

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3567

Appeal MA16-316 & MA16-280-2

City of Toronto

February 27, 2018

Summary: The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records for a property development. The requester and the property developer both appealed the city's decision to disclose portions of the development's building plan. This order upholds the city's decision that the section 10(1) exemption for third party information does not apply to the building plan. The order finds that the section 8(1)(i) exemption for information that endangers the security of a building, system or procedure does not apply to the withheld information. The building plan is ordered disclosed, except for a small portion of the plan that is not responsive to the request.

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

Orders and Investigation Reports Considered: Order 188, MO-2986, MO-2074, MO-2181, MO-2353, MO-2635, MO-3043-R, MO-2735, MO-3015, MO-1225, MO-3125, PO-2735, PO-2461.

OVERVIEW:

[1] The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to documents and correspondence regarding the rezoning and/or condominium development of a Queen Street, Toronto property.

[2] The requester subsequently clarified that the request included any architectural

drawings that formed part of the Site Plan Agreement, including drawings dated 2013, and floor plans, exterior elevations and roof planes of the 4th, 5th and 6th floors. The requester advised that he was not interested in the retail (non-residential) space on the ground floor.

[3] In accordance with its routine disclosure bulletin, the city decided to disclose 27 pages of records to the requester held by the city's Planning Division, including a Notice of Approval Conditions and Site Plan Agreement.

[4] The city also identified 95 pages of records, comprising a building plan and drawings ("building plan") as responsive to the request. The building plan contains detailed plans, including drawings, for the development prepared for the affected party property developer by professional firms, including architects.

[5] The city invited the affected party property developer to provide its views on disclosure of the building plan. The affected party's representations suggested to the city it withhold the building plan under sections 10(1)(a) (prejudice to competitive position), 8(1)(i) (endanger the security of a building, system or procedure) and 13 (danger to safety or health) of the *Act*.

[6] The city issued a decision granting partial access to the responsive records, withholding 16 pages of the building plan under section 8(1)(i) of the *Act*.

[7] The affected party and the requester both appealed the city's decision. The requester wants access to responsive information in the building plan withheld by the city under section 8(1)(i). The affected party maintains that the building plan should be withheld under section 10(1)(a). The affected party also supports the city's position regarding section 8(1)(i).

[8] Since mediation did not resolve either party's appeals, they proceeded to adjudication. I decided to conduct one inquiry for both appeals because they involved the same record. The inquiry began by inviting the city and the affected party to provide representations on issues in a Notice of Inquiry.

[9] The affected party's representations did not address all of the information at issue in the building plan. After consulting with the city, the affected party obtained a complete copy of the records at issue. In fairness to the affected party, I invited it to provide updated representations addressing all of the information at issue.

[10] I then invited the requester to provide representations responding to the city's and appellant's representations and the issues in a Notice of Inquiry.

[11] Next, I invited the city and the appellant to provide representations in response to the requester's representations. Finally, I invited the affected party and the city to provide additional representations after reviewing each other's initial and reply representations regarding section 10(1), and the city did so. Representations were

shared in accordance with IPC *Practise Direction 7*.

[12] This order upholds the city's decision that section 10(1) does not apply to the building plan. This order also finds that section 8(1)(i) also does not apply to the responsive parts of the building plan. I order the city to disclose the building plan to the requester, except for the information withheld under section 8(1)(i) that is outside the scope of the request.

RECORDS:

[13] The record at issue is a building plan. The 95-page record relates to a property development on Queen Street in Toronto. It comprises plans for the development of the property, including drawings, prepared for the affected party by professional firms.

[14] The city is withholding 16 pages of drawings in the building plan under section 8(1)(i) of the *Act*:

1. An architectural drawing of a mechanical penthouse structure located on the top of the building (page A.307);
2. diagrams showing the electrical layout plan for each floor of the building, including underground parking levels and the mechanical penthouse structure on the roof (pages E-1 to E-9);
3. a diagram titled "Fire Alarm System & Telephone/CATV Riser Diagram and Details" (page E-10)
4. a diagram titled "Main Electrical Distribution Diagram" (page E-11);
5. a diagram titled "Emergency Distribution Diagram" (page E-12);
6. a diagram titled "Mechanical/Electrical Site Plan" (page MES-1);
7. a diagram titled "Mechanical Penthouse HVAC Layout" (page M-9);
8. a diagram titled "Mechanical Penthouse Plumbing Layout" (page P-4);

[15] The affected party's position is that the entire building plan should be withheld under section 10(1)(a) of the *Act*.

[16] The requester narrowed the scope of his request to exclude information about the non-residential space on the ground floor. Accordingly, the electrical layout plan for the ground floor on Page E-3 and the diagram of the ground floor electrical layout on page E-2 are no longer at issue, and I do not need to discuss them further in this order. I note that while some other information in the building plan, including some of the information withheld under section 8(1)(i) also relates to services provided to the whole

building, including the ground floor, it is inseparable from information relating to the other floors. I therefore consider the remaining responsive information sufficiently related to the request for records that no other information falls outside the scope of the request.

ISSUES:

- A. Does the mandatory section 10(1)(a) exemption apply to the building plan?
- B. Does the discretionary section 8(1)(i) exemption apply to the information in the building plan the city withheld?
- C. Did the city exercise its discretion under section 8(1)(i)? If so, should I uphold the exercise of discretion?

DISCUSSION:

A. Does the mandatory exemption at section 10(1)(a) apply to the building plan?

Section 10(1)(a) states:

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;

[17] Section 10(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions.¹ 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 third parties confidential information that a competitor could exploit.²

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

¹ *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.).

² Orders PO-1805, PO-2018, PO-2184 and MO-1706.

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
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 the harms specified in paragraph (a) of section 10(1) will occur.

Part 1: type of information

[19] The affected party submits that the building plan consists entirely of technical information for the purposes of section 10(1) of MFIPPA. The city agrees that the information qualifies as technical information and therefore meets the first part of the section 10(1) test.

[20] The requester does not directly address whether the information is technical information but, as the affected party's reply representations suggest, the requester's representations seems to accept that the building plan contains at least some technical information.

[21] Technical information is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. While it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing.³ Previous orders have found building plans and related documents to comprise technical information.⁴

[22] I accept the characterization of the building plan by the affected party as comprising professionally prepared architectural and engineering drawings that detail the design, structure and construction of the property development, including floor plans, roof plans, elevation drawings, shoring drawings and servicing drawings. Consistent with previous orders regarding building plans, I find that the building plan meets the definition of technical information for the purposes of section 10(1) of the *Act*.

Part 2: supplied in confidence

Supplied

[23] The requirement that the information was "supplied" to the institution reflects

³ Order PO-2010.

⁴ See for example Order MO-3015, MO-3125, MO-2735 and MO-1225.

the purpose of section 10(1) to protect the informational assets of third parties.⁵

[24] Information may qualify as “supplied” if it was directly supplied to an institution by a third party, or where disclosing it would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.⁶

[25] The requester does not address the supplied requirement.

[26] The affected party submits that it directly provided the building plan to the city, in the course of seeking building permits for the development. It states it submitted the building plan to the city along with a building permit application in April 2013, as a city date stamp supports. The city agrees that the affected party supplied the building plan to the city.

[27] I am satisfied that the affected party supplied the building plan to the city.

In confidence

[28] In order to satisfy the “in confidence” component of part two, the affected party must establish that it had a reasonable expectation of confidentiality, implicit or explicit, at the time it supplied the information. This expectation must have an objective basis.⁷

[29] 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 disclosure⁸

[30] The affected party submits that it supplied the building plan in confidence, with a reasonable expectation that the city would not disclose it. It cites Order MO-1225, which found that an applicant who submitted plans to the Town of Niagara-on-the-Lake for building and foundation permits had a reasonable expectation that the records

⁵ Order MO-1706.

⁶ Orders PO-2020 and PO-2043.

⁷ Order PO-2020.

⁸Orders PO-2043, PO-2371 and PO-2497, upheld in *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

"would not be distributed outside the Town or for any purpose other than to obtain the building permit" and therefore that the materials were submitted in confidence.

[31] The affected party submits that like in Order MO-1225, it submitted the building plan to the city for the narrow purpose of obtaining the city's approval, so that it could construct the development.

[32] The affected party submits that the building permit approval process is not public. It says the Chief Building Official has a statutory obligation to issue a building permit if the proposed construction complies with all applicable law as prescribed in the Building Code. It submits therefore that public input is of little relevance, and that there is no expectation that the city will publicly disclose the plans and drawings in the course of its building permit review. The affected party submits that in these circumstances, its expectation that the building plan would not be distributed outside of the city or for any purpose other than reviewing the building permit application was reasonable and the building plan was therefore supplied in confidence.

[33] The city submits that the adjudicator in Order MO-1225 noted that the third party did not provide any evidence regarding its expectations with respect to confidentiality. It submits that the adjudicator believed that the third party may not have understood or even known about the *Act* and the consequences of providing information to the municipality. The third party simply stated, at the appeal stage, that the municipality may only use the records for the building permit application. For those reasons, the adjudicator accepted, "that although tenuous", the third party had a reasonably held expectation of confidentiality.

[34] The city submits that the circumstances in MO-1225 do not appear to be present in this appeal. They submit that the affected party has not indicated that it did not know the *Act* existed.

[35] The city also cites Order MO-2735, which noted that while the appellant submitted the building plans at issue in that appeal as part of the building permit application process, the expectation that the plans would be used for this purpose alone is not equivalent to a reasonable expectation of confidentiality.

[36] The city also submits that the affected party's "Application for a Permit to Construct or Demolish" had no notations on it with respect to confidentiality and that none of the drawings were noted or stamped "confidential". They submit that there is no other evidence to suggest that the affected party submitted the plans to the city in confidence.

[37] The city explains that its Building Division has a routine disclosure policy that applies to building plans. The city submits that the *Disclosure of Building Records and Plans* bulletin states that building plans are disclosed routinely to:

- an owner of the property that is the subject of the request;

- a principal of the management company that, on behalf of the owner, manages the property (the "property manager") that is the subject of the request;
- any person who has the written consent of the property owner or property manager of the property that is the subject of the request;
- city councillors and their staff;
- in the case of a City-owned building, a person with the authorization of the Director of Facilities and Real Estate; and
- an officer of the Municipal Property Assessment Corporation

[38] The bulletin states that all other requests for building records not routinely disclosed are to be submitted to the City Clerk's Office to be processed under the *Act*.

[39] The city submits that, given the bulletin, there should be an expectation that it could disclose building records (including building plans) for purposes other than issuing a building permit.

[40] The city also provided documentary evidence that the general floor plans for the development at issue were available in marketing materials and on the affected party's website and that many of the floor plans for specific units were also publically available. It acknowledges that while the more technical plans in the building plan are not identical to these floor plans, some of what the affected party describes as "unique design features" can be seen on those plans.

[41] The city therefore concludes that the affected party has no reasonable expectation of confidentiality with respect to the disclosure of the building plans.

[42] The requester also argues that in light of the city's routine disclosure bulletin, the affected party did not supply the building plan to the city with an expectation of confidentiality.

[43] The affected party addresses the routine disclosure bulletin in its reply representations. It submits that the bulletin only applies to "wholly residential" buildings, which is why it did not apply to the development. It submits that the routine disclosure bulletin suggested to the affected party that records relating to the development would not be subject to routine disclosure, and that the bulletin supports, rather than detracts from, the affected party's position that it had a reasonable expectation of confidentiality with respect to the building plan.

Analysis

[44] I have considered the parties' representations and the building plan. I conclude that the building plans do not satisfy the "in confidence" requirement of section 10(1).

[45] As noted above, Order PO-2735 found that where building plans were submitted as part of the building permit application process, an expectation that the plans would be used for this purpose alone was not equivalent to a reasonable expectation of confidentiality. This finding was followed in Order MO-3125. Accordingly, I do not put much weight on the affected party's argument regarding confidentiality based on the nature of its application.

[46] However, it is the content of the city's routine disclosure bulletin that I find is particularly relevant to the issue of whether a reasonable expectation of confidentiality existed.

[47] As the affected party points out, the city did not disclose the building plan under its routine disclosure bulletin, because the building plan was not a wholly residential development.

[48] However, the bulletin as a whole provides a clear expression of the city's intention to disclose building plans wherever possible. For example, the policy states:

Records, other than those exempt from disclosure, must be made available when requested. Further to the City's policy to disclose records routinely wherever possible, Toronto Building has identified and will continue to identify building records which will be routinely disclosed.⁹

[49] I note also that the city's bulletin, in acknowledging that limited exemptions to the general right of access need to be recognized, specifically refers to the exemption for personal information and the exemption where disclosure could reasonably be expected to endanger the security of a building, and not to the section 10(1) exemption. This is not to say the city believes the section 10(1) exemption can never apply. It does however support the position that withholding building plans would be a rare exception to the city's general approach.

[50] Further, as the requester notes, the building plans at issue are very similar in substance to those for wholly residential developments in the neighbourhood, which are disclosed under the city's routine disclosure bulletin. The only difference between those developments and the one in issue is that the ground floor of the development at issue was earmarked for commercial use. The substantial similarity of the development to others where building plans are routinely disclosed, and the city's general posture in the bulletin, which creates a clear expectation of transparency regarding building plans supplied to the city, makes it difficult to conclude that the affected party could have had a reasonable expectation of confidentiality regarding the building plan.

[51] Further, the affected party cannot point to any explicit expectation of privacy that may outweigh the general expectation in the city's bulletin regarding

⁹ City of Toronto Disclosure of Building Records and Plans Policy, Bulletin Number A-11e at page 7.

confidentiality. There is no explicit statement regarding confidentiality in the building plan or elsewhere.

[52] Accordingly, I do not accept that a reasonable expectation of confidentiality exists in the building plan.

[53] Order MO-3125 reached the same conclusion in an appeal that also involved city building plans and considered the city's bulletin. My finding is also consistent with Order MO-2735, which found no reasonable expectation of confidentiality in the building plans at issue in that appeal, though I recognize that the relevant municipality's policy (the City of London) differed from the one at issue in this appeal.

[54] I conclude that the affected party could not have held a reasonable expectation of confidentiality, implicit or explicit, at the time it supplied the building plan to the city. The building plan does not meet part 2 of the section 10(1) test. Therefore, the section 10(1) exemption cannot apply to it and it is not necessary to consider part 3 of the section 10(1) test.

B. Does the discretionary exemption at section 8(1)(i) apply to the building plan?

Sections 8(1)(i) states:

(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to...

(i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

[55] Although this provision is in a section of the *Act* dealing with law enforcement matters, it is not restricted to law enforcement uses and can apply to any building or system which requires protection.¹⁰ Previous orders have upheld the application of section 8(1)(i) to building plans¹¹ and other similar records.¹² Others have found the evidence required to establish that section 8(1)(i) applied to a building plan insufficient, particularly for residential building plans.¹³

[56] The city must provide evidence about the potential for harm that demonstrates a

¹⁰ Orders P-900 and PO-2461.

¹¹ Order MO-2074; MO-3043-R

¹² Order PO-2461 upheld the application of the equivalent of section 8(1)(i) in the *Freedom of Information and Protection of Privacy Act*, (section 14(1)(i)) to drawings, plans and a manual that together provided a complete picture of the architectural, structural, electrical, mechanical and security systems of a facility.

¹³ Order MO-2181, MO-2353 and MO-2635.

risk of harm that is well beyond the merely possible or speculative, although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed depends on the type of issue and seriousness of the consequences.¹⁴

Parties' representations

[57] The requester submits that the development has no particular features or elevated risks that would make it vulnerable to attack. It submits there is no special risk to the development that would make it a target for criminals trying to steal property in it and to circumvent alarm systems.

[58] The requester also submits that some municipalities allow unrestricted viewing of non-residential buildings and that the city and other municipalities allow unrestricted access to building plans for residential buildings. The affected party queries whether there is any proof that this kind of access has led to any breach of security or other harm.

[59] The requester concedes that the fire alarm information is a possible issue. However, the requester goes on to observe that it is unlikely that anyone would intentionally seek out building permit drawings to get details of fire alarms and then set a fire in a six-floor concrete building, particularly when the units all have easy fire egress. The requester, noting that the city does not restrict access to fire alarm drawings in wholly residential buildings, regardless of height or structural materials, questions the basis for withholding information about residential units in the building plans.

[60] The affected party submits that the city correctly applied the exemption in section 8(1)(i) to the portions of the building plan it withheld. The affected party suggests that section 8(1)(i) is intended to safeguard the building and its residents generally. It submits that ensuring the security of the development is a broad mandate that extends beyond the possibility of robbery or terrorism.

[61] The affected party submits that the mechanical, electrical, and alarm system drawings that the city withheld contain detailed information about the development's security systems. The affected party points to its correspondence with the city that claimed that the building plan reveals the location of security cameras, security desks, emergency exits and the layout of mechanical and electrical networks, all of which could be used to subvert systems put in place to ensure the development is secure. The affected party submits that disclosing details to the requester, whose identity and intentions are unknown, creates a reasonable prospect of danger to the security of the development and its residents. The affected party also seeks to distinguish previous

¹⁴ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

orders that found section 8(1)(i) did not apply to residential developments.¹⁵ It states that it has identified specific design features which, if disclosed, would undermine the security of the building and safety of residents. The city agrees and submits that both the city and the affected party have identified such design features in the building plan at issue in this appeal.

[62] The city submits that in making its access decision it attempted to balance the rights of the requester to city information and the concerns raised by the affected party. It notes that the requester asked for access to architectural and floor plans, which are very different from mechanical and electrical plans. It suggests that the mechanical and electrical plans withheld under section 8(1)(i) it could also have withheld as outside the scope of the access request. The city says its access decision (appealed by the affected party) would give access to a number of drawings including floor plans, elevations, roof plans, site servicing and grading, shoring and "general notes and typical details". It submits these drawings will likely address the requester's issues that motivated the request.

[63] The city acknowledges that previous orders have held that residential buildings by their nature do not usually give rise to a reasonable basis for believing that endangerment could result from disclosure. It notes however that the drawings at issue in this appeal are for a mixed use building; commercial and residential.

[64] The city states (drawing from the correspondence it received from the affected party) that the withheld drawings provide detailed information about the building's electrical, mechanical and fire and security alarm systems, including the development's emergency electricity distribution program. Adopting the position of the affected party, it submits these documents could be used as a blueprint to subvert the systems and security measures that were carefully designed to protect the building and its residents.

[65] The city's position is that the building plan is sufficiently connected with the protection of the building's systems and disclosure of the specific drawings could reasonably be expected to result in the harm section 8(1)(i) seeks to prevent.

Analysis

[66] I have carefully considered the purpose of section 8(1)(i) and that the city and affected party were not obligated to prove that the disclosure of the building plan will actually result in the alleged harm. I have concluded that there is insufficient evidence about the potential for harm to demonstrate a risk of harm that is well beyond the merely possible or speculative.

[67] Order 188 states that establishing one of the exemptions in section 8 of the *Act* requires that the expectation of one of the enumerated harms coming to pass, should a

¹⁵ Specifically Orders MO-2353 and MO-2181.

record be disclosed, not be fanciful, imaginary or contrived, but rather one that is based on reason. This requirement that the expectation of harm must be "based on reason" means that there must be some logical connection between disclosure and the potential harm which the institution or affected party seeks to avoid by applying the exemption.

[68] As noted above, previous orders have carefully scrutinized arguments that disclosing building plans for residential buildings can satisfy section 8(1)(i), often reciting the following statement in Order MO-2181:

Residential structures, by their very nature, do not establish a reasonable basis for believing that harms set out in section 8(1)(i) will result from the disclosure of their building plans. In my view, the wording of section 8(1)(i) does not support a blanket application to the building plans of all structures, regardless of their nature, or the circumstances in which access is sought.

[69] The city and the affected party seek to distinguish these previous orders first by pointing out that the building is not entirely residential and also by providing evidence of harm to specific systems that was lacking in previous appeals.

[70] On the first point, the city observes that the development in issue is mixed use, because the ground floor is allocated to retail or commercial use and the remainder of the six floor development is residential. As at the date of the appeal, the retail occupants were yet to be confirmed.¹⁶

[71] However, the requester narrowed his request to exclude information about the ground floor retail space from his request, a point not addressed in the other parties' representations. As I found above, the requester's narrowed request means that the withheld information which relates to the ground floor of the development is no longer at issue in this appeal.

[72] The narrowing of the request means that the information at issue relates to the residential portion of the property only. The withheld information cannot always be neatly separated into residential and retail information because information regarding the fire alarm system, for example, pertains to the development as a whole. Despite this, the information at issue is predominantly, and in many cases exclusively related to the residential components of the development. As discussed above and as the requester points out, if the development had been exclusively residential, the information would be routinely disclosed under the city's bulletin. Only the existence of the retail ground floor space prevented this.

¹⁶ I note that as at the date of this order, a cafe is the only commercial tenant in the development.

[73] The ultimate question is whether the parties have established the requisite harm to the required standard. That the information at issue is almost entirely residential is a factor in this but certainly not determinative.

[74] Turning to the harms, I observe that the city and the affected party do not clearly indicate what parts of section 8(1)(i) they rely upon- "endanger the security of a building" or endanger "a system or procedure established for the protection of items." The arguments raised seem a sort of hybrid: that disclosure of systems information endangers the building in a manner that falls within the scope of section 8(1)(i). For completeness, I note here the further element of section 8(1)(i): "for which protection is reasonably required."

[75] While the overall purpose of section 8(1)(i) is most important, I find that much of the withheld information does not comprise "detailed information about the development's security systems" as the affected party and city submit and is not "a system or procedure for the protection of items" under section 8(1)(i). The withheld information comprises drawings and explanatory notes that predominately explain the development's electrical layout, with some additional details regarding the mechanical penthouse. Obviously, the electrical system is established for the purpose of supplying electricity to the development. I question whether the mechanical penthouse is even a "system" in the sense it is used in section 8(1)(i), and it is certainly not one established "for the protection of items". While the electrical system might support the operation of security systems, it is obvious that this is, at best a secondary purpose of this infrastructure. While my finding below means it is not necessary to do so, I consider that with the possible exception of security camera locations the affected party asserts are revealed by the withheld information, the information at issue is not information that, if disclosed, could endanger the security of a system established for the protection of items. I accept however that if disclosure of the information at issue endangers the security of a building for which protection is reasonably required, then section 8(1)(i) still applies.

[76] Ultimately, I find that the city and affected party's submissions in general do not establish the necessary clear and direct evidentiary link between release of the information and the likelihood of the harm occurring to the standard required. In my view, the arguments regarding harm that could arise by disclosure of the withheld information are not well beyond merely possible or speculative.

[77] There is a critical distinction between having some knowledge of a system and the ability to circumvent or compromise it, quite aside from the question of the likelihood that someone intends to do so.

[78] Any development includes systems of the type revealed in the withheld information, most being required to comply with the building code. Accordingly, disclosing the withheld information in the building plan does not reveal the existence of systems that are not already known to exist. The withheld information provides more

than a general awareness of the building's features, but there is insufficient evidence that disclosing the withheld information makes any real difference to the security of the building. The withheld information does not reveal building access codes, passwords or even the specifications of security systems or other information that would raise more than the possibility of compromising the development's systems in a way that could endanger the building. To the extent the information relates to the security of the building at all, and much does not, its disclosure merely makes clear beyond doubt that the building has features and systems that aid in securing the building that are common to any development of the type at issue. The parties arguments assume, without support, that access to the information gives rise to the possibility of these systems being compromised. Disclosing the existence of these systems and some information about them, in my view, does not logically link to compromising the security of the building.

[79] My view is supported by the fact that even the information that does directly relate to security, such as surveillance cameras, does not rely on obscurity for effectiveness. The deterrent effect that comes from awareness of the existence of a security camera is often cited as a primary reason for installation of cameras. Knowledge of a system, even one connected with security, does not necessarily lead to an elevated risk that the system will be compromised. There is no evidence to suggest that there is a link between disclosing the information and a risk to the building. Awareness of a system does not equate to vulnerability of that system, especially when the system's existence is already known.

[80] I note also that the ability to use the withheld information in the building plan to do harm is predicated on having access to the building. This is particularly relevant for the withheld information relating to the mechanical penthouse on the roof of the development. For obvious reasons of health and safety, access to building mechanical equipment is typically security restricted, even for lawful residents. The practical hurdles to access to the parts of the building at issue (including residential suites) are further compounded in the current appeal by the requester's narrowing his request to exclude information about the ground floor. For obvious reasons, the ground floor provides the majority of the access points to the building, though I recognize there are others. Again, knowledge of the existence of access points to the building has not been shown to undermine the security measures that prevent them from being used for unauthorized access to the development.

[81] As Order MO-2986 summarizes, past orders have reviewed the relevance of the identity of the requester/appellant in determining the application of section 8(1)(i) and considered that it has been a relevant factor in some appeals¹⁷ but not relevant in

¹⁷ For example, where the affected party had obtained a restraining order against that individual (Order MO-2074).

others.¹⁸ The motivation of the requester in seeking the information has also been considered. In this appeal, the affected party does not suggest that the appellant would use the building plan for an inappropriate or illegitimate purpose, but rather expresses concern about not knowing the identity of the requester and therefore their intentions for use of the information.

[82] Disclosure under the *Act* is commonly characterized as disclosure to the world at large, because there are no restrictions on the further dissemination of information once disclosed to a requester under the *Act*. However, as Order MO-2986 observes, this does not make it inappropriate to consider the consequences of disclosure of a record into the public domain in the particular circumstances of each appeal. Accordingly, though disclosure of the building plan to the requester is considered disclosure to the world, I note that I am satisfied that the requester's intended use of the building plan poses no special risk to the security of the development or its systems that weighs for or against disclosure. Without disclosing information that may reveal the requester's identity, I am satisfied that the requester's interest in the development is not nefarious or related to the security of the building.

[83] I also note that disclosure of the building plan to the requester is unlikely to result in distribution of it to a broader audience. As the city observes, the requester may not even want the withheld information. However, as the parties did not pursue that line of inquiry further, I cannot resolve the appeal on that basis.

[84] For the reasons above, I find that the city and affected party have not established that section 8(1)(i) applies to the withheld information.

Section 8(4)

[85] Section 8(4) provides that even if section 8(1) applies, certain information cannot be withheld under section 8(1). The requester's representations reference section 8(4) without making a clear argument about its relevance to the building plan.

[86] The city submits that it is unclear how section 8(4) applies in this appeal. The affected party submits that section 8(4) has no application in the appeal.

[87] Given my finding above, it is not necessary to consider section 8(4), though I note that I am satisfied that section 8(4) does not apply in this appeal.

C. Did the institution exercise its discretion under section 8(1)(i)? If so, should this office uphold the exercise of discretion?

[88] Given my finding that section 8(1)(i) does not apply to the responsive

¹⁸ MO-2353, as Order MO-2986 notes, notwithstanding what might be considered poor relations between the parties.

information withheld under section 8(1)(i) it is not necessary to consider the issue of the city's exercise of its discretion.

ORDER:

1. I uphold the city's decision with respect to section 10(1), and dismiss the affected party's appeal.
2. Information withheld under section 8(1)(i) on pages E2 and the information relating to the ground floor of the development on page E3 is not responsive to the narrowed request and should be withheld.
3. Section 8(1)(i) does not apply to the responsive information withheld by the city.
4. I order the city to disclose the responsive information by **April 6, 2018** but not before **April 2, 2018**.

Original Signed by: _____
Hamish Flanagan
Adjudicator

February 27, 2018 _____