

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-3541

Appeal MA16-305

The Corporation of the City of Oshawa

December 19, 2017

**Summary:** The City of Oshawa (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for a copy of confidential attachment #6 to the city Auditor General's Report AG-13-09. Confidential attachment #6 is Report CM-07-16, which was submitted at a closed meeting of council. The city denied access to the record, citing the secrecy provision found at section 223.22 of the *Municipal Act, 2001*. The city also relied on the exemptions found at sections 6(1)(b) (closed meeting), 10(1) (third party information) and 14(1) (personal privacy) of *MFIPPA*. The appellant appealed and raised the applicability of the public interest override found at section 16 of *MFIPPA*. In this order, the adjudicator finds that section 223.22 of the *Municipal Act, 2001* does not apply, and that the exemptions at sections 6(1)(b) and 10 of *MFIPPA* also do not apply. She upholds the city's application of the personal privacy exemption at section 14(1) to a portion of the information in the record and finds that the public interest override at section 16 does not apply to this information. She orders the city to disclose the remainder of the information in the record 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) (definition of "personal information"), 6(1)(b), 10, 14 and 16; *Municipal Act, 2001*, S.O. 2001, c.25, section 223.22.

**Orders and Investigation Reports Considered:** Orders MO-2439, MO-2629-R, and MO-2843.

**Cases Considered:** *David McCartney v. The City of Ottawa*, 2010 ONSC 2690 (CanLII).

## **BACKGROUND:**

[1] In May 2013, the Auditor General for the City of Oshawa (the city) submitted Report AG-13-09 to city council, along with several attachments, some of which the Auditor General specified as being confidential. Council received the report at a public meeting on May 21, 2013 and appointed an investigator to investigate the allegations contained therein. Report AG-13-09 was also released to the public, with the exception of the confidential attachments, which to date have not been released.

[2] Turning to the access request that is the subject of this appeal, the appellant submitted a request to the city under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)* for a copy of confidential attachment #6 to the Auditor General's Report AG-13-09. Attachment #6 is Report CM-07-16, which relates to the city's acquisition of the components of a miniature village. The report was submitted at a closed meeting of council on March 19, 2007.

[3] The City of Oshawa denied access to Report CM-07-16 on the basis of the closed meetings exemption at section 6(1)(b) of the *Act*. The appellant appealed the city's decision to this office, which assigned a mediator to the appeal.

[4] During mediation, the city informed the mediator that Report CM-07-16 has always been confidential and has never been made public. The city indicated that the report was discussed at a closed meeting, and noted that the reference to the report is found at page 8 of the Auditor General's Report AG-13-09, identifying the record as "Confidential Report CM-07-16... for the acquisition process for the ... miniatures".

[5] The city told the mediator that a closed meeting of council took place on March 19, 2007, pursuant to subsection 239(2)(c) of the *Municipal Act, 2001*<sup>1</sup> (*Municipal Act*) to deal with confidential legal and property matters. The city referred to the public minutes from that meeting:

4. ... City Manager, submitting Confidential Report CM-07-16 concerning a confidential legal matter (All Wards)

Recommendation (AMENDED – See Page 111)

That staff proceed as directed concerning Confidential Report CM-07-16 and report back to the Community Services Committee.

[6] Also during mediation, the city issued a revised decision in which it stated that the exemptions at sections 10(1) (third party information) and 14(1) (personal privacy)

---

<sup>1</sup> S.O. 2001, c.25.

apply to some information in the record.<sup>2</sup>

[7] The appeal could not be resolved at mediation and accordingly, it was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[8] Because the record at issue is the same as one of the records at issue in Appeal MA16-79,<sup>3</sup> and because the city raised the confidentiality provision found in section 223.22 of the *Municipal Act* in that appeal, I decided to invite representations on the applicability of section 223.22 of the *Municipal Act* to the record in this appeal.

[9] The city, the appellant and an affected party made representations, which were shared in accordance with *Practice Direction 7* and section 7 of the *Code of Procedure*.

[10] In this order, I find that section 223.22 of the *Municipal Act* does not apply to the record at issue, and that the exemptions at sections 6(1)(b) and 10 of *MFIPPA* also do not apply to it. I uphold the city's application of the personal privacy exemption at section 14(1) to a portion of the information in the record and find that the public interest override at section 16 does not apply to this information. I order the city to disclose the remainder of the record to the appellant.

## **RECORD:**

[11] The record at issue is Report CM-07-16 pertaining to the acquisition of the miniatures.

## **ISSUES:**

- A. Does the secrecy requirement relating to an Auditor General in section 223.22 of the *Municipal Act, 2001* apply to the record?
- B. Does the discretionary exemption at section 6(1)(b) (closed meeting) apply to the record?
- C. Does the mandatory exemption at section 10(1) (third party information) apply to the information withheld under that exemption?
- D. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

---

<sup>2</sup> The mediator later confirmed that the city's reference to sections 6(1)(c) and (f) in its revised decision was a typographical error, and was intended to read Sections 239(c) and (f) of the *Municipal Act*.

<sup>3</sup> The appellant is also the appellant in Appeal MA16-79.

- E. Does the mandatory personal privacy exemption at section 14(1) apply to the personal information in the record?
- F. Does the public interest override found in section 16 of the *Act* apply to the personal information in the record?

## **DISCUSSION:**

### **Issue A: Does the secrecy requirement relating to an Auditor General in section 223.22 of the *Municipal Act, 2001* apply to the record?**

[12] The city submits that the confidentiality provision in section 223.22 of the *Municipal Act* applies to the record at issue.

[13] Part V.1 of the *Municipal Act* contains provisions allowing for the appointment of accountability officers, one of which is an Auditor General. Part V.1 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.

[14] 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". 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.

[15] 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*.

[16] 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 the record at issue is captured by the wording of section 223.22(1) of the *Municipal Act*.

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

[17] The city submits that the requirement to preserve secrecy under subsection 223.22(1) is wide, relating to all matters coming to the Auditor General's knowledge during the course of his duties. The city submits that section 223.22(1) applies because the record at issue is a confidential attachment to the Auditor General's Report AG-13-09. It submits that while the balance of the Auditor General's report was made public, the confidential attachments, including the record at issue in this appeal, were not. The city submits, further, that the record at issue falls outside of the confidentiality exception for reports made by the Auditor General found at section 223.22(2)(a).

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

[18] The appellant submits that section 223.22(1) is generally applied to the working papers documenting matters that come to the attention of the Auditor General and his or her staff, but does not apply to audit reports which are the normal medium for the Auditor General to communicate the results of audits to members of council and/or the public. The appellant submits that the record at issue is subject to section 223.22(2)(a) of the *Municipal Act* which sets out exceptions to the confidentiality requirement, and includes reports made by the Auditor General.

[19] The appellant also relies on a decision of the Ontario Superior Court of Justice,

*David McCartney v. The City of Ottawa*,<sup>4</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 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.

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

[20] The city submits that the *McCartney* case relied on by the appellant is of no

---

<sup>4</sup> 2010 ONSC 2690 (CanLII).

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*. The city also submits that the Master seems to find that the Auditor General's disclosure to the city in that case was in the administration of Part V.1 of the *Municipal Act* but fails to set out how he came to that conclusion, in light of the limited nature of the exceptions to secrecy under that Part.

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

[21] The scope of section 223.22 of the *Municipal Act* has been discussed in previous orders of this office. This office has previously held, for example, 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(1), 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]information 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.

[22] 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.

[23] 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

[24] 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].*

[25] 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*.

[26] 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).

[27] 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).

[28] 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).

[29] Given my findings, I 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 it 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***

[30] I find that section 223.22(1) of the *Municipal Act* does not apply to the record at issue. Since section 223.22(1) of the *Municipal Act* does not apply, the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA or the *Act*) is the controlling statute for determining access to the record at issue.

### **Issue B: Does the discretionary exemption at section 6(1)(b) apply to the record?**

[31] The city argues that the record is exempt from disclosure by virtue of section 6(1)(b) of the *Act*, which reads as follows:

A head may refuse to disclose a record,

that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

[32] For this exemption to apply, an institution must establish that

1. a council, board, commission or other body, or a committee of one of them, held a meeting
2. a statute authorizes the holding of the meeting in the absence of the public, and
3. disclosure of the record would reveal the actual substance of the deliberations of the meeting.<sup>5</sup>

[33] The first and second parts of the test for exemption under section 6(1)(b) require the institution to establish that a meeting was held by the institution and that it

---

<sup>5</sup> Orders M-64, M-102 and MO-1248.

was properly held *in camera*.<sup>6</sup>

***City's representations***

[34] The city submits that a closed meeting of council took place on March 19, 2007, pursuant to section 239(2)(c) of the *Municipal Act*, which provides:

A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

a proposed or pending acquisition or disposition of land by the municipality or local board;

[35] The city submits that the closed meeting dealt with confidential legal and property matters. It submits that its By-law 126-75, being the Council Procedural By-law, addresses open and closed meetings of council and mirrors the legislative authority found in the *Municipal Act*:

11A. (1) All meetings shall be open to the public, except that a meeting or part of a meeting may be closed to the public if the subject matter being considered is:

e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;

f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;

g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act.

[36] The city submits that the required notices for the holding of a closed meeting under the *Municipal Act* and by-law were met and that the meeting was held in the absence of the public.

[37] With respect to the third requirement of the section 6(1)(b) test, the city submits that the closed meeting was for the purpose of a proposed or pending acquisition of land by the city, and that disclosure of the record would disclose the actual substance of the discussion and deliberations which took place in the duly constituted closed meeting of city council.

***Appellant's representations***

[38] The appellant submits that section 239(2)(c) of the *Municipal Act* does not apply,

---

<sup>6</sup> Order M-102.

because the miniatures that were acquired by the city are not real estate or real property. As a result, the closed meeting held on March 19, 2007 was not held in accordance with a statute authorizing the holding of the meeting in the absence of the public.

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

[39] The city reiterates that the March 19, 2007 meeting was properly closed pursuant to the statutory authority to close municipal meetings which are with respect to a proposed or pending acquisition or disposition of property by the municipality.

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

[40] For the following reasons, I find that section 6(1)(b) of the *Act* does not apply to the record at issue because the meeting was not authorized to be held in the absence of the public.

[41] I begin with the city's suggestion that the meeting was held for the purpose of giving or receiving legal advice. While the only *Municipal Act* provision referred to by the city as authority to hold a closed meeting is section 239(2)(c) pertaining to the acquisition of land, the city also refers to the discussion of "confidential legal matters" at the meeting.

[42] Section 239(2)(f) of the *Municipal Act* authorizes the closing of a meeting to the public if the subject matter being considered is

advice that is subject to solicitor-client privilege, including communications necessary for that purpose;

[43] The city did not elaborate on its implication that the meeting was properly closed pursuant to section 239(2)(f). Having reviewed the record at issue, I find that the subject matter being considered at the meeting was not advice that is subject to solicitor-client privilege. As noted in the public minutes of the meeting, the report was submitted to council by the City Manager, not the City Solicitor. The city has not provided me with any other evidence suggesting that the subject matter of the meeting was legal advice or communications necessary for legal advice. The fact that legal counsel may have had input into the report does necessarily mean that the report or the resulting discussions at the meeting are privileged. Nothing in the report indicates that any particular part of the report consists of legal advice.<sup>7</sup>

[44] I turn now to the city's argument that the meeting was properly closed as the subject matter being considered was a proposed or pending acquisition or disposition of

---

<sup>7</sup> See *Canada (Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104 (CanLII).

land by the city within the meaning of section 239(2)(c) of the *Municipal Act*. I find that section 239(2)(c) does not apply because, based on my review of all the information before me, including my review of the record at issue, I find that the subject matter being considered was not the acquisition of land; the city was not contemplating the acquisition of any land as part of its acquisition of the miniatures. According to public reports, the miniatures had been on display in another city and Oshawa bought the collection with the intent of displaying them on an existing site in Oshawa. The agreement for purchase and sale that the city and the vendor subsequently entered into was for the acquisition of the miniatures collection and the associated goodwill.

[45] I find, therefore, that the *Municipal Act* did not authorize the March 19, 2007 meeting to be held in the absence of the public. The city has not argued that any other statute authorized the closing of the meeting. As a result, the record at issue is not exempt from disclosure pursuant to section 6(1)(b) of the *Act*.

**Issue C: Does the mandatory exemption at section 10(1) (third party information) apply to the information withheld under that exemption?**

[46] The city relies on the mandatory exemption at section 10(1) for certain discrete portions of the record. Section 10(1) states in part:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

(c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

[47] Section 10(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.<sup>8</sup> Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third

---

<sup>8</sup> *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

parties that could be exploited by a competitor in the marketplace.<sup>9</sup>

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

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information;
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 10(1) will occur.

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

[49] The city's representations on this issue are brief. The city submits that the amount of third party information in the record is minimal and is limited to specific figures and values. It submits that this is commercial or financial information relating to a proposed or pending acquisition or disposition of land by the city, the disclosure of which could reasonably be expected to significantly prejudice the competitive position or interfere significantly with the contractual or other negotiations of one or more organizations. The city submits that the information in the record was supplied to it in confidence for the purpose "reflected in the above cited closed meeting authority".

### ***Affected party's representations***

[50] The affected party submits that the information at issue is a trade secret. He also submits that the deal to sell the miniatures to the city was made in good faith, that the price that the city paid for the miniatures was a bargain and that he believed the city would rebuild the village. He also stated that he does not wish any of his personal information to be disclosed, raising privacy and other concerns.

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

[51] The appellant submits that the information in the record was not "supplied" to the city as it was used in the generation of a negotiated price for the purchase and sale of the miniatures. The appellant also questions whether any of the information is still confidential, as a substantial amount of previously confidential information is readily available in the public domain including on the city's own website.

[52] The appellant submits that section 10(1) also does not apply because the sale of

---

<sup>9</sup> Orders PO-1805, PO-2018, PO-2184 and MO-1706.

the miniatures collection was a one-time sales opportunity for the vendor. The business formerly operated by the vendor as a miniature village was no longer operating, so there would be no further businesses opportunities in that regard. Once the city completed the acquisition of the miniatures, there was no further basis for maintaining confidentiality over the information contained within the record at issue, as there was no longer a competitive interest or trade secret for the vendor to be concerned about.

[53] The appellant also questions the affected party's privacy concerns. The appellant points out that public records indicate that the public is already aware of the price the city paid for the miniatures.

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

[54] The city reiterates that the record contains commercial or financial information supplied in confidence, the disclosure of which could reasonably be expected to significantly prejudice the competitive position or interfere significantly with the contractual or other negotiations of one or more organizations.

[55] The affected party did not file reply representations, although provided with the opportunity to do so.

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

[56] For section 10(1) to apply, the institution and/or the third party must satisfy each part of the three-part test set out above. I will discuss each part in turn.

#### ***Part 1: type of information***

[57] The types of information listed in section 10(1) have been discussed in prior orders:

*Commercial information* is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises.<sup>10</sup> The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.<sup>11</sup>

*Financial information* refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this

---

<sup>10</sup> Order PO-2010.

<sup>11</sup> Order P-1621.

type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.<sup>12</sup>

[58] I have reviewed the information that the city withheld under section 10(1). Most of it is information relating to the purchase price of the miniatures, and a small portion relates to other financial or commercial aspects of the miniatures collection. I am satisfied that all of the information withheld under section 10(1) is commercial and/or financial information of the affected party. Part 1 of the three-part test is therefore satisfied.

*Part 2: supplied in confidence*

Supplied

[59] The requirement that the information was “supplied” to the institution reflects the purpose in section 10(1) of protecting the informational assets of third parties.<sup>13</sup> Information may qualify as “supplied” if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.<sup>14</sup>

[60] The contents of a contract involving an institution and a third party will not normally qualify as having been “supplied” for the purpose of section 10(1). The provisions of a contract, in general, have been treated as mutually generated, rather than “supplied” by the third party, even where the contract is preceded by little or no negotiation or where the final agreement reflects information that originated from a single party.<sup>15</sup>

[61] The information at issue, however, is not the contract of purchase and sale, and it was not incorporated into the contract or derived from that contract. It predates the contract. I am satisfied that the information withheld by the city under section 10 was supplied to it by the affected party.

In confidence

[62] In order to satisfy the “in confidence” component of part 2, the parties resisting disclosure must establish that the supplier of the information had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was

---

<sup>12</sup> Order PO-2010.

<sup>13</sup> Order MO-1706.

<sup>14</sup> Orders PO-2020 and PO-2043.

<sup>15</sup> This approach was approved by the Divisional Court in *Boeing Co.*, cited above, and in *Miller Transit Limited v. Information and Privacy Commissioner of Ontario et al.*, 2013 ONSC 7139 (CanLII) (*Miller Transit*),.



provided. This expectation must have an objective basis.<sup>16</sup>

[63] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, all the circumstances are considered, including whether the information was

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential
- treated consistently by the third party in a manner that indicates a concern for confidentiality
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure<sup>17</sup>

[64] While neither the city nor the affected party provided any particulars about the circumstances surrounding the communication of the information from the affected party to the city, some of the information provided by the appellant suggests that the information at issue may have been supplied in confidence. However, I do not need to make a determination about whether the information was supplied in confidence, because I find below that part 3 of the test is not satisfied.

### *Part 3: harms*

[65] The party or parties resisting disclosure must provide detailed evidence about the potential for harm. They must demonstrate a risk of harm that is well beyond the merely possible or speculative although they need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.<sup>18</sup>

[66] The failure of a party resisting disclosure to provide detailed evidence will not necessarily defeat the claim for exemption where harm can be inferred from the surrounding circumstances. However, parties should not assume that the harms under section 10(1) are self-evident or can be proven simply by repeating the description of harms in the *Act*.<sup>19</sup>

[67] In this case, the city and the affected party have provided insufficient evidence to lead me to conclude that disclosure of the information at issue could reasonably be

---

<sup>16</sup> Order PO-2020.

<sup>17</sup> Orders PO-2043, PO-2371 and PO-2497, upheld in *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC); 298 DLR (4th) 134; 88 Admin LR (4th) 68; 241 OAC 346.

<sup>18</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

<sup>19</sup> Order PO-2435.

expected to prejudice the competitive position or interfere significantly with the contractual or other negotiations of one or more organizations. The city provided little evidence in support of its argument, and while the affected party's representations provide some interesting background to this matter, they do not satisfy me that disclosure of the information withheld under section 10(1) could reasonably be expected to result in either of the harms set out in sections 10(1)(a) or (b). As noted by the appellant, the transaction has completed. The amount that the city paid for the miniatures, as well as the price that it received when it resold them, are public information. I am not satisfied that disclosure of the information in the record relating to the purchase price could reasonably be expected to result in the harms specified in section 10(1)(a) or (b) when the prices that were ultimately agreed upon are public information.

[68] The affected party expresses concern about the privacy implications of disclosing the information at issue. I have considered whether the affected party's concerns amount to "undue loss" within the meaning of section 10(1)(c) of the *Act*. However, based on the information and representations before me, I am not satisfied that disclosure of the information that the city withheld under section 10(1) could reasonably be expected to result in the concerns expressed by the affected party. In my view, while it is possible that public scrutiny and discussion of the information may result from disclosure of this information, such scrutiny or discussion does not constitute undue loss within the meaning of section 10(1)(c). The affected party's personal information withheld under section 14(1) is a separate issue and is discussed below under issues D and E.

[69] Finally, I note that the information withheld under section 10(1) appears to already be in the public domain, although I cannot be more specific without revealing the content of the record.

[70] I conclude that the exemption at section 10(1) does not apply to the information that the city withheld under that section.

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

[71] The city withheld certain portions of the record under the mandatory personal privacy exemption found at section 14(1) of the *Act*. Because section 14(1) only applies to "personal information", it is necessary to determine whether the information that the city withheld under section 14(1) is personal information.

[72] "Personal information" is defined in section 2(1) as follows:

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

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

[73] 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.<sup>20</sup>

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

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

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their

---

<sup>20</sup> Order 11.

dwelling and the contact information for the individual relates to that dwelling.

[75] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual.<sup>21</sup> However, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.<sup>22</sup>

### ***City’s representations***

[76] The city reiterates that the record is a confidential report to city council. It submits that the record contains personal information of third parties such as non-business email addresses, telephone numbers and home addresses. It submits that although the person was dealing with the city in a professional capacity, the information itself is personal and not business contact information.

[77] The city submits that the record also includes financial information, employment information and individuals’ names where the disclosure of the names would reveal other personal information about the individuals.

### ***Affected party’s representations***

[78] While the affected party’s representations do not expressly address whether the information in the record is his personal information, he states that he does not wish any of his personal information to be disclosed, raising privacy and other concerns.

### ***Appellant’s representations***

[79] The appellant submits that the city has not taken into account section 2(2.1) of the *Act* which indicates that personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity. He notes that information associated with an individual in a professional, official or business capacity will generally not be considered to be “about” the individual. The appellant submits that the record likely contains important comments from city staff, the vendor and other individuals that influenced council’s decision to approve the purchase of the miniatures.

### ***City’s reply representations and appellant’s sur reply representations***

[80] The city reiterates that the record contains information about third parties in

---

<sup>21</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>22</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

their personal capacities as opposed to their business capacities, such as their personal contact information and other personal information. The appellant submits that personal addresses can be severed from the record, but that the majority of the information in the record is not personal information.

***Analysis and findings***

[81] I have reviewed the information that the city withheld under section 14(1) of the *Act*. I agree with the city that the address and telephone number appearing on the sixth page of the record is the personal rather than professional information of the individual in question. I do not have sufficient information before me to conclude that the individual was carrying out business from that address, and so that information does not fit within the exceptions to the definition of personal information at sections 2(2.1) and 2(2.2).

[82] The city has also severed names from the record in several instances. I find that, with one exception, noted below, the information in the record to which the names relate appears in a business or commercial context, not a personal one. Further, disclosing the names would not reveal information of a personal nature about the individuals in question. Although the city argues that the record contains financial information, I find that the financial information relates to an individual or individuals in their professional and not personal capacities. These names are therefore not personal information.

[83] The name of another individual appears in three places in the record. As I was not able to locate this individual, he was not notified of this appeal and did not provide representations. Having reviewed the information relating to this individual, however, I am satisfied that disclosing his name would reveal other personal information about him; specifically, his employment history and other information about him in his personal capacity.

[84] In conclusion, I find that the address and telephone number of one individual constitutes his personal information, and that the name of another individual where it appears in three places in the record constitutes his personal information.

[85] The remainder of the information that the city withheld under section 14(1) is not personal information. Since section 14(1) does not apply to such information, and since no other exemptions have been claimed for this information (other than those above which I have found do not apply), I will order that it be disclosed to the appellant.

[86] I will now consider whether the personal privacy exemption at section 14(1) applies to the information that I have found to be personal information.

**Issue E: Does the mandatory personal privacy exemption at section 14(1) apply to the personal information in the record?**

[87] Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. Section 14(1) reads as follows:

**14. (1)** A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

(b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;

(c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;

(d) under an Act of Ontario or Canada that expressly authorizes the disclosure;

(e) for a research purpose if,

(i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,

(ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and

(iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

[88] The parties did not argue that any of the exceptions at sections (a) to (e) apply and I find that none of the exceptions apply here. In particular, section 14(1)(a), which allows disclosure where the person to whom the information relates consents, does not apply, because the individuals to whom the information relates did not consent to the

disclosure of their personal information.

**Would disclosure be “an unjustified invasion of personal privacy” under section 14(1)(f)?**

[89] Under section 14(1)(f), if disclosure would not be an unjustified invasion of personal privacy, it is not exempt from disclosure. Sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy. Those provisions read as follows:

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

(b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

(c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;

(d) relates to employment or educational history;

(e) was obtained on a tax return or gathered for the purpose of collecting a tax;

(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

(g) consists of personal recommendations or evaluations, character references or personnel evaluations; or

(h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

(4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

(a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution; or

(b) discloses financial or other details of a contract for personal services between an individual and an institution.

(c) discloses personal information about a deceased individual to a spouse or close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons.

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

[90] The city submits that some of the personal information is financial information, the disclosure of which is presumed to be an unjustified invasion of privacy pursuant to section 14(3)(f), and that some of the personal information is employment information, the disclosure of which is presumed to be an unjustified invasion of privacy pursuant to section 14(3)(d). The city also cites section 14(3)(g).



### ***Affected party's representations***

[91] As noted above, the affected party objects to the disclosure of his personal information on the basis that it could affect his privacy interests.

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

[92] The appellant submits that the public interest override at section 16 applies to any information that the city has withheld under section 14. While I address the appellant's arguments on the public interest below under Issue F, I am also referring to them here because they are relevant to the factor at section 14(2)(a).

[93] The appellant takes issue with the due diligence exercised by the city in acquiring the miniatures, and argues that the information in the record will shed light on the procurement process for their acquisition. He submits that disclosure will also allow the public to understand the concerns raised by the city's former Auditor General in Report AG-13-09 about the acquisition process for the miniatures. Further particulars of the appellant's submissions are set out below under Issue F.

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

*Do any of the presumptions in paragraphs (a) to (h) of section 14(3) apply?*

[94] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies.<sup>23</sup>

[95] I found above that some of the personal information relates to an individual's employment history. Therefore, the presumption at section 14(3)(d) applies to this information. No party argued that section 14(4) applies and I find that it does not. I will address the public interest override at section 16 below under Issue F.

*Do any of the section 14(2) factors apply?*

[96] The remainder of the personal information at issue is not subject to any section 14(3) presumption. If no section 14(3) presumption applies and the exception in section 14(4) does not apply, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.<sup>24</sup> The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are

---

<sup>23</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

<sup>24</sup> Order P-239.

not listed under section 14(2).<sup>25</sup>

[97] I begin by considering whether there are any factors weighing in favour of the disclosure of the personal information at issue.

Paragraph 14(2)(a): public scrutiny

[98] This paragraph contemplates disclosure in order to subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.<sup>26</sup>

[99] Although the appellant did not make representations on the section 14(1) issue *per se*, he made extensive representations with respect to the public interest in disclosure of the record as part of his argument that the public interest override at section 16 applies. The city also made representations on the public interest issue. I have considered those representations, which are set out in further detail under Issue F below, and have reviewed the information at issue in deciding whether disclosure of the information is desirable for the purpose of subjecting the activities of the city to public scrutiny.

[100] The only information that I have found to be personal information consists of an individual's personal contact information, as well as the name of another individual where it appears in three places in the record. Having reviewed the parties' representations and the record as a whole, I am not satisfied that disclosure of any of the personal information in the record would assist in subjecting the city's activities to public scrutiny. As a result of this order, the record at issue will be disclosed to the appellant, with discrete severances limited to the personal information in the record. Although one of the *Act's* central purposes is to shed light on the operations of government, I find in this instance that disclosure of the personal information in the record would not add anything to the public's ability to scrutinize the actions of the city.

[101] The appellant has not argued that any other section 14(2) factors favouring disclosure apply, and based on my independent review of the record, I find that none apply. In order to find that disclosure does *not* constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 14(2) must be present. In the absence of such a finding, the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies.<sup>27</sup> Since I have found that there are no factors favouring disclosure of the personal information at issue, I find that the exception in section 14(1)(f) does not apply and the mandatory section 14(1) exemption applies to the personal information in the record.

---

<sup>25</sup> Order P-99.

<sup>26</sup> Order P-1134.

<sup>27</sup> Orders PO-2267 and PO-2733.

**Issue F: Does the public interest override found in section 16 of the *Act* apply to the personal information at issue?**

[102] The appellant has raised the applicability of the public interest override found in section 16 of the *Act*, which states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[103] For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[104] The *Act* is silent as to who bears the burden of proof in respect of section 16. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 16 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, this office reviews the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.

***Compelling public interest***

[105] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act's* central purpose of shedding light on the operations of government. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

[106] The word "compelling" has been defined in previous orders as "rousing strong interest or attention".

[107] Any public interest in non-disclosure that may exist must also be considered. A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling".

[108] The parties, particularly the appellant, made extensive representations on the public interest. While I have reviewed them in their entirety, I will refer only to the main points below.

***Appellant's representations***

[109] The appellant takes issue with the due diligence exercised by the city in acquiring the miniatures, and argues that the information in the record will shed light on the procurement process for their acquisition. He submits that disclosure will allow the public to understand the concerns raised by the city's former Auditor General in Report AG-13-09 about the acquisition process for the miniatures.

[110] The appellant submits that disclosure of the information at issue will also allow the citizenry to better judge the actions of council in 2013, when it opted to endorse the findings and recommendations of the investigator hired by the city to investigate the allegations set out in Report AG-13-09, and when it closed the Auditor General's Office. The appellant also believes that disclosure will shed light on the integrity of the process surrounding the appointment of the investigator.

***City's reply representations***

[111] The city submits that the appellant has not provided a reasonable basis for suggesting there is any public interest in disclosure of the information, which is ten years old. The city also points out that it released a number of related reports that had previously been treated as confidential.

***Appellant's sur reply representations***

[112] The appellant submitted extensive sur reply representations which I have reviewed carefully. Essentially, the appellant reiterates and elaborates on the points he raised in his initial representations.

***Analysis and findings***

[113] For reasons similar to those set out above in my discussion of section 14(2)(a), I find that there is no public interest, compelling or otherwise, in the disclosure of the personal information at issue. As a result of this order, the record at issue will be disclosed to the appellant, with the exception of severances limited to a small amount of personal information. To the extent that the appellant has raised issues of public interest with respect to the procurement process and the investigator's report, among other concerns, I find that the personal information at issue does not respond to those concerns.

[114] As a result, the public interest override at section 16 of the *Act* does not apply to the personal information at issue.

**ORDER:**

1. I do not uphold the city's decision that section 223.22 of the *Municipal Act, 2001* applies to the record at issue.
2. I do not uphold the city's decision that sections 6(1)(b) or 10(1) of *MFIPPA* apply to the record at issue.
3. The city's decision to withhold information pursuant to section 14(1) of *MFIPPA* is upheld, in part. With the city's copy of this order is a copy of the record at issue with the information to be withheld highlighted in yellow.
4. I order the city to disclose the remainder of the record to the appellant by sending him a copy by January 30, 2018 but not before January 25, 2018.
5. In order to ensure compliance with provisions 3 and 4 of this order, I reserve the right to require the city to provide this office with a copy of the record disclosed to the appellant.

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

December 19, 2017 \_\_\_\_\_