

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER MO-3176-I

Appeal MA12-508

City of Markham

March 30, 2015

Summary: The appellant sought access to specified reports relating to the proposal for the construction of an arena in the city. The city located four records that were responsive to the request and it issued a decision denying access to them in their entirety. The city relied on the discretionary exemptions in sections 6(1)(b) (closed meeting), 7 (advice or recommendations), 11(a), (c), (d) and (e) (economic and other interests) and 12 (solicitor-client privilege), and the mandatory exemption in section 10(1)(a) (third party information) of the *Act* to deny access. The appellant appealed the city's decision to this office and raised the possible application of the public interest override in section 16 of the *Act*. In this interim order, the adjudicator finds that while some records are covered by a discretionary exemption, the city must reconsider its discretionary exemption claims. If the city decides to withdraw its objections to disclosure, the adjudicator will issue a final decision on whether mandatory exemptions apply.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 6(1)(b) and 12; *Municipal Act, 2001*, S.O. 2001, c.25, sections 239(1)(c) and 239(3.1).

Cases Considered: *Ontario (Attorney General) v. Big Canoe*, [2006] O.J. No. 1812 (Div. Ct.). *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23, reversing 2007 ONCA 32, which reversed (2004) 70 O.R. (3d) 332 (Div. Ct.). *St. Catharines (City) v. Ontario (Information and Privacy Commissioner)*, 2011 ONSC 2346 (Div. Ct.).

OVERVIEW:

[1] The appellant, a representative of a ratepayers association, made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the City of Markham (the city) for access to a copy of two specified reports relating to the proposed Markham Sports Entertainment and Cultural Centre (the GTA Centre).

[2] In response to the access request, the city identified four responsive records and issued an access decision denying the appellant access to them in their entirety. The city relied on the mandatory exemption in section 10(1)(a) (third party information), and the discretionary exemptions in sections 6(1)(b) (closed meeting), 7 (advice or recommendations), 11(a), (c), (d) and (e) (economic and other interests), and 12 (solicitor-client privilege) of the *Act* to deny access. The city provided the appellant with an index of records which identified each record and the corresponding exemptions claimed.

[3] The appellant was not satisfied with the city's decision. She appealed the decision to this office on the grounds that the city is entering into a public/private partnership with a very high cost, and the public has a right to know what is in the reports.

[4] During the mediation stage of the appeal, the city clarified that records 1 and 2 listed in the index that accompanied its access decision should include the application of section 12 of the *Act* as stated in its access decision. In addition, the appellant confirmed that she wishes to raise the possible application of the public interest override in section 16 of the *Act* as an issue in the appeal.

[5] A mediated resolution was not possible and the file was forwarded to the adjudication stage of the appeal process for a written inquiry under the *Act*. The adjudicator who was originally assigned to this appeal sought and received representations from the city and the appellant. The city provided confidential representations in addition to representations that it agreed to share with the appellant. The adjudicator shared the representations she received with the parties in accordance with section 7 of this office's *Code of Procedure and Practice Direction Number 7*.

[6] The appeal and related Appeal MA13-261, were then transferred to me for final determination.

[7] In the meantime, there have been a number of developments which have significant bearing on the appeal:

- The city decided not to proceed with the GTA Centre proposal.

- Information relating to the city's plan for the GTA Centre has been published in the media; this is in addition to the information previously disclosed by the city about the proposal.
- Information relating to this appeal and to related Appeal MA13-261 has been published in the media.
- The city informed this office that a motion before City Council (Council) to have all of the records at issue in this appeal and in related Appeal MA13-261 disclosed to the public was defeated on the basis that the *Act* prohibits disclosure.

[8] In light of these developments, I have decided to issue this interim order addressing some of the issues in this appeal and reserving my decision on other issues pending further representations from the city, including additional representations on its exercise of discretion to apply certain discretionary exemptions to the records.

[9] I have also decided to notify a number of third parties about the appeal and invite their representations on the possible application of the mandatory third party information exemption in section 10(1) of the *Act* to the records. These third parties have not been notified in this appeal, in part, due to the city's position during the appeal that regardless of whether the third parties consented to disclosure, the city would still withhold the records under the various discretionary exemptions it has claimed. However the city's communications with this office indicate that the circumstances of the appeal appear to have changed and it is necessary to provide these third parties an opportunity to make representations on disclosure. As a result, concurrent with this order requiring the city to re-exercise its discretion with respect to its decision to withhold the records under the discretionary exemptions in sections 6(1)(b), 7, 11(a), (c), (d) and (e) and 12 of the *Act*, I will be seeking representations from the affected third parties regarding the possible application of section 10(1) to the records.

RECORDS:

[10] The records at issue in this appeal as set out in the index provided by the city are the following:

Record	# of Pages	General Description	Sections Applied
1*	27	Report – Summary dated January 2011 prepared by Firm 1 (*record 1 is a draft version of record 2, and is contained in its entirety within record 2)	6(1)(b), 7, 10(1)(a), 11(a), (c), (d) and (e), and 12

2	42	Report dated January 2011 prepared by Firm 1	6(1)(b), 7, 10(1)(a), 11(a), (c), (d) and (e), and 12
3	4	Opinion Letter and Report dated February 27, 2012, prepared by Firm 2	6(1)(b), 7, 10(1)(a), and 11(a), (c), (d) and (e)
4	2	Report Presentation dated April 12, 2012, prepared by Firm 2	6(1)(b), 7, 10(1)(a), and 11(a), (c), (d) and (e)

ISSUES:

- A. Does the discretionary exemption at section 12 apply to records 1 and 2?
- B. Does the discretionary exemption at section 6(1)(b) apply to records 3 and 4?
- C. Was the city's exercise of discretion proper in the circumstances?

DISCUSSION:

A. Does the discretionary exemption at section 12 apply to records 1 and 2?

[11] The city submits that records 1 and 2, the draft and final version respectively of a report entitled "Town of Markham – Markham Arena Opportunity" prepared by a consultant, are solicitor-client privileged records exempt from disclose under section 12 of the *Act*. Section 12 states:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

[12] Section 12 contains two branches. Branch 1 ("subject to solicitor-client privilege") is based on the common law. Branch 2 ("prepared by or for counsel employed or

retained by an institution...”) is a statutory privilege. The city submits that both branches of section 12 apply to records 1 and 2.

Branch 1: common law solicitor-client communication privilege

[13] At common law, solicitor-client privilege encompasses solicitor-client communication privilege and litigation privilege; only solicitor-client communication privilege is relevant in this appeal.

[14] Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice.¹ The rationale for this privilege is to ensure that a client may freely confide in his or her lawyer on a legal matter.² The privilege covers not only the document containing the legal advice, or the request for advice, but information passed between the solicitor and client aimed at keeping both informed so that advice can be sought and given.³ The privilege may also apply to the legal advisor’s working papers directly related to seeking, formulating or giving legal advice.⁴

[15] Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication.⁵ The privilege does not cover communications between a solicitor and a party on the other side of a transaction.⁶

[16] Under the common law, solicitor-client privilege may be waived. An express waiver of privilege will occur where the holder of the privilege

- knows of the existence of the privilege, and
- voluntarily demonstrates an intention to waive the privilege.⁷

[17] An implied waiver of solicitor-client privilege may also occur where fairness requires it and where some form of voluntary conduct by the privilege holder supports a finding of an implied or objective intention to waive it.⁸

¹ *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

² Orders PO-2441, MO-2166 and MO-1925.

³ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).

⁴ *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.

⁵ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

⁶ *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.).

⁷ *S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (S.C.).

⁸ *R. v. Youvarajah*, 2011 ONCA 654 (CanLII) and Order MO-2945-I.

[18] Generally, disclosure to outsiders of privileged information constitutes waiver of privilege.⁹ However, waiver may not apply where the record is disclosed to another party that has a common interest with the disclosing party.¹⁰

Branch 2: statutory solicitor-client communication privilege

[19] Branch 2 is a statutory privilege that applies where the records were “prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.” The statutory and common law privileges, although not identical, exist for similar reasons. Like the common law solicitor-client communication privilege, this privilege covers records prepared for use in giving legal advice. Only the head of an institution may waive the statutory privilege in section 12.¹¹

Representations

[20] The city submits that records 1 and 2 are privileged under both the common law and statutory branches of the exemption because they were prepared for the city solicitor, who is counsel employed by the city, for giving legal advice. The city explains that the city solicitor retained the consultant who prepared records 1 and 2 to provide the information contained in the records to permit her to provide the city with legal advice on the terms of potential contracts between it and private sector parties. The city states that the city solicitor has advised it that the records are subject to solicitor-client privilege and that only Council may waive the privilege by first passing a motion to do so. The city submits that the solicitor-client privilege in records 1 and 2 has not been lost through waiver.

[21] In her representations, the appellant states that the city is in the process of waiting to hear back from an independent lawyer on whether records 1 and 2 should be released. She submits that the city solicitor has publicly stated that these records can be released but has nonetheless advised against the release. The appellant contends that the city solicitor should protect residents’ interests and not the interests of the proponent of the GTA Centre who, she asserts, submitted inaccurate information to the city which should not be kept confidential. She also suggests that there is a conflict of interest since the proponents of the GTA Center who want to operate it, are the ones who provided information on the viability of the proposal to the city; this information was then used by Firm 1 in the preparation of the report in record 2. The appellant also alleges that the city solicitor is not acting at “arms-length” to protect taxpayers. The appellant’s position is that the city should exercise its discretion to disclose all of the requested records, including those for which it has claimed solicitor-client privilege.

⁹ J.Sopinka et al., *The Law of Evidence in Canada* at p. 669; Order P-1342, upheld on judicial review in *Ontario (Attorney General) v. Big Canoe*, [1997] O.J. No. 4495 (Div. Ct.).

¹⁰ *General Accident Assurance Co. v. Chrusz*, cited above; Orders MO-1678 and PO-3167.

¹¹ See *Ontario (Attorney General) v. Big Canoe*, [2006] O.J. No. 1812 (Div. Ct.). (*Big Canoe*)

[22] In its reply representations, the city addresses the assertions of the appellant by stating that they raise no justifiable grounds on which to find that the city has not properly applied the solicitor-client privilege exemption. The city argues that the appellant's statement about the city solicitor publicly stating the reports can be released is factually incorrect. The city states that its solicitor never provided the advice alleged by the appellant and the appellant should know this because she was present at the meeting of Council on February 12 and 13, 2013, when the city solicitor advised Council that:

[W]hile there were eight grounds in the [Act] for a discretionary refusal of disclosure, there were also grounds that prohibited disclosure. In fact, [the Act] prohibits disclosure of a number of the records and I so advised Council of the Corporation more than once.

[23] The city provides an affidavit sworn by the city solicitor that sets out the excerpt above at paragraph 4. The city also notes that the city solicitor does not represent the taxpayers or the residents of the city; she is responsible for protecting the interests of the city and providing advice to the Council and city staff. This is repeated in the city solicitor's affidavit. The city states that the appellant's representations question its approach to the GTA Centre proposal and its exercise of decision-making powers under the *Municipal Act, 2001*.¹² It states that these arguments of the appellant can be alternatively construed as pertaining to the public interest override at section 16 of the *Act*, which does not apply to the solicitor-client privilege exemption in section 12. The city concludes by stating that its representations along with the city solicitor's affidavit conclusively substantiate its claim that the exemption at section 12 applies to records 1 and 2.

[24] In her affidavit, the city solicitor states that she retained the consultant who authored the report in records 1 and 2 to provide the information contained in the requested records, to permit her to provide her client, the city, with legal advice pertaining to negotiations with a third party for a potential legal contract.

Analysis and findings

[25] The evidence I have before me on this issue is an affidavit sworn by the city solicitor, affirming that she retained the consultant who authored records 1 and 2 to provide her with the information contained in these records so that she would be able to advise the city on contractual negotiations. I also have a copy of an engagement letter from the consultant who authored the records, sent to the city solicitor's attention; this letter supports the city solicitor's contention that she retained the consultant. The statutory solicitor-client communication privilege stands on its own and

¹² S.O. 2001, c.25. (*Municipal Act*)

applies if records 1 and 2 meet the description in the second branch of section 12. As found by the Divisional Court in *Big Canoe*¹³, which considered the provincial counterpart to section 12 of the *Act*:

Where through FIPPA, documents are sought which fit the description in the second branch of section 19, the question of whether they are, or ever were, privileged at common law is not the test. The test is the definition in the section.

[26] I am bound to follow the ruling of the Divisional Court in this appeal. Section 12 permits the city to claim statutory solicitor-client communication privilege in respect of a record "that was prepared . . . for counsel employed . . . by an institution for use in giving legal advice." The sworn evidence of the city solicitor is that records 1 and 2 were prepared for her, by the author, for use in giving legal advice. I accept the affidavit evidence of the city solicitor. I find that the statutory solicitor-client communication privilege under branch 2 of the exemption applies to records 1 and 2, and as a result of this finding, I need not consider the application of the common law solicitor-client communication privilege.

[27] Because the section 12 exemption is a discretionary one, the city may exercise its discretion to disclose a record to which section 12 applies. In this regard, I note the appellant's submissions on why records 1 and 2 should be disclosed in the circumstances of this appeal. Although the city is correct in stating that section 12 is not subject to the application of the public interest override in section 16 of the *Act*, public interest considerations do nonetheless properly form part of an institution's exercise of discretion in applying section 12. Accordingly, I will direct the city to re-exercise its discretion with respect to its decision to withhold records 1 and 2 in this appeal.

[28] Having found that, subject to the city's re-exercise of its discretion, records 1 and 2 qualify for exemption under section 12, I will not at this time consider the possible application of the other discretionary exemptions (sections 6(1)(b), 7 and/or 11) raised by the city for these records. However, this order requires the city to re-exercise its discretion to apply all of these discretionary exemptions to the records in this appeal.

B. Does the discretionary exemption at section 6(1)(b) apply to records 3 and 4?

[29] The closed meeting exemption in section 6(1)(b) reads:

A head may refuse to disclose a record,

¹³ *Supra* note 11, at para 46.

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

[30] For this exemption to apply, the institution must establish that

1. a council, board, commission or other body, or a committee of one of them, held a meeting
2. a statute authorizes the holding of the meeting in the absence of the public, and
3. disclosure of the record would reveal the actual substance of the deliberations of the meeting.¹⁴

[31] The first and second parts of the test for exemption under section 6(1)(b) require the institution to establish that a meeting was held by the institution and that it was properly held *in camera*.¹⁵ In determining whether there was statutory authority to hold a meeting *in camera* under part two of the test, the question to ask is whether the purpose of the meeting was to deal with the specific subject matter described in the statute authorizing the holding of a closed meeting.¹⁶

[32] With respect to the third requirement set out above, section 6(1)(b) is not intended to protect records merely because they refer to matters discussed at a closed meeting. Rather, it specifically requires that disclosure of the record would reveal the actual substance of deliberations which took place at the *in camera* meeting, not merely the subject of the deliberations.¹⁷ Previous orders of this office have found that:

- “deliberations” refer to discussions conducted with a view towards making a decision¹⁸; and
- “substance” generally means more than just the subject of the meeting.¹⁹

¹⁴ Orders M-64, M-102 and MO-1248.

¹⁵ Order M-102.

¹⁶ *St. Catharines (City) v. Ontario (Information and Privacy Commissioner)*, 2011 ONSC 2346 (Div. Ct.).

¹⁷ Orders MO-1344, MO-2389 and MO-2499-I.

¹⁸ Order M-184.

¹⁹ Orders M-703 and MO-1344.

[33] Section 6(2) of the *Act* sets out exceptions to section 6(1). It reads, in part:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,

- (a) in the case of a record under clause (1)(a), the draft has been considered in a meeting open to the public;

Representations

[34] The city submits that section 6(1)(b) applies to all of the records and refers to a number of meetings held by Council or a committee of Council which discussed the records. In particular, it refers to two specific General Committee meetings and two specific Council meetings as closed meetings relating to all of the records.

[35] The city submits that the meetings above were held in the absence of the public when the records were the substance of discussions or deliberations of Council or the committee of Council, and states that these meetings were closed to the public in accordance with sections 239(1)(c) and 239(3.1) of the *Municipal Act*, which state:

Meetings open to public

239(1) Except as provided in this section, all meetings shall be open to the public.

Exceptions

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

- (c) a proposed or pending acquisition or disposition of land by the municipality or local board;

Educational or training sessions

(3.1) A meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:

1. The meeting is held for the purpose of educating or training the members.
2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

[36] In order to determine whether the exemption in section 6(1)(b) applies to records 3 and 4, one of the issues I must decide is whether the purposes of the closed meetings were to deal with the specific subject matter described in the relevant provisions of section 239 of the *Municipal Act* relied on by the city. In particular, I must determine whether the subject matter being considered at these meetings was the proposed or pending acquisition or disposition of land by the city as permitted by section 239(c) of the *Municipal Act*, or for the purpose of educating or training the members as permitted by section 239(3.1) of the *Municipal Act*. If I find that the city had the authority to proceed *in camera*, the decision of the Divisional Court in *St. Catharines* then requires me to review the records to determine whether or not portions of them, which relate to other matters, can nevertheless be ordered disclosed on the basis that they do not qualify for exemption under section 6(1)(b) of the *Act*.

[37] However, prior to conducting such a review, I note that neither the city nor the appellant was given the opportunity to address a section of the *Municipal Act* which may have a significant bearing on my decision regarding the application of section 6(1)(b). Specifically, section 239(9) of the *Municipal Act*, which states:

Record may be disclosed

(9) Clause 6(1)(b) of the *Municipal Freedom of Information and Protection of Privacy Act* does not apply to a record of a meeting closed under subsection (3.1).

[38] The city relies on section 239(3.1) of the *Municipal Act* as the reason for which two particular council meetings were closed to the public (the meetings of April 12 and 16, 2012). The city states that all of the records relate to those meetings. Section 239(9) of the *Municipal Act* states that the section 6(1)(b) exemption of the *Act* does not apply to a record of a meeting closed under section 239(3.1) of the *Municipal Act*.

[39] The possible application of section 239(9) of the *Municipal Act* and the impact it may have on my findings regarding the application of section 6(1)(b) of the *Act* to the records before me, has not been identified as an issue in this appeal. Because the city has not addressed this issue and because of the significant impact this section may have on my findings, I will reserve my decision on the application of section 6(1)(b) to the records at issue and will invite the city and the appellant, by separate correspondence, to provide specific representations on what impact, if any, section 239(9) of the *Municipal Act* may have on the section 6(1)(b) issue before me.

[40] Before inviting further representations on section 6(1)(b) from the parties, I will order the city to re-exercise its discretion to withhold the records under the various discretionary exemptions it has claimed, including the closed meeting exemption in section 6(1)(b), in accordance with the considerations listed below. If the city chooses

to re-exercise its discretion and disclose the records, then it need not provide representations on the possible impact of section 239(9) of the *Municipal Act*.

C. Was the city's exercise of discretion proper in the circumstances?

[41] The sections 6(1)(b), 7, 11 and 12 exemptions are discretionary and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so. In addition, 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,
- it fails to take into account relevant considerations.

[42] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.²⁰ This office may not, however, substitute its own discretion for that of the institution.²¹

[43] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:²²

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information

²⁰ Order MO-1573.

²¹ Section 54(2).

²² Orders P-344 and MO-1573.

- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

[44] In its representations, the city submits that it considered the principles of the *Act* and the purpose of each of the discretionary exemptions when exercising its discretion to withhold the records. It also submits that it considered the nature of the information and that the GTA Centre commercial transaction has not yet been completed, and that there is no compelling need to disclose the records and no compelling interest in records that apply to a commercial transaction between the city and private parties.

[45] The appellant's position is that there is a strong public interest in full disclosure of the records at issue. She states that the taxpaying residents of Markham paid in excess of \$500,000 for the reports at issue in this appeal and thus, they have a compelling need to have all the information pertaining to the GTA Centre released. The appellant criticizes the city's actions and asserts that it did not conduct any due diligence on the GTA Centre proposal prior to signing an agreement with the proponent. She states that Council's role as set out in section 224 of the *Municipal Act* is to represent the public and to consider the well-being and interests of the municipality, and to ensure the accountability and transparency of the municipality. On this basis she asserts that the principles of open, transparent and accountable government should be respected and the city should exercise its discretion to disclose the records. In related Appeal MA13-261, the appellant makes an additional argument on the city's exercise of discretion which applies to this appeal as well. She states that the GTA Centre proposal has been abandoned and the records at issue in both Appeal MA13-261 and the present appeal are now obsolete and they should be disclosed.

[46] To begin, I note that one of the factors the city considered in deciding to exercise its discretion to deny access under the discretionary exemptions is its position that there is "no compelling interest in records that apply to a commercial transaction between the city and private parties." Given the nature and magnitude of the

commercial transaction being considered, and the statement by the Supreme Court of Canada that the public interest may be a factor to consider when an institution is exercising its discretion in deciding whether or not to apply an exemption,²³ I find that the city failed to take into account a relevant consideration in exercising its discretion; specifically, the possible public interest. On this basis alone, I would have required the city to re-exercise its discretion, taking into account this factor.

[47] However, as identified above, since this appeal was transferred to me, there have been a number of developments which have significant bearing on the appeal. They include the city's decision not to proceed with the GTA Centre which would appear to preclude the possibility of any future negotiations or contracts; the publication of information about the city's plan for the GTA Centre; the publication of information about this appeal and about related Appeal MA13-261; and the motion before Council in February 2015 to have all of the records at issue in this appeal and in related Appeal MA13-261 disclosed to the public, and the defeat of this motion on the basis that the *Act* prohibits disclosure.

[48] In the circumstances of this appeal, I find that these factors are also relevant considerations and should be considered by the city in exercising its discretion to apply the discretionary exemptions in section 6, 7, 11 and 12. Accordingly, I will order the city to re-exercise its discretion to apply each of these sections to the records for which they are claimed, taking into account the factors set out above.

INTERIM ORDER:

1. I order the city to re-exercise its discretion to deny access to the records under sections 6(1)(b), 7(1), 11(a), (c), (d) and (e) and 12 in accordance with the factors set out above, and to advise the appellant and this office of the result of this re-exercise of discretion, in writing no later than **April 22, 2015**.
2. If, after re-exercising its discretion, the city continues to withhold all or part of the records on the basis of any or all of the discretionary exemptions listed, I order it to provide the appellant and this office with an explanation of the basis for exercising its discretion to do so no later than **April 22, 2015**.
3. If, after re-exercising its discretion, the city decides to disclose any or all of these records, it may not disclose until I have addressed the possible application of the mandatory section 10(1) claim to those records.

²³ *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23, reversing 2007 ONCA 32, which reversed (2004) 70 O.R. (3d) 332 (Div. Ct.).

4. I remain seized of this appeal in order to address any outstanding issues as set out in this interim order.

Original Signed By: _____

Stella Ball
Adjudicator

March 30, 2015 _____