

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## INTERIM ORDER MO-3780-I

Appeal MA17-518

City of Ottawa

June 3, 2019

**Summary:** The appellant made a request to the city under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records related to a petition to change the parking regulations on his street. The city issued a decision granting the appellant partial access to the records. It relied on the mandatory personal privacy exemption found at section 14(1) of the *Act* to withhold some of the information. The appellant appealed the city's decision and also asserted that there should be additional responsive records that the city did not provide. During mediation, section 38(b) was added as an issue to the inquiry as the mediator noted that the records may also contain the appellant's personal information. The issue of reasonable search was also added.

In this order, the adjudicator finds that the section 38(b) exemption applies to the information at issue and upholds the city's exercise of discretion to withhold that information under section 38(b). However, the adjudicator finds that the city did not conduct a reasonable search for responsive records and she orders a further search.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1) definition of "personal information", 17 and 38(b).

**Orders Considered:** Orders M-580 and MO-3345.

### OVERVIEW:

[1] The City of Ottawa (the city) received a request from the appellant under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following:

Copy of petition and any other communications and/or documents produced and/or received by [named individual] and/or members of his organization in relation to parking on [street name].

[2] The individual named in the appellant's request was the city's Director of Traffic Services and the petition related to changes to parking restrictions on the appellant's street.

[3] The city issued a decision granting the appellant partial access to the records, which were comprised of emails and attachments, written correspondence and copies of a petition. The city withheld some of the information in the records pursuant to the mandatory exemption in section 14(1) (personal privacy) of the *Act*.

[4] The appellant appealed the decision and the parties attempted mediation, which resolved part of the appellant's request. At mediation, the mediator noted that the records appeared to also relate to the appellant and as a result, section 38(b) of the *Act* (discretion to refuse requester's personal information) was added as an issue to the appeal.

[5] During mediation, the appellant also told the mediator that he did not believe the city conducted a reasonable search for responsive records. The city agreed to conduct a further search for records, after which it issued a supplementary decision stating that it did not locate any further responsive records. In that supplementary decision, the city also decided to disclose a portion of the petition it had previously withheld.

[6] The appellant advised the mediator that he wished to pursue access to the remaining records at issue and also asserted his belief that additional records should still exist. Further mediation was not possible and the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*.

[7] An adjudicator commenced this inquiry by seeking representations from the city and an affected party. Both the city and the affected party provided representations. The affected party's representations were not shared with the appellant as they met the confidentiality criteria in *Practice Direction Number 7* of the IPC's Code of Procedure. The city's representations were shared with the appellant in full. The appellant was then provided a Notice of Inquiry and was invited to make representations in response to the matters set out in that notice and in the city's representations.

[8] The appeal was then transferred to me to continue the inquiry. With the consent of the appellant, I provided the city with a copy of his representations and invited it to make representations in reply. The city submitted a reply, which was sent to the appellant and he was offered an opportunity to provide a sur-reply. The appellant declined to make any further representations.

[9] In this order, I find that the discretionary personal privacy exemption at section

38(b) applies to the information at issue and I uphold the city's exercise of discretion to withhold that information. However, I find that the city did not conduct a reasonable search for responsive records and I order it to conduct a further search.

## **RECORDS:**

[10] There are 22 pages of records in total and portions of 10 of those pages are at issue. The information at issue is described in the following chart:

<b>Page Number(s)</b>	<b>Type of Record</b>	<b>Type of Information</b>
1, 2, 8, 9, 11,16, 18 and 19	Email chains	Names, emails addresses and the content of some emails.
7	Photograph attached to an email	A license plate number.
20	Petition	Names, signatures and votes for "agree" or "disagree."

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1)?
- B. Does the discretionary exemption at section 38(b) apply to the information at issue?
- C. Did the city conduct a reasonable search for responsive records?

## **DISCUSSION:**

### **Preliminary Matter**

[11] The city has severed portions of the records on pages 11, 18 and 19 and marked those sections with the word "Duplicate." The severed portions are emails that are parts of larger email chains. The emails that have been severed on these three pages also appear as part of different email chains on other pages in the records.

[12] Although the individual emails the city has marked as duplicate appear on other pages, the rest of the content on those pages is not the same. To be clear, the entire records themselves are not duplicates because the email chains are different.

[13] An institution cannot withhold information in a record on the basis that there is duplicate information in other records that have already been disclosed. The manner in

which the city has severed pages 11, 18 and 19 is unhelpful to a reader because although it has indicated that the portion of the email chain it has severed is a duplicate, the reader does not know which email in the balance of the records the severed portion duplicates and therefore the context for the remaining information on that page (i.e. the rest of the email chain) is lost.

[14] In order to sever a portion of an email chain, an institution must establish that an exemption in the *Act* applies to that information. As such, I find that the city may not withhold the portions of pages 11, 18 and 19 that it has marked as duplicate on the basis that those emails have been disclosed elsewhere in the records.

[15] However, where there is information in the portions of the emails marked duplicate that the city has withheld on other pages pursuant to an exemption under the *Act*, I will consider whether those specific portions must also be withheld under the *Act*.

**A. Do the records contain "personal information" as defined in section 2(1)?**

[16] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, whose. That term is defined in section 2(1) as follows:

"Personal information" is defined in section 2(1) of the *Act* as 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;

[17] 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.

[18] 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 dwelling and the contact information for the individual relates to that dwelling.

[19] 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>1</sup>

### ***The parties' representations***

[20] The city says that the information at issue is personal information, as defined under section 2(1) of the *Act*. It says that the personal information pertains to the individual residents who provided the information to the city, as well as other individuals whom those residents identify.

[21] The city submits that the information at issue consists of resident names and contact information, including personal email addresses. The city also says that the license plate number of the vehicle in the photograph on page 7 is also personal information.

[22] In addition to names and contact information, the city says that there is other information in the records that is likely to identify individuals who were communicating

---

<sup>1</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

with city staff and the Office of the Ward Councillor in respect of the parking issues on the street. As such, the city says this information constitutes identifying information of a personal nature under paragraph (h) of the definition of personal information in section 2(1) of the *Act*.

[23] The city submits that subsection 2(2.2) of the *Act* is not applicable because the information at issue pertains to individuals who were communicating in a personal rather than professional, official, or business capacity.

[24] The city concedes that the records may also include the personal information of the appellant, but it makes no further representations in that regard.

[25] The affected party says that the records at issue contains his personal information. Specifically, the affected party says the records contain his name, address, cell phone number, private email address and his correspondence with the city. He says his correspondence with the city includes his personal opinions that were provided to the city on a confidential basis.

[26] The appellant made no representations about whether the information at issue is personal information.

### ***Findings and Analysis***

[27] Based on my review of the records and the parties' representations, I find that the records contain the personal information of multiple individuals, including the affected party and the appellant.

[28] The information at issue on pages 1, 3, 8, 9, 11, 16, 18 and 19 contains the affected party's name, email address and his personal opinions about the subject matter of the petition, as well as information about things he said and did in relation to the matter at issue in the petition. I am satisfied that revealing this information would reveal something of a personal nature about the affected party.

[29] I find that the license plate the city severed from the photograph on page 7 also qualifies as personal information under paragraph (c) of the definition of personal information, as it is a number that was assigned to an individual identified in the records.

[30] The information at issue in the petition on page 20 is the names, addresses, signatures of residents on the street and their answers to the question posed in the petition. All of this information qualifies as personal information pursuant to paragraphs (d), (e) and/or (h) of the definition of personal information.

[31] Finally, although none of the parties made representations about whether the records contain the appellant's personal information, I find that they do. Previous orders from this office have established that the entire record should be examined when

determining whether a request for access should be addressed under Part 1 of the *Act*, where the mandatory section 14(1) personal privacy exemption is found, or Part II of the *Act*, which addresses requests for one's own personal information and where the discretionary personal privacy exemption at section 38(b) is found.<sup>2</sup>

[32] I have reviewed the records at issue and I am satisfied that they contain the appellant's personal information and as such, the discretionary personal privacy exemption at section 38(b) is the appropriate personal privacy exemption to consider.

**B. Does the discretionary exemption at section 38(b) apply to the information at issue?**

[33] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[34] Section 38(b) states:

A head may refuse to disclose to the individual to whom the information relates personal information,

If the disclosure would constitute an unjustified invasion of another individual's personal privacy;

[35] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.<sup>3</sup>

***Would disclosure be "an unjustified invasion of personal privacy" under section 38(b)?***

[36] Sections 14(1) to (4) provide guidance in determining whether disclosure of the information of the individuals other than the appellant would be an unjustified invasion of their personal privacy. If the information fits within any of paragraphs (a) to (e) of section 14(1) or paragraphs (a) to (c) of 14(4), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). None of the parties raised the application of any of the paragraphs in (a) to (e) of section 14(1) or

---

<sup>2</sup> See, for example, Orders MO-3408-I and M-352.

<sup>3</sup> See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's discretion under section 38(b).

(a) to (c) of 14(4) and I find that none apply.

[37] The next step this office considers when determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b) is to consider and weigh the factors and presumptions in section 14(2) and (3) and balance the interests of the parties.<sup>4</sup>

[38] 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.<sup>5</sup> None of the parties have raised any of these paragraphs and I find that none apply.

[39] Where none of the factors in section 14(3) apply, the next step is to consider the various factors in section 14(2) that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.<sup>6</sup> Four of the listed factors, if present, generally weigh in favour of disclosure, while five of the factors, if present, generally weigh in favour of non-disclosure.

[40] The list of factors under section 14(2) is not exhaustive. When making its decision, the institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).<sup>7</sup>

[41] Furthermore, since the section 38(b) exemption is discretionary, if an institution determines the information at issue is exempt after weighing the factors in 14(2), it may still decide to disclose the information to the requester. An institution must exercise its discretion in this regard. On appeal, the Commissioner may determine whether an institution has failed to do so.

[42] The Commissioner may find that the institution erred in exercising its discretion where, for example, it does so in bad faith or for an improper purpose, it takes into account irrelevant considerations, or it fails to take into account relevant considerations.

[43] This office may send the matter back to the institution for an exercise of discretion based on proper considerations, but it may not substitute its own discretion for that of the institution.

### ***The parties' representations***

[44] The city says that disclosure of any information identifying other individuals who

---

<sup>4</sup> Orders MO-2954 and MO-3408-I.

<sup>5</sup> Unless any of paragraphs (a) to (c) of section 14(4) apply. I have already concluded none of those paragraphs apply in this case.

<sup>6</sup> Order P-239.

<sup>7</sup> Order P-99.



communicated with city staff about the parking matters would constitute an unjustified invasion of those individuals' personal privacy.

[45] The city submits that none of the factors under section 14(2) weigh in favour of disclosure. It says that sections 14(2)(f) (the personal information is highly sensitive) and (h) (the personal information was supplied by the individual to whom the information relates in confidence) weigh in favour of non-disclosure.

[46] Regarding the application of section 14(2)(f), the city says that in a residential environment, identification of individual residents in this context may result in antagonism between residents and the appellant, and therefore disclosure of the information may cause other residents personal distress.

[47] In support of its assertion that section 14(2)(h) applies, the city submits that its practice is to keep the identity of complainants and residents who communicate their views in respect of local issues confidential.

[48] Finally, the city says that it severed the content of some of the email correspondence because the emails contained detailed information about the time and place that particular residents were present and/or fact specific concerns. The city asserts that because the appellant lives on the same street and has been engaged in the same issues that comprise the subject matter of the emails, he would be able to apply his knowledge of the events to identify the other residents who contacted the city staff, or others who were identified by the residents who contacted the city.

[49] The affected party also says that section 14(2)(h) applies to his correspondence with the city. The affected party says that he provided information to the city with the expectation that it would be treated confidentially and did not expect that the information would be released.

[50] The affected party also says that he collected information from other residents in relation to the petition in the records. He says that when gathering signatures, he advised the other residents that the information they provided would remain confidential between himself and the city.

[51] The appellant's representations with regard to the disclosure of the information at issue are brief. He specifies only that he can see no grounds as to why the severed information should be protected and states that a petition, by its very nature, is a public document from citizens putting forward a request to the city for specific services.

### ***Findings and Analysis***

[52] I do not agree with the city's assertion that section 14(2)(f) applies to the

information at issue. To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.<sup>8</sup> I accept that, given the proximity of the residents and events that unfolded surrounding the parking restriction changes, the disclosure of the information at issue may make the affected party and other residents uncomfortable; however, I have insufficient evidence to conclude that the disclosure of the personal information would cause any of the individuals significant personal distress.

[53] With regard to section 14(2)(h), previous orders from this office have stated that it will apply where both the individual supplying the information and the recipient had a reasonable expectation that the information would be treated confidentially.<sup>9</sup> Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.<sup>10</sup>

[54] In my view, the context and surrounding circumstances of the subject matter of the emails (and the attached photograph) are such that a reasonable person would expect that the personal information they supplied would be kept confidential by the city and not shared with other individuals outside of that institution.

[55] I accept the city's representation that its practice is to keep the identity of individuals who communicate their views and concerns about local issues confidential. I also accept the affected party's representation that he provided information to the city on a confidential basis and that they did not expect that information to be disclosed to others. As such, I find that section 14(2)(h) applies to the personal information in the emails and the photograph.

[56] Turning to the personal information in the petition, I note that petitions are not necessarily documents that have an aura of confidentiality.<sup>11</sup> However, as discussed by the adjudicator in Order M-580, there may be cases where, because of the sensitivity of the content of a petition, the requirements of a presumed unjustified invasion of privacy may be met.<sup>12</sup>

[57] In this case, I accept the affected party's representation that he informed the other residents that their information would be kept confidential when he collected the signatures. I also accept the city's representation that it intended to keep this information confidential.

[58] I find that the circumstances of this appeal are similar to Order MO-3345, where

---

<sup>8</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

<sup>9</sup> Order MO-2960.

<sup>10</sup> Order PO-1670.

<sup>11</sup> Order M-580.

<sup>12</sup> Order M-580.

an adjudicator concluded that section 14(2)(h) applied to individual's personal information in a petition that addressed local street parking issues. The adjudicator in that case was satisfied that the personal information in the petition was supplied by petition signees to the petition's creator, and the petition's creator to the city councillor's office, in confidence to address the street parking issues and that their expectations were reasonable in the circumstances. I make the same finding here.

[59] The appellant has not raised the possible application of any factors which would weigh in favour of disclosure of any of the information at issue. From my independent review of the records, I find that there are no factors favouring the disclosure of the information at issue in this case.

[60] Since there are factors weighing against disclosure, and there are no factors weighing in favour of disclosure, I find that the disclosure of the information at issue would be an unjustified invasion of personal privacy of the individuals to whom the information relates. As a result, the section 38(b) exemption applies to the information.

### ***Exercise of discretion***

[61] As noted above, the section 38(b) analysis requires that an institution exercise its discretion when determining whether information that qualifies for a personal privacy exemption may be disclosed to the appellant.

[62] In this case, the city said that although some of the information at issue contained the mixed personal information of both the appellant and others, it concluded that the information it withheld should not be disclosed due to the fact that it relates to matters which arose in a residential environment and that disclosing the information may result in antagonism between residents and the appellant and could cause residents personal distress.

[63] The city also specified that it considered whether disclosing the information to the appellant would be relevant to the determination of his rights and determined that would not be, particularly because the city had already provided him with a history of how the decision in question was made.

[64] The city also stated that it considered whether any additional severed information in the emails could be disclosed to the appellant. The city says it concluded that, given the appellant's familiarity with the issues and the parties involved, he may be able to identify the individuals that provided information to the city through the contents of the emails that the city has redacted.

[65] Based on my review of the city's representations I am satisfied that the city gave adequate consideration to whether the information at issue should be disclosed to the appellant. The reasons provided by the city for exercising its discretion to withhold the information are appropriate. I see no evidence that the city exercised its discretion in bad faith or for an improper purpose, that it took into account irrelevant considerations,

or that it failed to take into account relevant considerations.

[66] As a result, I conclude that the information at issue is exempt from disclosure pursuant to the discretionary exemption at section 38(b) of the *Act* and I uphold the city's exercise of discretion in choosing to withhold the information.

### **C. Did the city conduct a reasonable search for responsive records?**

[67] Where a requester claims additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.<sup>13</sup> If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[68] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.<sup>14</sup> A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.<sup>15</sup>

[69] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.<sup>16</sup>

#### ***City's Representations***

[70] The city says that it conducted a reasonable search for responsive records. In support of its representations, the city provided an affidavit from an analyst that details the steps it took to locate responsive records.

[71] The city submits that it retrieved records from the appropriate service area. The analyst says that the appellant specifically named the Director of the Traffic Services department in his request and asked for a copy of a petition and other documents related to parking on his street that were produced and/or received by staff in the director's organization. The analyst says that, based on that wording, the city concluded that the responsive records would be held by Traffic Services of the Transportation Services Department.

---

<sup>13</sup> Orders P-85, P-221 and PO-1954-I.

<sup>14</sup> Orders P-624 and PO-2559.

<sup>15</sup> Orders M-909, PO-2469 and PO-2592.

<sup>16</sup> Order MO-2246.

[72] The analyst says that the city located the petition and emails between residents, the Office of the Councillor, and By-law and Regulatory Services staff. The city also located a work order for the installation of signs on the street and identified it as responsive to the request.

[73] The analyst says that other records the appellant has asserted should have been provided, such as parking infractions, are not responsive because they were created by City By-law and Regulatory Services and not shared with Traffic Services.

[74] The analyst says that he conducted a second search during the mediation of this appeal. He says that he specifically instructed staff to search for documents relating to "site inspections" and "sign placement." He says he also contacted the Director of Traffic Services and verified that, to his knowledge, no further responsive records exist.

[75] The city says that the analyst's second search supports its assertion that the individuals who had access to the records and knowledge of the subject matter were provided with clear instructions on what documents to search for and that a reasonable search was conducted.

[76] The city submits that the *Act* does not require it to prove with absolute certainty that further records do not exist. It says its two searches were reasonable and that some of the information sought by the appellant does not exist. For example, it says that a site visit was not necessary because city staff have maps and street-view images of the street at hand. Similarly, the city asserts that the exact placement of signs need not be planned in detail by city staff as signs are regularly attached to existing city infrastructure such as light standards.

### ***The appellant's representations***

[77] The appellant says the content of records he has been provided suggests that further records should exist. Specifically, he says the following:

- On page one of the records a city staff member asks other city staff to provide information in relation to the city's enforcement activities with regard to parking on the street and no responses were included as part of the responsive records;
- On page two of the records a staff member was asked a question and no answer was provided as part of the responsive records;
- On page 19 of the records a staff member's email asks that another staff member "check the petition", but no further records regarding the "results of checking the petition" were provided as part of the responsive records; and
- A "cryptic comment" at the top of page 15 of the records suggests that further conversations were held, but that information was not provided as part of the responsive records.

[78] The appellant also says that a number of steps were required in order to modify the on-street parking regulations, including a review of collision records and a site check to identify safety issues and to consider operational needs. The appellant provided a copy of a letter he received from the General Manager of Transportation Services in support of his assertion that records relating to those steps should exist.

[79] The appellant also notes that "it is surprising" that none of the records provided by the city predate June 19, 2017 since he asked for records that preceded that date.

***The city's reply***

[80] The city says that the appellant's assertions that further records exist are speculative and do not constitute a reasonable basis for concluding that additional records exist.

[81] In response to the specific points raised by the appellant, the city submits that any records that were not received by the Traffic Services are not responsive to the request. The city says that the comments made by the Director of Traffic Services in the email at the top of page one of the records indicate that the role of Traffic Services was focused on the petition, whereas enforcement questions were directed to the By-law and Regulatory Services department.

[82] The city also refers me to the letter the appellant provided with his representations (the letter from the General Manager of Transportation Services) and says that it provides a complete overview of how the city processes petitions for changes to on-street parking regulations. The city disagrees with the appellant's assertion that the letter says that collision records must be reviewed.

[83] Specifically, the city says the letter references a determination of whether there are any "identifiable safety issues" on the street and states that if a resident's requested changes to on-street parking regulations can be supported from a traffic safety perspective with consideration to operational needs such as emergency services, snow clearing and waste removal, then the resident making the request is offered a petition to help achieve their objectives.

[84] The city says that the records provided to the appellant document the actions taken by Traffic Services from the beginning of their involvement up until the date of the request, including the petition itself, correspondence with local residents, and the issuance of a work order for installation of new signs.

[85] The city submits it is not unusual that further responsive records, such as studies or safety reports, do not exist given that the street in question was not a major road in the city but rather, a crescent in a suburb with detached homes on either side.

[86] Finally, the city submits that the steps taken to search for records support the conclusion that the persons who conducted the search were both experienced and

knowledgeable in the subject matter of the request and made a reasonable effort to locate records which were responsive to the request.

[87] The city's reply representations were sent to the appellant and he was provided an opportunity to make a sur-reply. The appellant declined to make any further representations.

### ***Findings and Analysis***

[88] Based on the evidence provided by the city and my review of the appellant's request and the records, I find that the city's interpretation of the scope of the appellant's request was reasonable.

[89] The appellant requested records produced or received by a named individual, or members of his organization. The city provided evidence that the named individual was the Director of Traffic Services and I agree that it is appropriate to interpret "members of his organization" to mean those employees working in the Traffic Services department. As such, I find that records that were not produced or received by the Director, or those individuals working within Traffic Services, are not responsive to the request.

[90] I further accept the city's assertion that Traffic Services' role focused on the petition and that questions related to parking enforcement were dealt with by another department.

[91] The appellant has pointed out a number of occasions where questions were posed in emails but no responses were provided. In my view, it is reasonable to assume that staff from other departments that answered questions that did not relate to duties or responsibilities of Traffic Services may not have included Traffic Services staff in their responses. I find that the appellant has not provided a reasonable basis for me to conclude that additional records of that nature may exist.

[92] However, I find that the appellant has established a basis to conclude that additional records may exist that predate those provided by the city to date. The appellant says that there should be records related to a number of steps the city was required to take to respond to a request to modify the on-street parking regulations. He argues that the letter supports his assertion that there should be additional responsive records related to the city's review of collision records and a "site check."

[93] The city "disagrees with the Appellant's characterization of the process" and says that the letter "does not reference a requirement that collision records be reviewed."

[94] I have reviewed the letter from the General Manager of Transportation Services and reproduce the relevant portions of the second paragraph here:

When a request for a change to on-street parking regulations is received, Traffic Services staff undertake a review of collision records and conduct a site check to determine if there are identifiable safety issues existing on the street in question. If safety issues are identified [...]. If no identifiable safety issues are present on the street, staff will review the resident's request to determine whether the change in regulation can be supported from a traffic safety perspective with consideration to operational needs such as emergency services, snow clearing and waste removal for example. If the requested safety changes can be supported, the resident making the request is offered a petition to help achieve their objectives. The resident then becomes the proponent of the petition process.

[95] In this letter, the General Manager clearly states that Traffic Services staff review collision records and conduct a site check before a resident is offered a petition.

[96] The earliest communication in the records is an email chain in which the petition is sent to the affected party. I agree with the appellant that, based on the General Manager's letter, it is reasonable to expect that Traffic Services undertook a number of steps prior to providing the affected party the petition and one would expect that there would be some records that relate to those steps.

[97] The appellant's request was for a copy of the petition, and any other communications and/or documents "in relation to parking" on the street. In my view, "in relation to parking" is broad enough to encompass the steps outlined in the letter that the General Manager says occur before a petition is provided to a resident proponent.

[98] As such, I find that the appellant has provided a reasonable basis to conclude that additional records may exist that predate what the city has provided. Accordingly, I find that the city has not met its search obligations under the *Act* and I order it to conduct further searches for any records in its custody or under its control that might be responsive to the request.

[99] These searches should include any communications or other records related to steps taken before the petition was provided to the resident proponent.

## **ORDER:**

1. I uphold the city's exercise of discretion to refuse to disclose the information it withheld pursuant to section 38(b).
2. I order the city to disclose the information marked "duplicate" on pages 11, 18 and 19 that is not subject to section 38(b). I have attached a highlighted copy of the records to the copy of this order that I am providing to the city, highlighting the exempt information that is not to be disclosed to the appellant on those



pages. I order the city to disclose the remaining information, which has not been highlighted, to the appellant.

3. I order that the city make the disclosure referred to in order provision 2 by **July 9, 2019** but not before **July 3, 2019**.
4. I order the city to conduct a further search for records responsive to the appellant's request.
5. I order the city to issue an access decision to the appellant regarding access to any records located as a result of the search ordered in provision 4, in accordance with the *Act*, treating the date of this order as the date of the request.
6. I order the city to provide representations on the new search referred to in provision 4 and to provide them to me, by **July 9, 2019**, with an affidavit outlining the following:
  - a. The names and positions of the individuals who conducted the searches;
  - b. Information about the types of files searched, the nature and location of the search, and the steps taken in conducting the search;
  - c. The results of the search;
  - d. Information regarding the outstanding matter referred to in paragraph 95 of this order.

The city's representations may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for submitting and sharing representation is set out in Practice Direction Number 7 of the IPC's *Code of Procedure* and is available on the IPC's website. The city should indicate whether it consents to the sharing of its representations with the appellant.

7. I remain seized of this appeal in order to deal with any other outstanding issues arising from order provisions 4 and 6 in this interim order.

Original Signed By: \_\_\_\_\_  
Meganne Cameron  
Adjudicator

\_\_\_\_\_ June 3, 2019