

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER PO-4490-I

Appeal PA21-00292

Metrolinx

February 26, 2024

Summary: Metrolinx received a six-part request under the *Act* for records relating to the Hurontario Light Rail Transit system. It issued a decision denying access, in full, to the records responsive to part 1 of the request, relying on section 14(1)(i) (security) of the *Act*. Metrolinx stated that there are no records responsive to the other parts of the request. At mediation, the issue of whether Metrolinx conducted a reasonable search for responsive records was added to the scope of the appeal. In this decision, the adjudicator upholds Metrolinx's decision to withhold the records under section 14(1)(i). She finds, however, that Metrolinx's search was not reasonable and orders it to conduct a further search for responsive records.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, sections 14(1)(i) and 24.

Orders Considered: Orders M-909, PO-2461 and PO-3475.

OVERVIEW:

[1] This appeal relates to the building of the Hurontario Light Rail Transit (LRT), an 18-kilometre transit line. The Hurontario LRT will have 19 stops, starting at Port Credit GO Station and traveling north on Hurontario to Brampton.

[2] The appellant is concerned about Metrolinx's proposed changes to traffic patterns and the difficult driving that would result from the new line. The appellant is also concerned about the ability of emergency medical services (EMS) being able to service

individuals and homes along certain roadways adjacent to the transit line.

[3] The appellant made a six-part request, under the *Freedom of Information and Protection of Privacy Act* (the *Act*), to Metrolinx for access to records relating to the Hurontario LRT, between Pinetree Way and Indian Valley, including current drawings, EMS sign offs, traffic study reports, and emails or other documents.

[4] Metrolinx issued a decision withholding access, in full, to the records responsive to part 1 of the request pursuant to section 14(1)(i) (security)¹ of the *Act*. Metrolinx advised that no records were found to be responsive to parts 2 to 6² of the request.

[5] The appellant appealed Metrolinx' decision to the Information and Privacy Commissioner of Ontario (the IPC).

[6] During mediation, the appellant stated that he believes records responsive to parts 2 to 6 exist. Subsequently, Metrolinx restated its decision that it has located all the responsive records in its custody and control and that no other records exist.

[7] Metrolinx also referred the appellant to relevant program areas to discuss the appellant's concerns with the LRT project. Following this meeting, the appellant stated that he continues to believe additional records should exist. As such, reasonable search was added to the scope of the appeal.

[8] As further mediation was not possible, this appeal was transferred to the adjudication stage of the appeal process, where I decided to conduct an inquiry under the *Act*. I invited and received representations from the parties.³

[9] For the reasons that follow, I find that that the records at issue are exempt under section 14(1)(i) of the *Act*. I also find that Metrolinx's search was not reasonable and order it to conduct another search.

RECORDS:

[10] The two records at issue are very detailed "blueprint" like engineering design documents. They consist of 11 pages of draft roadway drawings and 4 pages of trackwork drawings, totaling 15 pages (the drawings).

¹ Metrolinx also relied on sections 13(1) (advice or recommendation) and 18(1) (economic and other interests). As I found that the drawings are exempt under section 14(1)(i), it was not necessary for me to consider sections 13(1) and 18(1).

² I set out the appellant's complete request under parts 2 to 6 below under "Issue C" relating to my determination of the reasonableness of Metrolinx's search.

³ The parties' representations were shared in accordance with the confidentiality criteria in the IPC's *Practice Direction 7* and section 7.07 of the IPC's *Code of Procedure*.

ISSUES:

- A. Does the discretionary exemption at section 14(1)(i) related to law enforcement activities apply to the drawings?
- B. Did Metrolinx exercise its discretion under section 14(1)(i)? If so, should I uphold the exercise of discretion?
- C. Did Metrolinx conduct a reasonable search for records?

DISCUSSION:

Issue A: Does the discretionary exemption at section 14(1)(i) related to law enforcement activities apply to the drawings?

[11] Metrolinx opposes disclosure of the drawings based on section 14(1)(i) of the *Act*, which 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;

[12] Many of the exemptions listed in section 14 apply where a certain event or harm “could reasonably be expected to” result from disclosure of the record.

[13] Parties resisting disclosure of a record cannot simply assert that the harms under section 14 are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 14 are self-evident and can be proven simply by repeating the description of harms in the *Act*.⁴

[14] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.⁵ However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the

⁴ Orders MO-2363 and PO-2435.

⁵ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

information.⁶

[15] For section 14(1)(i) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to 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.

[16] Although this exemption is found in a section of the *Act* that deals primarily with law enforcement matters, it is not restricted to law enforcement situations. It can cover any building, vehicle, system or procedure that requires protection, even if those things are not connected to law enforcement.⁷

Parties' representations

[17] Metrolinx states that its security mandate includes critical infrastructure resilience. It submits that a public disclosure of documents that contain critical infrastructure information, such as engineering diagrams, structural diagrams, and related calculations that provide the arrangement or configuration of infrastructure of future or planned track alignments could become available to terrorist organizations or others with malicious intent who may stage an attack causing mass casualty and infrastructure loss.

[18] Metrolinx points out that Transport Canada generally recommends that for the protection of critical infrastructure details, such as the drawings at issue, be kept out of the public domain. It submits that this is particularly important for areas with high population density.

[19] Metrolinx submits that the appellant's motivation for requesting the records is irrelevant when considering its need to protect its transit system as disclosure to one person is disclosure to the world.

[20] Metrolinx relies on Order PO-2461, specifically the argument made by the institution in that appeal (the Ministry of Agriculture, Food and Rural Affairs) that "the current climate of domestic and international terrorism demands increased vigilance with regard to facility management issues such as security."⁸ It points out in Order PO-2461 the IPC upheld the ministry's decision to withhold the relevant records, recognizing the importance of vigilance.

[21] Metrolinx points out that Canada's national terrorism threat level is currently medium, which states a violent act of terrorism could occur. It also points out that rail transportation has previously been a target for terrorist attacks, for example the 2013

⁶ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

⁷ Orders P-900 and PO-2461.

⁸ See page 4 of Order PO-2461.

VIA Rail terrorism plot, which targeted the rail route between Toronto (Union Station) and New York.

[22] In response, the appellant submits that the drawings already exist in the public domain in preliminary form. He submits that disclosing a similar PDF extract of one page of a construction drawing has no significant cost. The appellant also submits that he is only seeking how much above or below the level of the existing road the LRT tracks will be placed for the area immediately in front of Hampshire Crescent. Specifically, he wants to know the elevation in front of Hampshire Crescent or accommodation for emergency vehicle for discussion purposes. He explains that he requires this information to be able to have an informed technical discussion about the alternatives Metrolinx could consider to accommodate existing traffic patterns.

[23] In addition, the appellant disagrees that his focused request for disclosure of 25 meters of curb height could be compared to the broad request for the city's water distribution system in Order PO-2461.

[24] In response to the appellant's concern with emergency vehicles accessing his community, Metrolinx submits that it previously communicated to the appellant that emergency services (including fire, police and EMS) will be permitted to cross the tracks at Hampshire Crescent in the case of an emergency because they will have regular communication with the Hurontario LRT operations and drivers, as is the case with other rail/transit infrastructure.

[25] In response to Metrolinx's statement that emergency services will be permitted to cross the tracks at Hampshire Crescent, the appellant submit that this new, untested system needs to be disclosed to the impacted residents. He submits that without supporting evidence, these claims cannot be evaluated and are not believable.

Analysis and findings

[26] As I stated above, parties resisting disclosure must show that the risk of harm is real and not just a possibility. However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information. The application of section 14(1)(i) is not limited to the law enforcement context and may be extended to any building, vehicle or system which *reasonably* requires protection.

[27] In this appeal, with regard for both the representations provided, as well as the content of the drawings themselves, I am satisfied that there is sufficient evidence to support a conclusion that disclosure of the drawings could reasonably be expected to endanger the security of a system, the Hurontario LRT system. For the following reasons, I find that the drawings are exempt under section 14(1)(i).

[28] As mentioned by Metrolinx in its representations, since September 11, 2001,

increased vigilance is the norm, not the exception for many countries, including Canada. Supporting this statement is that fact that Canada's national terrorism threat level is at medium, which means that a violent act of terrorism could occur.⁹ I accept Metrolinx's statements in this respect.

[29] In Order PO-3475, the adjudicator referenced the September 11, 2001 terrorist attacks when considering whether the record at issue, a lease and operating agreement between the Niagara Parks Commission (NPC) and an affected party (the agreement), should be withheld under section 14(1)(i). In that order, the NPC argued that a "vehicle" referred to in section 14(1)(i) includes boats such as those to be used in the boat tour operations at Niagara Falls. The NPC argued that disclosure of the portions of the agreement that have not been released, including the "Security Plan" in Schedule "C", would pose serious risks to the operations, property and interests of the NPC, the boat tour company, Canada and the United States, not to mention the lives and safety of the public and others who may be impacted by a breach of security of the boat tour operations. More specifically, disclosure of these portions would compromise the effectiveness of the security measures under the agreement and could reasonably be used by a would-be attacker, terrorist or other criminal to facilitate, plan, and/or carry out a breach of security, attack or infiltration of the boat tour operations.

[30] After accepting that Niagara Falls is a major tourist attraction, the adjudicator found that the evidence provided by the NPC Chair established that disclosure of certain information in Schedule "C" could reasonably be expected to pose a threat to the safety of boat tour company's employees or staff and/or the vessel's used by the boat tour company to transport passengers, and/or those passengers themselves.

[31] I agree with the approach and reasoning applied by the adjudicator in Order PO-3475, which led him to find that disclosure of certain information in Schedule "C" could reasonably endanger the security of the boats or its operations. I find it relevant to my consideration of the disclosure of the drawings before me. As such, I adopt it and apply it for the purpose of this appeal.

[32] In this appeal, the records at issue are described by Metrolinx as very detailed "blueprint" like engineering design documents. They are draft civil road works drawings and draft trackwork drawings of Indian Valley to Pinetree Way. On my review of the records, I agree with Metrolinx's description of them. As they are very detailed "blueprint" drawings, I also accept that they could be used by terrorist organizations or others with malicious intent who may stage an attack causing mass casualty and infrastructure loss. I accept that the 2013 VIA Rail terrorism plot is a clear example of individuals targeting rail transportation. As such, I find that the evidence provided establishes that disclosure of the drawings could reasonably be expected to result in the harms alleged in section

⁹ See [Canada's National Terrorism Threat Levels - Canada.ca](#), as referenced by Metrolinx in its representations.

14(1)(i).

[33] The IPC has found in previous orders that disclosing records to a requester is deemed to be disclosure to the world.¹⁰ The *Act* does not impose any restrictions or limits on what a requester can do with records disclosed to him or her. Consequently, it is not relevant that the appellant wants the drawings due to his concern for public safety, disclosing the drawings would move it into the public domain where it can be freely disseminated.

[34] I agree with the appellant that his access request is focused unlike the access request in Order PO-2461. However, it is not the nature of the access requests themselves that are relevant here, it is the content of the records. What I am considering in this appeal are 11 pages of draft roadway drawings and 4 pages of trackwork drawings related to the Hurontario LRT system. As indicated above, for similar reasons as set out by the adjudicator in Order PO-2461 (where he found that the five consulting engineer drawings and the project manual at issue in that appeal were exempt from disclosure under section 14(1)(i)), I find that disclosure of these drawings could reasonably be expected to give rise to the harm considered in section 14(1)(i).

[35] In addition, I accept Metrolinx's statement that it has previously communicated to the appellant that emergency services (including fire, police and EMS) will be permitted to cross the tracks at Hampshire Crescent/Polesden Drive¹¹ in the case of an emergency because they will have regular communication with the Hurontario LRT operators and drivers. I understand that the appellant is not satisfied with this statement, instead he demands evidence supporting it. On my review of the drawings, I accept Metrolinx's position that it has taken into account that emergency services will be permitted to cross the tracks at Hampshire Crescent/Polesden Drive.

[36] As a final note, I acknowledge the appellant's numerous comments about the disclosure of the drawings being in the public interest. However, the public interest override at section 23 of the *Act* does not apply to the section 14(1)(i) exemption.

[37] In sum, I find that the drawings are exempt under section 14(1)(i) of the *Act*, subject to my review of Metrolinx's exercise of discretion below.

Issue B: Did Metrolinx exercise its discretion under section 14(1)(i)? If so, should I uphold the exercise of discretion?

[38] The exemption in section 14(1)(i) is discretionary and permits an institution to disclose the information subject to the exemption despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

¹⁰ e.g., Orders P-169, P-679 and PO-3117.

¹¹ Hampshire Crescent and Polesden Drive is the same road.

[39] The IPC may find 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 fails to take into account relevant considerations. In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.¹² However, the IPC may not substitute its own discretion for that of the institution.¹³

[40] Metrolinx submits that it properly exercised its discretion. It submits that it considered the importance of the principles of an open and transparent government, public safety, and access for EMS. Metrolinx also submits that it continues to engage with the appellant (and community members in general), even prior to the receipt of the access request, to discuss their concerns and respond to their inquiries regarding the alignment of the Hurontario LRT. It also suggests that the Cities of Mississauga and Brampton may have more information about approvals or discussions related to track alignment and its potential impact to emergency services.

[41] In response, the appellant submits that Metrolinx has not acted in good faith. He states that Metrolinx explained that it had approval for the traffic changes but in a virtual meeting held in April 2022 members of the fire, ambulance and police services did not confirm that they had approved the traffic changes. The appellant also submits that Metrolinx has not acted in accordance with its obligations under the *Act* as it could easily provide, at least some of the information, but have chosen instead to stonewall all his inquiries.

[42] I will first address the appellant's allegation that Metrolinx acted in bad faith because it initially claimed to have approvals for the traffic changes but this claim was later identified as having been unconfirmed by the fire, ambulance and police services. I find that the appellant has not provided sufficient evidence to support his claims that Metrolinx acted in bad faith, in this respect.

[43] The appellant also alleges that Metrolinx did not meet its obligations under the *Act* as it could easily provide at least some of the information but it did not. Section 10(2) of the *Act* obliges the institution to disclose as much of any responsive record as can reasonably be severed without disclosing information which is exempt. From my review of the records, I accept that Metrolinx could not sever the drawings to disclose portions of them to the appellant as disclosure of any of the drawings could reasonably be expected to endanger the security of the system.

[44] Based on my review of Metrolinx's representations and the nature and content of the drawings, I find that Metrolinx properly exercised its discretion to withhold the drawings pursuant to the discretionary exemption at section 14(1)(i) of the *Act*. I note that Metrolinx considered the principles of an open and transparent government and

¹² Order MO-1573.

¹³ Section 43(2) of the *Act*.

public safety. I also found that Metrolinx considered the wording of the exemption and the interests it seeks to protect. I am satisfied that it did not act in bad faith or for an improper purpose. Accordingly, I uphold Metrolinx's exercise of discretion in deciding to withhold the drawings pursuant to the section 14(1)(i).

Issue C: Did Metrolinx conduct a reasonable search for records?

[45] The appellant claims that Metrolinx did not conduct a reasonable search for responsive records. The appellant's representations focus on the search relating to parts 4 and 5 but it is clear that he also takes issue with the search relating to parts 2, 3 and 6 of his request.

[46] 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 24.¹⁴ If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the Metrolinx's decision. If I am not satisfied, I may order further searches.

[47] The *Act* does not require Metrolinx to prove with absolute certainty that further records exist. However, the Metrolinx must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.¹⁵ 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 (responsive) to the request.¹⁶

[48] 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.¹⁷

[49] Parts 2 to 6 of the appellant's six-part request state the following:

...the records we are seeking regarding the Hurontario LRT, between Pinetree Way and Indian Valley in Port Credit

2. EMS sign offs, showing when and who authorized the plan to prevent left turns from Northbound Hurontario into Hampshire Crescent and left turns onto Northbound Hurontario from Hampshire Crescent.

3. A copy of the traffic study used as the basis for the decision to block access to Northbound Hurontario from Hampshire Crescent, including how long emergency vehicles will be delayed by the limited access.

¹⁴ Orders P-85, P-221 and PO-1954-I.

¹⁵ Orders P-624 and PO-2559.

¹⁶ Orders M-909, PO-2469 and PO-2592.

¹⁷ Order MO-2246.

4. Emails or other documents detailing alternative access configurations for Hampshire Crescent and Hurontario, including any versions that preserved the option of residents and emergency vehicles turning onto northbound onto Hurontario from Hampshire Crescent;

5. Emails or other documents that express doubts or concerns of Metrolinx staff, or outside experts, including correspondence with the City of Mississauga, on the impact on the Residents of Hampshire Crescent and Polesden Drive caused by the turning restrictions on the only access available to us;

6. Emails or other documents that address any doubts or concerns of Metrolinx staff, or outside experts, including correspondence with the City of Mississauga, on the increase in road traffic on Hurontario since the last traffic study used to justify the planned changes to Hurontario below the QEW interchange.

Parties' representations

[50] With respect to part 2 of the request, Metrolinx explains that it located one record from a meeting in February 26, 2020 between Metrolinx, Mobilinx¹⁸ and EMS but this record did not contain or discuss a sign off as requested by the appellant. As such, Metrolinx submits that it determined this record was not responsive to the request.¹⁹

[51] In addition, Metrolinx explains that it was communicated to the appellant that EMS sign-off and obligations fall under municipal jurisdictions and therefore would have been acquired by the Cities of Mississauga and Brampton earlier during the design stage of the process, which preceded its ownership of the project in 2015. It opines that any EMS sign offs are likely to be in the custody or control of the municipalities and not with Metrolinx.

[52] With respect to part 3 of the request, Metrolinx explains that it provided two links to reports commissioned by the Cities of Mississauga and Brampton, as they relate to the topic of traffic studies.

[53] With respect to part 4 of the request, Metrolinx explains that it took ownership of the project in 2015, after the general alignment, including the turning restrictions at the intersection in question, had already been finalized. As such, Metrolinx submits that it does not have any records in its custody or control detailing alternate configurations.

[54] With respect to part 5 of the request, Metrolinx submits that its staff confirmed

¹⁸ Mobilinx was the successful bidder for the Hurontario LRT project. As the winning bidder, Mobilinx is responsible for designing, building, financing, operating, and maintaining the new transit project for a 30-year term. All of this information about Mobilinx is from Metrolinx's representations.

¹⁹ The appellant does not argue that this record is responsive to his request.

that there are no records expressing the doubts or concerns of Metrolinx staff, or outside experts, including correspondence with the City of Mississauga, on the impact to the residents of Hampshire Crescent and Polesden Drive.

[55] With respect to part 6 of the request, Metrolinx states that its staff confirmed that there are no records responsive to this part of the request.

[56] In response, with respect to part 2, the appellant submits that Metrolinx claimed to have approvals from the emergency services for the traffic changes but have not provided proof of this. He argues that during the virtual meeting in April 2022 members of the Fire, Ambulance and Police services did not confirm that they had approved of the traffic changes.

[57] The appellant submits that emails or other documents exist for part 4 of his request. He submits that a named councillor had asked and continues to ask that residents of Hampshire/Polesden be able to use the same left turn facility as is now proposed for emergency vehicles. The appellant submits that the named councillor's correspondence and Metrolinx's reply to it would be responsive to part 4. He submits that these discussions have occurred since 2015.

[58] The appellant also submits that Metrolinx's statement that there are no records responsive to part 5 is non-credible. However, he does not elaborate or provide additional information about his position in this issue.

[59] In its reply, Metrolinx explains that with respect to part 5 it is not denying a discussion with the named councillor took place on February 18, 2020. It explains the record for this meeting is not responsive to the request because it does not express concerns of Metrolinx staff or outside experts, regarding the left turn restriction at Hampshire Crescent.²⁰

[60] In his sur-reply, the appellant submits that having uncovered documentation from the office of the named councillor, where he raised questions about whether EMS could access Hampshire/Polesden, Metrolinx should disclose it as it is relevant to his request.

Analysis and findings

[61] Having carefully reviewed the representations before me, I am not satisfied that the search conducted by Metrolinx was reasonable.

[62] In Order M-909, the adjudicator made the following finding with respect to the obligation of an institution to conduct a reasonable search for records:

²⁰ At paragraphs 13 to 14 of Metrolinx's reply representations, Metrolinx refers to paragraph 36 of its representations in which it addressed part 5 of the request.

In my view, an institution has met its obligations under the *Act* by providing experienced employees who expend a reasonable effort to conduct the search, in areas where the responsive records are likely to be located. In the final analysis, the identification of responsive records must rely on the experience and judgment of the individual conducting the search.

[63] I agree and adopt the approach taken in the above-noted order for this appeal.

[64] In my view, Metrolinx's representations lack details about when the search was conducted, what places were searched, and what types of files were searched. It is also unclear who conducted the search and whether this employee had experience in conducting searches, besides their position with Metrolinx and how long they were/are in that position.

[65] As stated above, the *Act* does not require Metrolinx to prove with certainty that responsive records do not exist for parts 2 to 6 of the request, but it does require Metrolinx to provide *sufficient* evidence to demonstrate that it has made a reasonable effort to identify and locate responsive records within its custody or control. In the circumstances of this appeal, I do not find that Metrolinx has provided sufficient evidence that it has made such reasonable efforts. Accordingly, I do not uphold Metrolinx's search as reasonable and will order it to conduct further searches for records responsive to parts 2 to 6 and to provide further evidence of the efforts it made in conducting its search.

[66] Finally, I note that the appellant raises the issue of what records are responsive to his request. In particular, he argues that the record about the February 18, 2020 meeting between the named councillor and Metrolinx is responsive to his request. I note that Metrolinx argues that it this record is not responsive to his request.

[67] To be considered responsive to the request, records must "reasonably relate" to the request.²¹ Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, this should be resolved in the requester's favour.²²

[68] I have reviewed the meeting minutes for the February 18, 2020 meeting (the record in question)²³ and find that the withheld portions are not responsive to the appellant's request. The responsive portions of this record have been disclosed to the appellant.²⁴

[69] In sum, I find that Metrolinx has not conducted a reasonable search for records relating to parts 2 to 6 of the request. I order it to conduct further searches for records

²¹ Orders P-880 and PO-2661.

²² Orders P-134 and P-880.

²³ A copy of this record was attached as Appendix 1 to Metrolinx's reply representations.

²⁴ The appellant received a copy of Metrolinx's reply representations and Appendix 1 when I invited him to provide sur-reply representations.

responsive to parts 2 to 6 and to provide further evidence of the efforts it made in conducting its search.

ORDER:

1. I uphold Metrolinx's decision to withhold the drawings under section 14(1)(i).
2. I order Metrolinx to conduct further searches for the records responsive to parts 2 to 6 of the request. I order Metrolinx to provide me with an affidavit sworn by the individual or individuals who conduct the searches within 21 days of the date of this Interim Order. At a minimum, the affidavit should include information relating to the following:
 - a. information about the employee(s) swearing the affidavit describing his or her qualifications and responsibilities;
 - b. the date(s) the person conducted the search and the names and positions of any individuals who were consulted;
 - c. information about the record holdings searched, the nature and location of the search, and the steps taken in conducting the search;
 - d. the results of the search;
 - e. if as a result of the further searches it appears that no responsive records exist, a reasonable explanation for why such records would not exist.
3. The affidavit referred to in the above provision should be forwarded to my attention, c/o Information and Privacy Commissioner of Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8. The affidavit provided to me will be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in *IPC Practice Direction 7*.
4. If Metrolinx finds additional records in its further searches or if it does not find additional records, I order Metrolinx to issue an access decision in accordance with the *Act*. For the purposes of section 26, 29 and 30 of the *Act*, the date of this order shall be deemed to be the date of the request.

Original Signed by: _____
Lan An
Adjudicator

February 26, 2024 _____