the context of a decision-maker’s activities and the nature of its function...

When the Minister has to make a specific decision concerning someone subject to the law, he must comply with precise procedural obligations, which were described earlier. Generally speaking, those obligations require that he give notice to the person concerned, receive and review the representations and information submitted by that person and give reasons to that person for his decision. The effect of this procedural framework is that the Minister must carefully and attentively examine the observations submitted to him. However, that obligation is not equivalent to the impartiality that is required of a judge or an administrative decision-maker whose primary function is adjudication.

[24] This reasoning was applied in Order PO-2381, which addressed whether the

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<sup>3</sup> [2003] 2 SCR 624, 2003 SCC 58 (CanLII).

Ontario Realty Corporation's CEO, as the individual who made an access decision, was in a conflict of interest position in relation to the decision-making process. The adjudicator cited *Imperial Oil* and found that the Ontario Realty Corporation's CEO was not in a conflict of interest despite the fact that he had been personally involved in the dealings with the requester that led to the requester's access request. The adjudicator stated:

[I]n my view, the fact that the CEO has been personally involved in resolving the question of the disposition of these lands in his capacity as senior official of the ORC, including participating in exploring options other than sale to the appellant's company, combined with the fact that the ORC and the appellant are in litigation over the appropriate disposition of these lands, is not sufficient to disqualify the CEO from exercising the statutory function of deciding access requests under the *Act*. These facts do not establish a conflict of interest or a reasonable apprehension of bias.

In carrying out his functions under the *Act*, the CEO was not required to be impartial in the way that would be expected of an independent adjudicator. As set out in the *Imperial Oil* decision, the contextual nature may vary to reflect the content of a decision-maker's activities and the nature of his functions. The CEO was required to carry out certain functions and, in doing so, to comply with the procedural fairness obligations set out in the *Act* and to comply with other legislation governing the ORC. He was also required to exercise his discretion in good faith, taking into account all relevant considerations and disregarding irrelevant ones. I cannot conclude from the evidence before me that he did otherwise.

[25] Previous orders have posed the following questions in determining whether there is a conflict of interest on the part of a person responding to an access request:<sup>4</sup>

- a. Did the decision-maker have a personal or special interest in the records?
- b. Could a well-informed person, considering all of the circumstances, reasonably perceive a conflict of interest on the part of the decision-maker?

[26] These questions are not intended to provide a precise standard for measuring whether or not a conflict of interest exists in a given situation. Rather, they reflect the kinds of issues which need to be considered in making such a determination.

[27] As noted above, there is a presumption of impartiality, and the onus of demonstrating bias lies on the person who alleges it. For the reasons set out below, I find that the appellant has have not demonstrated that a reasonable apprehension of

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<sup>4</sup> See for example Orders M-640, MO-1285, MO-2073, MO-2605 and MO-2867.

bias exists in this case.

[28] The appellant points out that some of the records that were withheld in their entirety appear to be the same records he has received copies of as a result of another access request or requests, which were disclosed to him with some severances. In the appellant's view, this is evidence of bias on the part of the city clerk. However, the appellant has not provided any particulars of the other request or requests that resulted in disclosure of the severed records. Even assuming the city has been inconsistent regarding the severances made to particular records, there could be any number of reasons for this. I do not find this to be evidence of bias on the part of the city clerk.

[29] The appellant submits that according to the investigator's report, the city clerk was one of the senior staff whom the Auditor General "explicitly or implicitly" criticized. As I note in more detail below, the main focus of the Auditor General's report consisted of allegations of improprieties as against the city manager. I find any implied criticism of the city clerk to be minimal, and not sufficient to establish any reasonable apprehension of bias on her part in responding to the access request.

[30] The appellant also points out that the city clerk reported to the city manager, who was one of the main focuses of the investigation, and implies that the clerk would be reluctant to identify and/or disclose any documents implicating her superior in wrongdoing. I note, however, that according to publicly available reports, the city manager identified in the Auditor General's report retired two years before the city clerk issued her access decision.<sup>5</sup> Under the circumstances, I do not accept that the clerk's access decision would be influenced by the fact that the focus of the investigation was her former superior.

[31] Finally, I find that appellant's suggestion that the records might show improprieties in how the investigator was paid, thereby implicating the city clerk, to be speculative at best.

[32] I also agree with the adjudicator in Order PO-2381 that an individual responding to an access request under the *Act* is not required to be impartial in the way that would be expected of an independent adjudicator. As set out in the *Imperial Oil* decision, the content of a duty of impartiality may vary depending on the decision-maker's activities and the nature of his or her functions. In this case, the clerk was required to respond to the access request in good faith. For the reasons set out above, I find any personal or special interest the city clerk had in the records to be minimal. Given the circumstances before me, I find that an informed person would conclude that the city clerk responded to the access request fairly and in good faith. As a result, I find that the clerk was not in a conflict of interest position in responding to the appellant's access request.

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<sup>5</sup> <https://www.durhamregion.com/news-story/4286361-oshawa-city-manager-reflects-on-four-decades-of-service/>



**Issue B: Does the secrecy requirement relating to an Integrity Commissioner in section 223.5 of the *Municipal Act* apply to any of the records? Was the investigator an Integrity Commissioner within the meaning of that section?**

[33] The *Municipal Act*, Part V.1 contains provisions allowing for the appointment of accountability officers. Two such accountability officers are an Integrity Commissioner and an Auditor General. I address the provisions relating to an Auditor General below under Issue C.

[34] Part V.1 of the *Municipal Act* also contains secrecy provisions that prevail over *MFIPPA* as a result of certain provisions of the *Municipal Act* itself in combination with section 53(1) of *MFIPPA*. Section 53(1) of *MFIPPA* states:

This Act prevails over a confidentiality provision in any other Act unless the other Act or this Act specifically provides otherwise.

[35] Section 223.5 of the *Municipal Act* states the following with respect to an Integrity Commissioner:

(1) The Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.

(2) Despite subsection (1), information may be disclosed in a criminal proceeding as required by law or otherwise in accordance with this Part.

(3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

[36] As noted in Order MO-2975-I, this office has not treated section 53(1) of *MFIPPA* as a jurisdiction-limiting provision, but rather as a direction that *MFIPPA* is not the controlling statute for protecting the confidentiality of information that falls within the scope of the confidentiality provision in the other statute. I must determine, therefore, whether any of the records at issue in this appeal are captured by the wording of either section 223.5 or section 223.22 of the *Municipal Act*.

[37] As a preliminary matter, the appellant argues that since the city did not initially raise sections 223.5 and 223.22 of the *Municipal Act*, it is in my discretion whether to allow the city to raise these sections. However, sections 223.5 and 223.22 are not exemptions, discretionary or otherwise, under *MFIPPA*. Rather, they are confidentiality provisions in the *Municipal Act* that prevail over *MFIPPA*. An institution does not have to raise the confidentiality provisions at sections 223.5 and 223.22 of the *Municipal Act* for this office to decide that they apply.

***City's representations***

[38] The city submits that the appellant's access request sought the investigation communications, work, and dockets of the city's Integrity Commissioner who conducted an investigation into a report authored by the city's Auditor General. The city explains that on May 16, 2013, the Auditor General submitted Report AG-13-09. That report included attachments, some of which the Auditor General identified as confidential. Aside from these confidential attachments, Report AG-13-09 was made publicly available.

[39] The city submits that subsequent to the release of Report AG-13-09, city council appointed an Integrity Commissioner (the named investigator referred to in the access request) to investigate the allegations contained in the Auditor General's report.

[40] The city submits that the records at issue are emails to and from the Integrity Commissioner while in the performance of his duties. It submits that the requirement to preserve secrecy is broad, and relates to "all matters" coming to the accountability officer's knowledge during the course of his or her duties (or to the knowledge of any person acting under his or her instructions).

***Appellant's representations***

[41] The appellant argues that the investigator did not act as an Integrity Commissioner, and points out that the investigator stated as follows in his final report:

Although Council, in its mandate to me ... conferred upon me, for the purposes of my investigation, the power and duties of an integrity commissioner, at no time did I find it necessary to exercise such power...

[42] The appellant argues that as a result, section 223.5 of the *Municipal Act* is not applicable to the records at issue.

***City's reply representations***

[43] The city refers to the resolution passed by city council whereby it appointed the investigator, and wherein it is explicitly stated that for the purposes of the investigation, the investigator shall have the powers and duties of an Integrity Commissioner as set out in sections 223.3 to 223.5 of the *Municipal Act*. The city submits that the appellant has quoted the investigator out of context, and that in his final report,<sup>6</sup> the investigator states as follows:

Although the Council, in its mandate to me... conferred upon me, for the purposes of my investigation, the powers and duties of an integrity

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<sup>6</sup> Both the investigator's interim report and final report are publicly available.

commissioner, at no time did I find it necessary to exercise such power or use any other coercion or incentive to obtain information from staff. To the contrary I am satisfied that City staff has cooperated in every way possible with the investigation whenever I have called upon them to do so.

[44] The city submits that the fact that the investigator did not have recourse to his coercive powers under the *Municipal Act* does not diminish his role as a duly appointed Integrity Commissioner with all of the attendant rights and obligations as set out in the *Municipal Act*, including the obligation to preserve secrecy under section 223.5.

### ***Analysis and findings***

*Was the investigator an Integrity Commissioner?*

[45] I must first decide whether the investigator was an Integrity Commissioner. If he was not, then section 223.5 has no application to the records at issue in this appeal.

#### Provisions in the *Municipal Act* relating to an Integrity Commissioner

[46] Section 223.3 of the *Municipal Act* provides for the appointment of an Integrity Commissioner:

(1) Without limiting sections 9, 10 and 11,<sup>7</sup> those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to,

(a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;

(b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them; or

(c) both of clauses (a) and (b).

(2) Subject to this Part, in carrying out the responsibilities described in subsection (1), the Commissioner may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality.

(3) The municipality and its local boards shall give the Commissioner such information as the Commissioner believes to be necessary for an inquiry.

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<sup>7</sup> These sections set out general municipal powers.

(4) The Commissioner may continue to exercise the delegated powers and duties, despite the delegation.

(5) The Commissioner is not required to be a municipal employee.

[47] Section 223.4 sets out an Integrity Commissioner's powers on an inquiry:

(1) This section applies if the Commissioner conducts an inquiry under this Part,

(a) in respect of a request made by council, a member of council or a member of the public about whether a member of council or of a local board has contravened the code of conduct applicable to the member; or

(b) in respect of a request made by a local board or a member of a local board about whether a member of the local board has contravened the code of conduct applicable to the member.

(2) The Commissioner may elect to exercise the powers under sections 33 and 34 of the *Public Inquiries Act, 2009*, in which case those sections apply to the inquiry.

(3) The municipality and its local boards shall give the Commissioner such information as the Commissioner believes to be necessary for an inquiry.

(4) The Commissioner is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality or a local board that the Commissioner believes to be necessary for an inquiry.

(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.

2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days.

(6) The local board may impose either of the penalties described in subsection (5) on its member if the Commissioner reports to the board that, in his or her opinion, the member has contravened the code of

conduct, and if the municipality has not imposed a penalty on the member under subsection (5) in respect of the same contravention.

[48] Section 223.5 contains the confidentiality provision noted above. Section 223.6 sets out provisions relating to reports to council:

(1) If the Commissioner provides a periodic report to the municipality on his or her activities, the Commissioner may summarize advice he or she has given but shall not disclose confidential information that could identify a person concerned.

(2) If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board has contravened the applicable code of conduct, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report.

(3) The municipality and each local board shall ensure that reports received from the Commissioner by the municipality or by the board, as the case may be, are made available to the public.

[49] As section 223.3(1) makes clear, an Integrity Commissioner is appointed under the *Municipal Act* to perform specific functions. Namely, an Integrity Commissioner performs the functions assigned by the municipality with respect to (a) the application of the code of conduct for members of council and/or local boards, (b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and/or of local boards, or (c) both.

[50] For the reasons set out below, I find that the investigator was not an Integrity Commissioner under section 223.3 because his investigation was directed primarily if not exclusively toward the alleged misconduct of staff, not the conduct or behaviour of members of council or local boards.

#### City council recommendation

[51] The city council recommendation that was carried on May 21, 2013 stated in part as follows:

Whereas the City's Auditor General has made serious allegations about both individual employees and City departments in Report AG-13-09...

Therefore be it resolved that a full investigation be undertaken by an independent expert authority with the direction that a comprehensive report be prepared clearly outlining the findings, conclusions and any recommended action judged necessary in the best interests of the Corporation and the citizens of Oshawa...

That the inquiry report be presented as soon as possible in an open session of Council, subject to applicable law, thereby enabling full public disclosure of findings and recommended actions; and,

That in view of his recognition as one of the top authorities in municipal law in Canada, his direct experience as a municipal solicitor, as well as his role as an Integrity Commissioner, [the named investigator] be appointed to undertake this investigation; and,

That for the purposes of this investigation so authorized by council [the named investigator] shall also have the powers and duties of an Integrity Commissioner as set out in Sections 223.3 to 223.5 of the *Municipal Act, 2001*, as amended, with respect to the subject matter of his investigation, including the conduct of employees and officers of the City; and,

The [the investigator] be provided with absolute co-operation from all staff, including all information, public or confidential, relative to the allegation or other matters, as he deems necessary to complete his inquiry;

[52] There are aspects of this recommendation that suggest that the investigator was not hired as an Integrity Commissioner.

[53] First, the wording of the investigator's appointment and powers is equivocal. It would have been a simple matter to plainly appoint the investigator as an "Integrity Commissioner", rather than as someone who has been given the "powers and duties of an Integrity Commissioner".

[54] More importantly, however, is the fact that the recommendation does not mention any alleged misconduct on the part of members of council. It states:

Whereas the City's Auditor General has made serious allegations about both **individual employees and City departments** in Report AG-13-09...

That for the purposes of this investigation so authorized by council [the named investigator] shall also have the powers and duties of an Integrity Commissioner as set out in Sections 223.3 to 223.5 of the *Municipal Act, 2001*, as amended, **with respect to the subject matter of his investigation, including the conduct of employees and officers of the City** (emphasis added).

[55] In my view, this is evidence that the investigator's mandate was to investigate employees and officers of the city, as opposed to members of council.

### The investigator's report

[56] In the investigator's report, he set out the investigation mandate as follows:

City Council, at its meeting held on May 21, 2013, was in receipt of Report AG-13-09 from the Auditor General. At that time, the Council instructed me to conduct a full investigation into Report AG-13-09 "with the direction that a comprehensive report be prepared clearly outlining the findings, conclusions and recommended actions judged to be necessary in the best interest of the Corporation and the citizens of Oshawa".

[57] The report contains a summary which begins with the investigator's view of the subject matter of the Auditor General's Report AG-13-09:

While the title of [Report AG-13-09] is "independence of the Auditor General", and its purpose is shown as "to propose a number of changes to support the independence of the Auditor General, improve accountability and transparency and to bring the City into full compliance with the *Municipal Act, 2001*", the substance of the report addresses at least three general areas of subject matter:

- (1) proposed establishment of an Audit Committee and a revised multi-year audit plan, and other administrative issues relating to the role of auditor, and particularly the role of Auditor General in the City Corporation;
- (2) a series of allegations of misconduct and improprieties by the City Manager involving the role of the Auditor General, "threatening his independence";
- (3) related to the above two issues, calling into serious question the process through which the City of Oshawa acquired property... as part of its development of its Consolidated Operation Centre.

[58] In his report, the investigator also sets out a long list of those whom he states the Auditor General explicitly or implicitly criticized in Report AG-13-09, including the city manager, council and the Mayor. However, he states that he was not able to pursue every issue in relation to every potential subject matter raised by the Auditor General's report. He notes that the Auditor General concentrated his criticism on the city manager.

[59] The investigator's report is 52 pages long exclusive of attachments. The investigator states that he interviewed various city staff, and the Mayor. The report focusses on, and addresses in depth, the Auditor General's allegation that city staff misled council leading up to the purchase of a particular property. It addresses in detail the process leading up to the city's acquisition of the property. The investigator reviews

the advantages of the acquisition of the property, the process of obtaining appraisals for the property, and the ultimate terms upon which the city acquired the property. The report then addresses at length the Auditor General's allegations of misconduct against the city manager, and also assesses the role of the Auditor General himself (who was a city employee) in relation to the property acquisition. Finally, the report addresses the Auditor General's stated concerns about the independence of his office, including complaints that city council changed his responsibilities and his office's budget.

[60] Under the report's brief "Conclusions and Recommendations" section, the investigator concludes that city council acted appropriately in acquiring the property in question. He concludes that the Auditor General's allegations against the city manager have not been supported or corroborated in any way. He commends council for having made public a number of previously confidential reports.

[61] Also among the investigator's recommendations are certain recommendations relating to council. For instance, the investigator recommends that council remind staff to report to council as a whole, and not to individual members of council. He also recommends that council emphasize to its members the importance of maintaining confidentiality over documents and subject matters discussed at in-camera meetings to prevent leaks of confidential information. He recommends that council consider adopting a code of conduct for members of council and establishing an office of the Integrity Commissioner.

[62] However, these latter recommendations are out of keeping with the remainder of the report, which focusses on the conduct of staff, not of the Mayor or other members of council. As noted above, the investigator, in his report, sets out a long list of individuals whom he alleges the Auditor General criticized explicitly or implicitly, including "Council" and the "Mayor". Other than the Mayor, however, no individual councillor is identified. Moreover, the investigator states in his report:

As mentioned above, this investigation, if expanded to include every issue raised by [the Auditor General's report] and the mass of documentation and information which I have received could have involved interviewing a substantial additional number of current and former members of staff, and members of Council in addition to the Mayor. However, I have attempted to adhere strictly to the terms of reference and instructions provided to me by the Council and accordingly have restricted the scope of my investigation to interviewing the senior members of staff directly involved in the actions and transactions which are the subject matter of [the Auditor General's report], and reviewing relevant documentation.

[63] Even I were to infer, based on my review of the information before me, that the scope of the investigation included the conduct of the Mayor and individual council members, I find that these concerns were peripheral to his focus on the Auditor General's allegation that staff misled council. For example, while the investigator's



report makes note of the Auditor General's complaints about the Mayor, and states that the investigator interviewed the Mayor, there is no further mention of the Mayor's conduct anywhere in the report. There is similarly no mention in the body of the report about any councillor misconduct.

[64] I also note that nowhere in his report does the investigator reference any document setting out the ethical obligations of the Mayor and members of council. Although there was apparently no Code of Conduct in effect at the time, a Council Charter setting out some ethical obligations of council members was in place.<sup>8</sup>

[65] Moreover, according to the investigator's report, he did not interview any members of council other than the Mayor, nor does it appear he attempted to do so. In my view, if the investigator were investigating the conduct of council members or council as a whole, one would expect him to try to interview members of council.

[66] I acknowledge that the council purported to bestow upon the investigator all of the powers and duties of an Integrity Commissioner as set out in sections 223.3 to 223.5 of the *Municipal Act*. These sections are reproduced above. Section 223.3 allows for the appointment of an Integrity Commissioner, section 223.4 sets out the Integrity Commissioner's powers on an inquiry, and section 223.5 is the confidentiality provision.

[67] The city argues, essentially, that the investigator was an Integrity Commissioner because the city appointed him as such. However, an Integrity Commissioner has specific functions under the *Municipal Act*, and I have concluded that the investigator in this case was not performing those functions.

[68] Although of lesser significance in my analysis of this issue, I also observe that the investigator appears not to have seen himself as acting as an Integrity Commissioner *per se*; rather, he believed the city to have given him the same power to compel cooperation from witnesses as an Integrity Commissioner has. For example, the investigator signed his report "Investigator, exercising the power and duties of Integrity Commissioner for the City of Oshawa". The investigator is a lawyer and has acted as an Integrity Commissioner for other municipalities, and therefore would be expected to understand the functions of an Integrity Commissioner. If the investigator had been of the view that he was an Integrity Commissioner, he could have simply signed the report "Integrity Commissioner for the City of Oshawa".

#### The records at issue

[69] I have also reviewed the records at issue and considered their contents in

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<sup>8</sup> [http://app.oshawa.ca/agendas/Council\\_Charter\\_Sub-Cmtee/11-30/CCSB-11-01\\_Council\\_Charter\\_Revised.pdf](http://app.oshawa.ca/agendas/Council_Charter_Sub-Cmtee/11-30/CCSB-11-01_Council_Charter_Revised.pdf)  
<http://oshawaexpress.ca/council-passes-code-of-conduct/>

coming to my conclusion regarding whether the investigator was acting as an Integrity Commissioner. I cannot be more specific without referring to the contents of the records.

### Conclusion

[70] Based on the above analysis, I find that the investigator was not performing the functions set out in section 223.3(1) of the *Municipal Act*. I conclude, therefore, that the investigator was not acting as an "Integrity Commissioner" within the meaning of the *Municipal Act*.

[71] As a result of my finding, the confidentiality provision found in section 223.5 of the *Municipal Act* does not apply to the records at issue in this appeal.

### **Issue C: Does the secrecy requirement relating to an Auditor General in section 223.22 of the *Municipal Act* apply to any of the records?**

[72] The city claims that the confidentiality provision in section 223.22 applies to the following records at issue: records 10, 50, 51, 52, 82, 87, 88 and 90. Record 10 consists of attachments to the Auditor General's report while the other records are emails.

[73] The *Municipal Act* provisions relating to an Auditor General are found in sections 223.19 through 223.24. Section 223.19 authorizes a municipality to appoint an Auditor General who reports to council and is responsible "for assisting the council in holding itself and its administrators accountable for the quality of stewardship over public funds and for achievement of value for money in municipal operations".

[74] Section 223.20 imposes on municipalities a duty to give such information to the Auditor General as the Auditor General believes to be necessary to perform his or her duties under Part V.1 of the *Municipal Act*, and section 223.21 provides that the Auditor General may examine any person on oath on any matter pertinent to an audit or examination.

[75] Section 223.22 is the confidentiality provision:

(1) The Auditor General and every person acting under the instructions of the Auditor General shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.

(2) Subject to subsection (3), the persons required to preserve secrecy under subsection (1) shall not communicate information to another person in respect of any matter described in subsection (1) except as may be required,

(a) in connection with the administration of this Part, including reports made by the Auditor General, or with any proceedings under this Part; or

(b) under the Criminal Code (Canada).

(3) A person required to preserve secrecy under subsection (1) shall not disclose any information or document disclosed to the Auditor General under section 223.20 that is subject to solicitor-client privilege, litigation privilege or settlement privilege unless the person has the consent of each holder of the privilege.

(4) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

### ***City's representations***

[76] The city submits that the confidential attachments to the Auditor General's report fall within section 223.22 of the *Municipal Act*. The city submits that these attachments were not made public, and do not fall within the confidentiality exception for an Auditor General's reports found in subsection 223.22(2)(a).

[77] The city submits that due to their sensitive nature, the city has never made these attachments public, but that the interim and final reports of the investigator were both made public as were the portions of the Auditor General's report which were not identified by him as being confidential.

### ***Appellant's representations***

[78] The appellant relies on a decision of the Ontario Superior Court of Justice, *David McCartney v. The City of Ottawa*,<sup>9</sup> where a Master ruled that the City of Ottawa, on examination for discovery in a civil action, was required to answer certain questions relating to its Auditor General's investigation. The Master reasoned as follows:

Therefore, the City cannot, at present, obtain information from the AG concerning his investigation leading to his reports as this is protected by the above provisions and such a request would not fall within the exceptions.

However, this is not necessarily dispositive of the questions objected to by the City. The AG might very well have legitimately provided information to the City while it conducted its investigation into circumstances relating to the unauthorized discharge (in connection with the administration of Part

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<sup>9</sup> 2010 ONSC 2690 (CanLII).

V.1 or with any reports made by the AG or with any proceedings under Part V.1, as provided by the exception). Any information or document communicated to the City (to its staff or to council) by the AG is not protected by these provisions to the extent that this information is with the City. Any such information or document communicated to the City by the AG, relevant to this action, is caught by Rules 30.02 and 31.06 and must be provided or answered (as the case may be) by the City unless the information is protected by privilege, in which case documents must nonetheless be disclosed at Schedule B of the City's Affidavit of Documents. In addition, any documentation that the City provided to the AG for the purpose of its investigation into circumstances relating to the unauthorized discharge must be produced. The City would, independently of the AG, have possession of either the original or a copy of documents it gave to the AG. As well, related questions as to what information or document was provided to the AG by the City must be answered, subject to any claim of privilege. Similarly, whatever information the City has about why the AG made certain decision(s), must be provided or answered to the extent that this information is relevant to this dispute as any such information of the City is not protected by the *Municipal Act, 2001*, once within the knowledge of the City. The scope of examination requires disclosure of the City's knowledge, information and belief by way of answer to relevant questions irrespective of whether this was communicated by or to the AG. Secrecy under these provisions does not apply to the City but to the AG. Proper questions arising from answers must be answered.

[79] The appellant also points out that the city no longer has an Auditor General and submits that all documents of the former Auditor General and his office should now be in the "care and control" of the city.

***City's reply***

[80] The city submits that the Auditor General is vested with the authority and obligation to preserve, or direct someone to preserve, secrecy. The exceptions to this requirement of secrecy are found in subsection 223.22(2) which allows the communication of the information protected under subsection (1) "as may be required...in connection with the administration of this Part, including reports made by the Auditor General, or with any proceedings under this Part". The city submits that the "administration of this Part" was conducted by the duly appointed Auditor General in choosing how to release his report, and by choosing to keep certain attachments confidential, presumably also on the basis that disclosure of the confidential attachments would contravene subsection (3). The city submits that the appellant's access request is not an activity conducted under the *Municipal Act* to bring it under either of the exceptions to the secrecy requirement in subsection 223.22(2).

[81] The city also submits that there is no statutory authority for any suggestion that if the Auditor General breaches his duty of secrecy in releasing any records contrary to the statutory prohibitions, this means that the record loses any claim to confidentiality altogether.

[82] The city argues that the fact that the records may now be in its custody and control does not negate the application of section 53(1) of *MFIPPA*. The city submits that the *McCartney* case relied on by the appellant is of no relevance because it relates to the right to defend against allegations in a civil lawsuit, not disclosure of information under *MFIPPA*. Additionally, the information at issue in *McCartney* was ordered to be disclosed in the context of an examination for discovery, where the information would be subject to the deemed undertaking rule. Here, the appellant is seeking access to the records under *MFIPPA*, and the *Municipal Act* provides that its confidentiality provision prevails over *MFIPPA*.

### ***Appellant's sur-reply***

[83] The appellant states that he has never suggested that the Auditor General has breached any confidentiality provisions. He argues that the confidential attachments to the Auditor General's report relate to a real estate acquisition and should be released now that the acquisition is complete.

### ***Analysis and findings***

[84] I begin with the appellant's suggestion that section 223.22 no longer applies because the land deal that was the subject of the Auditor General's report is concluded. I do not accept the appellant's submission. In this regard, I agree with Assistant Commissioner Sherry Liang where she states in Order MO-3314 that section 181(1) of the *City of Toronto Act* (equivalent to section 223.22(1) of the *Municipal Act*) does not contain any kind of time limit on its secrecy provisions.

[85] I am also not persuaded by the appellant's argument that section 223.22 does not apply since all documents that were formerly in the hands of the Auditor General would now be in the "care and control" of the city now that the city no longer has an Auditor General. The intent of section 223.22 is to allow an Auditor General to perform his or her functions in an independent matter. This purpose would be seriously undermined if the confidentiality provision were no longer to apply simply because the Auditor General position is currently empty. In my view, section 223.22 obliges the city to preserve the secrecy of matters that were in the hands of the Auditor General or anyone acting under his instructions.

[86] The appellant also argues, however, that records that the city possesses outside of the Auditor General's files are not subject to section 223.22, and cites *McCartney*, quoted above.

[87] Previous orders of this office have held that information remaining in the hands

of city staff members for the purposes of their ordinary tasks would not be subject to section 223.22, even if a copy has been given to the Auditor General. In Order MO-2439 (reconsidered on other grounds in Order MO-2629-R), Senior Adjudicator John Higgins considered the meaning of the phrase "in the course of duties under this Part" in section 181(1) of the *City of Toronto Act (COTA)*, which is equivalent to section 223.22(1) of the *Municipal Act*. He stated:

[I]nformation provided pursuant to section 179(1) [of *COTA*] is subject to the confidentiality requirement in section 181(1) where this information is in the hands of the Auditor General or a person acting under his or her "instructions". But this is to be distinguished, in my view, from information in the hands of a staff member of the City that such a person receives in the course of his or her normal duties, which later becomes the subject of a request for information by the Auditor General. In my view, such information (as opposed to knowledge of the "matter" of the investigation or complaint) would *not* be caught by section 181(1) because it did not come to the staff member's knowledge "in the course of duties under" Part V of the *COTA* as the section requires.

Moreover, imposing the non-disclosure obligation on original information in the hands of such staff members would, in many instances, render them unable to perform their day-to-day functions to which original information relates. Where applicable, this analysis would also apply to staff of another institution under the *Act* that is compelled to provide information to the Auditor General under section 179(1), such as a local board or city-owned corporation.

Accordingly, I conclude that, in the hands of City staff (or staff of another institution under the *Act* compelled to provide information to the Auditor General under section 179(1), such as a local board or city-owned corporation), and who are not staff of the Auditor General, original information that remains in the hands of the staff member for the purposes of his or her ordinary tasks would not be subject to section 181(1), even if a copy has been given to the Auditor General. Only information about the complaint or investigation being conducted by the Auditor General would be caught.

With respect to the nature of "duties" under Part V, I conclude that providing information when "instructed" to do so by the Auditor General would be a duty under Part V, but as already noted, if the information came to the knowledge of the staff member as part of his or her everyday work, and not in connection with Part V of the *COTA*, the information itself would not be caught by section 181(1) in the hands of the staff member. Only information about the Auditor General's investigation that was

acquired by the staff member as a consequence of being instructed or asked to provide information to the Auditor General would be covered.

[88] In Order MO-2843, Senior Adjudicator Frank DeVries followed this approach and found that correspondence from the Toronto Community Housing Corporation to the Toronto Ombudsman, including attachments, was a record falling within the ambit of the confidentiality provision in section 173(1) of the *COTA*. Senior Adjudicator DeVries found that although the staff member who sent the information to the Ombudsman was not staff of the Ombudsman, he or she was compelled to provide the information to the Ombudsman and in doing so was acting under the instructions of the Ombudsman.

[89] In Reconsideration Order MO-2629-R, Senior Adjudicator John Higgins discussed the effect of section 181(2)(a) of the *COTA*, which is equivalent to section 223.22(2)(a) of the *Municipal Act*. For ease of reference, I repeat section 223.22(2)(a) here:

(2) Subject to subsection (3), the persons required to preserve secrecy under subsection (1) shall not communicate information to another person in respect of any matter described in subsection (1) except as may be required,

(a) in connection with the administration of this Part, including reports made by the Auditor General, or with any proceedings under this Part; or

[90] Senior Adjudicator Higgins stated:

Section 181(2)(a) provides an exception to the confidentiality clause for reports made by the Auditor General, but the exception is limited to “the administration of this Part” – a reference to Part V of *COTA*. That part outlines the functions of the [accountability officers]. An access request under the *Act* is not an activity conducted under Part V of *COTA* and there is no sound basis for arguing that it is. Accordingly, in my view, even if the record is a report, the exception at section 181(2)(a) does not have the effect of making the report, in the hands of the Auditor General or those acting under his instruction, accessible under the *Act*. On the contrary, I conclude that section 181 would apply, and as a consequence, such a report could not be disclosed in response to a request under the *Act*..

*On the other hand, if a report has been provided to a City staff member who does not act under the Auditor General’s instructions in that regard, it would be subject to an access request under the Act. As already noted, no such record has been found in this case. [emphasis added].*

[91] I agree with the reasoning in the above orders. In my view, the effect of the confidentiality provision found in section 223.22(1) of the *Municipal Act* is that records

in the hands of the Auditor General, or anyone acting under his instructions, that came to their knowledge in the course of their duties under the *Municipal Act* fall within section 223.22(1). I also agree that the exception at section 223.22(2)(a) does not have the effect of making an Auditor General's report, in the hands of the Auditor General or those acting under his instructions, accessible under *MFIPPA*.

[92] However, records in the hands of city staff that such a person receives in the course of his or her normal duties, and not under the Auditor General's instructions, do not fall within section 223.22(1). In this latter scenario, section 223.22(2) is of no relevance because that provision only applies to the persons required to preserve secrecy under section 223.22(1).

[93] Applying this reasoning, I find that the Auditor General's report in this case does not fall within section 223.22(1). The report was prepared by the Auditor General and presented to Council in Committee of the Whole. Nothing in the parties' representations or in the records leads me to conclude that council was acting under the Auditor General's instructions when it received the report. Since the report (including confidential attachments) was given to the city itself through council, which was not acting under the Auditor General's instructions, the report does not fall within section 223.22(1).

[94] In light of my finding under section 223.22(1) of the *Municipal Act*, section 223.22(2) is of no relevance. Subsection (2) provides that the persons required to preserve secrecy under subsection (1) shall not communicate information to another person in respect of any matter described in subsection (1) except as may be required in connection with the administration of Part V.1 of the *Municipal Act*, including reports made by the Auditor General. However, the city, which has possession of the report, is not in these circumstances a person required to preserve secrecy under subsection (1). Similarly, section 223.22(3), which prohibits a person required to preserve secrecy under subsection (1) from disclosing certain types of information, does not apply, because the city *per se*, as distinct from the office of the Auditor General within the city, is not a person required to preserve secrecy under section (1) with respect to the Auditor General's report provided to it.

[95] Apart from the Auditor General's report, the city also argues that section 223.22(1) of the *Municipal Act* applies to various other records: records 50, 51, 52, 82, 87, 88, and 90. For reasons similar to those expressed above, I find that these records also do not fall within section 223.22.

[96] I agree with the previous orders of this office that have found that a member of city staff, even if not staff of the Auditor General, who supplies information to the Auditor General, or receives information from him, in the course of the Auditor General's duties under the *Municipal Act*, may in some circumstances be acting under the Auditor General's instructions.



[97] From my review of the information in the records, I acknowledge that some of it may pertain to matters that came to the knowledge of the Auditor General or those acting under his instructions in the course of their duties under the *Municipal Act*. However, all of the information in the records made its way into the hands of city staff who were not acting under the Auditor General's instructions in the course of his duties under Part V.1 of the *Municipal Act*. While I cannot be specific about the contents of the records, I have reviewed them and, in the context of the records as a whole and the parties' representations, it is clear that the city staff who ultimately received the records were not acting under the Auditor General's instructions. In the hands of those city staff, therefore, these records do not constitute a matter that came to the attention of the Auditor General or a person acting under his instructions. As a result, they are not caught by section 223.22(1) of the *Municipal Act*.

[98] Given the background to this appeal, some consideration of the phrase "in the course of his or her duties under this Part" is also warranted. Section 223.22(1) provides that the Auditor General and every person acting under the instructions of the Auditor General shall preserve secrecy with respect to all matters that come to his or her knowledge *in the course of his or her duties under this Part*. In this regard, I note that the investigator states in his report:

Following the commencement of my investigation, the Auditor General has apparently conducted a parallel investigation of his own, has indirectly or directly, communicated to me, and has provided a large amount of additional documentation including his views on the conduct of my investigation. This latter pattern of communications has not assisted me in my investigation.

[99] It is possible to infer from this passage that the investigator was of the view that the Auditor General's activities were outside the scope of his duties. However, no party took the position in this appeal that the Auditor General was not acting in the course of his duties under Part V.1 of the *Municipal Act* when the records at issue were created. Given my finding that the records do not fall within section 223.22(1), because they are in the hands of city staff who were not acting under the Auditor General's instructions, I do not need to make any finding about whether the Auditor General's activities as reflected in the records fell outside the scope of his duties. For the purposes of my findings, I have assumed, without deciding, that the Auditor General was acting in the course of his duties when the records were created.

[100] Given my findings, I also do not need to make any finding about whether the approach taken by this office in previous orders such as Order MO-2843 is consistent with the *McCartney* decision relied on by the appellant. Arguably, *McCartney* sets out a more restrictive approach than the above-noted orders because the Master in *McCartney* does not appear to allow for the possibility that city staff, other than staff of the Auditor General, act under the instructions of an Auditor General in some circumstances, and are therefore subject to the secrecy provisions found in section

223.22(1) of the *Municipal Act*. As mentioned above, I have found that the records at issue in this appeal are in the hands of city staff who were not acting under the instructions of the Auditor General. As a result, section 223.22(1) does not apply to them. My finding would be the same applying the analysis in *McCartney*.

**Conclusion**

[101] I find that section 223.22(1) of the *Municipal Act* does not apply to the records for which the city has raised that provision. Since neither section 223.22 nor section 223.5 of the *Municipal Act* apply to the records, *MFIPPA* is the controlling statute for determining access to the information at issue.

**Remaining issues**

[102] Given my conclusion that the secrecy provisions found in sections 223.5 and 223.22 of the *Municipal Act* do not apply, I will determine access to the records at issue under *MFIPPA*, and specifically whether the exemptions claimed by the city apply to the records. I will also decide the issue of the reasonableness of the city's search.

[103] However, before deciding those issues, I have decided to notify additional affected parties.

**ORDER:**

1. I do not uphold the city's decision with respect to the applicability of sections 223.5 and 223.22 of the *Municipal Act* to the records at issue.
2. Outstanding issues with respect to the records at issue are deferred pending notification of affected parties.

Original Signed by: \_\_\_\_\_  
Gillian Shaw  
Adjudicator

\_\_\_\_\_ October 31, 2017