

ORDER MO-1514

Appeal MA-010026-4

Regional Municipality of Peel



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NATURE OF THE APPEAL:

The Regional Municipality of Peel (the Region) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all files relating to the following municipal infrastructure projects:

1. Etobicoke Creek Sanitary Trunk Sewer - Contract 2, Region of Peel Project 99-2960;
2. Etobicoke Creek Sanitary Trunk Sewer crossing Burnhamthorpe Road (sewer was constructed approximately 25 years ago).

The Region located a large number of responsive records and granted access to many of them, in whole or in part. The Region denied access to other records, or portions of records, claiming the application of the following exemptions contained in the *Act*:

- closed meeting - section 6(1)(b);
- advice or recommendations – section 7(1);
- third party information – section 10(1);
- economic or other interests – section 11;
- solicitor-client privilege – section 12;
- invasion of privacy – section 14(1).

The requester, now the appellant, appealed the Region's decision to deny access to the records and indicated his belief that additional records responsive to both parts of his request should exist. Another appeal involving the same request was resolved by Order MO-1459-F in which I upheld the Region's decision to charge a fee for the cost of preparing the records for disclosure and photocopying the records.

During the mediation of the appeal, the Region supplied the appellant and this office with an Index describing the records and the exemptions applied to each. The Index simply listed the records by date, along with their origin and the exemptions claimed to apply to them. Copies of the records were provided to this office as well, but only after the appeal was moved to the Adjudication stage.

I decided to seek the representations of the Region initially, as it bears the burden of proving that the exemptions claimed for each record, in fact, apply. The Region made representations in response to the Notice of Inquiry which I provided to it. I decided to deny the appellant access to the representations of the Region due to my concerns about confidentiality. The appellant, in turn, made submissions in response to the Notice, which were shared with the Region. At the same time, I invited the Region to make representations on the application of section 12 to the records as this exemption had been omitted from the original Notice due to an oversight. Both the Region and the appellant provided me with representations on the application of section 12. The Region also made brief reply submissions to me with respect to certain issues raised by the appellant in his representations with respect to the adequacy of the Region's search.

In its submissions, the Region revised its position with respect to the application of the exemptions claimed for some of the records. The Region has withdrawn its reliance on the discretionary exemption in section 6 to Records 122 and 124. It continues to rely on the application of the exemptions in sections 11(a), (c), (d) and (e) for Record 122, however. The Region also indicates that it is no longer relying on the application of the following exemptions for the following records:

- section 7(1) to Records 153, 177, 183, 184, 186, 219, 232 and 234;
- section 10(1) for 90, 91, 93, 98, 101, 102, 112, 118, 153, 177, 183, 184, 186, 190 and 200;
- section 11 to Records 73-74, 86, 90, 91, 93, 96, 100, 105, 106, 110, 111, 123, 125, 152 to 155, 160, 164, 177, 179, 182 to 186, 190, 200, 213, 214, 215, 226, 227, 233, 234 and 235;
- section 12 to Records 83, 89, 94, 103, 115, 157, 158, 168, 169, 171, 172, 175, 181, 183, 190, 192, 194, 196, 197, 199, 201, 203, 204, 209, 212, 215, 217, 236, 242 and 244;
- section 14(1) for Records 193, 195, 204, 206 and 217;

The Region continues to assert that “litigation privilege” applies to Records 180, 210, 224, 225, 230, 237, 238, 241, 243, and 248, based on the solicitor-client privilege exemption in section 12.

As a result, the Region has withdrawn its reliance on the exemptions in the *Act* for Records 90, 91, 93, 96, 100, 101, 102, 105, 106, 110, 123, 125, 152, 153, 154, 155, 157, 160, 164, 168, 169, 177, 179, 182, 183, 184, 185, 190, 192, 193, 194, 195, 200, 203, 212, 213, 215, 219, 226, 227, 232, 233, 234, 235, 236 and 242. I have examined each of these documents and have concluded that no mandatory exemptions apply to them. As a result, they will be ordered disclosed to the appellant.

The records at issue in this appeal consist of the documentation maintained by the Region during the course of the sewer construction project including various invoices, meeting minutes, correspondence, memoranda and contracts.

DISCUSSION:

THIRD PARTY INFORMATION

The Region has claimed the application of the third party information exemption in section 10(1) to a number of the records at issue. I have reviewed these documents, as well as a number of the other responsive records and have concluded that it is necessary for me to seek the submissions of certain third parties whose interests may be affected by the disclosure of these records. I note that the Region chose not to give this notification under section 21 of the *Act*.

Because some of the records may contain information which falls within the ambit of the section 10(1) third party information exemption, I am required to notify these parties in order to afford them the opportunity to make representations on the possible application of this exemption to the records. Section 10(1) is a mandatory exemption and the principles of natural justice demand that I hear from these parties before making a decision regarding access to records containing information which may relate to them.

I will seek the representations of a number of potentially affected third parties whose information is contained in Records 1-72, 81, 85, 87, 89, 101, 102, 103, 104, 108, 113, 126 to 151, 157, 158, 163, 169, 171, 173, 174, 177, 178, 181, 183, 190, 196, 198, 199, 201, 202, 206, 216, 217, 229, 231, 232, 234, 245 and 245(b) and, upon receiving the representations of these parties on the possible application of section 10(1) to the records, I will issue a further decision respecting access to these records.

ECONOMIC AND OTHER INTERESTS

The Region has claimed the application of one or more of sections 11(a), (c), (d), (e) and (g) of the *Act* to Records 1 to 72, 73, 74, 75, 76-80, 81, 82, 83, 84, 85, 87, 89, 92, 94, 97, 98, 103, 104, 107, 108, 109, 112, 113, 114, 115, 116, 117, 118, 119, 121, 122, 126-151, 159, 162, 163, 165, 166, 171, 172, 173-176, 178, 180, 181, 187-189, 196, 197-199, 201, 202, 204, 206, 208, 210, 216, 217, 220-223, 229, 230, 231, 245 and 248. These sections state:

A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to an institution and has monetary value or potential monetary value;
- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;
- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution;
- (g) information including the proposed plans, policies or projects of an institution if the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;

The Section 11 Exemption in General

Broadly speaking, section 11 is designed to protect certain economic interests of institutions covered by the *Act*. Sections 11(c), (d) and (g) all take into consideration the **consequences** which would result to an institution if a record was released. They may be contrasted with sections 11(a) and (e) which are concerned with the **type** of the record, rather than the consequences of disclosure. [Order MO-1199-F]

In Order PO-1747, Senior Adjudicator David Goodis stated:

The words “could reasonably be expected to” appear in the preamble of section 14(1), as well as in several other exemptions under the [provincial *Freedom of Information and Protection of Privacy*] Act dealing with a wide variety of anticipated “harms”. In the case of most of these exemptions, in order to establish that the particular harm in question “could reasonably be expected” to result from disclosure of a record, the party with the burden of proof must provide “detailed and convincing” evidence to establish a “reasonable expectation of probable harm” [see Order P-373, two court decisions on judicial review of that order in *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 at 40 (Div. Ct.), and *Ontario (Minister of Labour) v. Big Canoe*, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)].

These findings apply equally to section 11(c), (d) or (g) of the municipal Act, which both include the phrase “could reasonably be expected to”. Accordingly, in order to establish the requirements of either of these exemptions, the Region must provide “detailed and convincing” evidence to establish a “reasonable expectation of probable harm” as described in those sections.

Section 11(a)

In order to qualify for exemption under section 11(a), the Region must establish that the information:

1. is a trade secret, or financial, commercial, scientific or technical information; and
2. belongs to an institution; and
3. has monetary value or potential monetary value [Orders 87, PO-1763 and PO-1921].

In Order M-654, Adjudicator Holly Big Canoe stated with respect to part 3 of the test for exemption under section 11(a):

The use of the term “**monetary value**” in section 11(a) requires that the information itself have an intrinsic value. The purpose of section 11(a) is to permit an institution to refuse to disclose a record which contains information where circumstances are such that disclosure would deprive the institution of the monetary value of the information . . . [emphasis in original].

In Order PO-1763, [upheld on judicial review in *Ontario Lottery and Gaming Commission v. Ontario Information and Privacy Commissioner* (April 25, 2001), Toronto Doc. 207/2000 (Ont. Div. Ct.)] Senior Adjudicator David Goodis reviewed a number of past orders of the

Commissioner's office regarding the interpretation applied to the phrase "belongs to" in section 18(1)(a) of the provincial *Act*. He held that:

With reference to the meaning of the phrase "belongs to", Assistant Commissioner Tom Mitchinson stated in Order P-1281:

The Ministry submits that the database, the data elements, and the selection and arrangement of the data in the database belong to the Government of Ontario or an institution. The Ministry argues that the term "belongs to" in section 18(1)(a) denotes a standard less than ownership or copyright, but does not clearly articulate what the standard is or how it is applicable here. If these words do mean "ownership", the Ministry argues that, quite apart from any consideration of copyright, it has ownership by virtue of its right to possess, use and dispose of the data as outlined in the various statutes authorizing its collection, retention and use under the [Ontario Business Information System (ONBIS)] system, as well as by virtue of its physical possession of the database and its control of the access and use of the ONBIS system.

I do not accept these submissions. In my view, the fact that a government body has authority to collect and use information, and can, as a practical matter control physical access to information, does not necessarily mean that this information "belongs to" the government within the meaning of section 18(1)(a). While the government may own the physical paper, computer disk or other record on which information is stored, the *Act* is specifically designed to create a right of public access to this information unless a specific exemption applies. The public has a right to use any information obtained from the government under the *Act*, within the limits of the law, such as laws relating to libel and slander, passing off and copyright, as discussed below.

If the Ministry's reasoning applied, all information held by the government would "belong to" it and, presumably, the rights to use information belonging to government could be restricted for this reason alone...

Similarly, in his earlier Order P-1114, the Assistant Commissioner stated:

Individuals, businesses and other entities may be required by statute, regulation, by-law or custom to provide information about themselves to various government bodies in order to access services or meet civic obligations. However, it does not necessarily follow that government bodies acquire legal ownership of this information, in the sense of having copyright, trade mark or

other proprietary interest in it. Rather, the government merely acts as a repository of information supplied by these external sources for regulatory purposes.

The Assistant Commissioner has thus determined that the term “belongs to” refers to “ownership” by an institution, and that the concept of “ownership of information” requires more than the right to simply to possess, use or dispose of information, or control access to the physical record in which the information is contained. For information to “belong to” an institution, the institution must have some proprietary interest in it either in a traditional intellectual property sense - such as copyright, trade mark, patent or industrial design - or in the sense that the law would recognize a substantial interest in protecting the information from misappropriation by another party. Examples of the latter type of information may include trade secrets, business to business mailing lists (Order P-636), customer or supplier lists, price lists, or other types of confidential business information. In each of these examples, there is an inherent monetary value in the information to the organization resulting from the expenditure of money or the application of skill and effort to develop the information. If, in addition, there is a quality of confidence about the information, in the sense that it is consistently treated in a confidential manner, and it derives its value to the organization from not being generally known, the courts will recognize a valid interest in protecting the confidential business information from misappropriation by others. [See, for example, *Lac Minerals Ltd. v. International Corona Resources Ltd.* (1989), 61 D.L.R. (4th) 14 (S.C.C.), and the cases discussed therein].

Application of the Section 11 Exemptions to the Records at Issue

The Region has made only generalized submissions with respect to the application of these exemptions to Records 1 to 72, 75, 92, 104, 107, 108, 112, 116, 117, 119, 126-151, 159, 163, 173-176, 178, 180, 181, 187-189, 196, 202, 202, 206, 208, 216, 217, 220-223, 229, 231 and 245 as follows:

These records are primarily financial in nature. They include purchase orders, purchase requisitions, payment summaries, reimbursement requests, invoices, invoice summaries, payment applications, payment certificates, monthly estimates, daily work records, stipulated price contracts, time charge sheets, expense summaries, change orders and similar documents. All contain cost data and/or unit prices or summaries of unit prices.

As such, the Region is claiming section 11(a), (c) and (d) exemptions with respect to these records in that the documents reveal financial or commercial or scientific information that either belongs to the Region or has been provided to it by a contracting party in confidence.

As confidential financial information, its disclosure could reasonably be expected to prejudice the economic or financial interests or competitive position of the Region or its contracting parties.

In my view, the Region has failed to provide me sufficient information for me to conclude that the information contained in Records 1-72, 75, 92, 104, 107, 108, 112, 116, 117, 119, 126-151, 159, 163, 173-176, 178, 180, 181, 187-189, 196, 202, 206, 208, 216, 217, 220-223, 229, 231 and 245 qualifies as information which has monetary or potential monetary value. I would agree, based on my review of these documents, that they contain financial, commercial and in some cases technical information for the purposes of section 11(a). I find that the Region has not demonstrated that the information in these documents either belongs to it or that the information has monetary or potential monetary value. As such, I conclude that section 11(a) has no application to them.

I also find that the Region has not provided me with sufficient evidence to substantiate a finding that the disclosure of the information contained in Records 1-72, 75, 92, 104, 107, 108, 112, 116, 117, 119, 126-151, 159, 163, 173-176, 178, 180, 181, 187-189, 196, 202, 206, 208, 216, 217, 220-223, 229, 231 and 245 could reasonably be expected to prejudice the economic interests or competitive position of the Region, as contemplated by section 11(c). Similarly, I find that I have not been provided with sufficient evidence for me to determine that the disclosure of the information contained in these records could reasonably be expected to be injurious to the financial interests of the Region under section 11(d). Beyond the simple assertion that such harm is reasonably likely to occur, the Region has not indicated how such harm might, in fact, be reasonably expected to flow from its disclosure.

Accordingly, I find that the information contained in Records 1-72, 75, 92, 104, 107, 108, 112, 116, 117, 119, 126-151, 159, 163, 173-176, 178, 180, 181, 187-189, 196, 202, 206, 208, 216, 217, 220-223, 229, 231 and 245 is not exempt from disclosure under sections 11(a), (c) or (d). No other exemptions have been claimed for Records 1-72, 75, 92, 126-151, 159, 163, 173, 174, 176, 181, 188, 189, 202, 206, 216, 220, 222, 223, 229, 231 and 245.

However, I am of the view that the mandatory exemption in section 10(1) may apply to some or all of these records. Accordingly, I will delay my decision respecting access to these records pending the notification of, and the taking of representations from, those individuals and corporations whose interests may be affected by the disclosure of the information which they contain.

The Region has made more specific, detailed representations on the application of the section 11(a), (c), (d), (e) and (g) exemptions to a number of other records. I will review the submissions pertaining to each record and determine whether the appropriate exemption claimed for it applies.

Records 76-80

The Region submits that each of these records, which are addenda to its contract with the construction company responsible for the work in which the appellant's client was engaged, are exempt under sections 11(a) and (e). It indicates that these records "constitute commercial and/or scientific and/or technical and/or financial information that belongs to the institution and

has inherent or potential monetary value” and that the records “pertain to positions or instructions relating to the Region’s negotiations with [the construction firm].”

Based on this submission and my own review of the contents of Records 76-80, I am not satisfied that the information has any monetary or potential monetary value. The Region has not demonstrated to me what value may be ascribed to this information or that the information “belongs” to it. Consistent with my findings above, I agree that the information may qualify as technical or financial information but I am not satisfied, based on the evidence provided to me and my own review of the records, that it has any monetary or potential monetary value. In addition, I find that section 11(e) has no application as I have been provided with no evidence to indicate that the information contained in the records represents any of the Region’s positions or instructions to be applied in any negotiations carried on by the Region. Rather, the records detail the agreement reached between the parties to the contract with respect to the payment of certain changes to the work performed.

Record 81

Record 81 is a 99 page contract entered into between the Region and the general contractor for the construction of a sanitary trunk sewer. The Region claims the application of sections 11(a), (c), (d) and (e) to the total bid prices for the competing vendors included in the tender documents which form part of the contract. In my view, as this information was provided to the Region by the submitting bidders, it is more appropriate that it be addressed in my discussion of section 10(1), which will follow in a subsequent decision after I have the opportunity to hear from the affected third parties whose information is included in this document. This information is specifically listed in several “Schedules of Unit Prices” which are attached to the contract documents as section FT-4.

Records 82 and 83

Records 82 and 83 are agreements entered into between the City and the owners of property adjoining the sewer construction project granting a right-of-way and a permanent easement to the Region for the work to be performed. The Region claims the application of section 11(a), arguing that these records contain confidential commercial and financial information belonging to the Region which has potential or inherent monetary value. The Region has not, however, explained the monetary value to it of the information contained in these records. I find that it has not provided me with sufficient evidence to make a finding that the information either belongs to the Region or that it has some potential or inherent monetary value. As such, I find that section 11(a) has no application to these records.

Record 84

The Region submits that Record 84 is exempt under section 11(g) as it contains proposed plans for the construction of a trail in the vicinity of the area where the contracted work is to be performed. It then goes on to make submissions respecting the nature of the undue financial benefit which may accrue to certain persons should the information contained in this record be

prematurely disclosed. I am unable to describe in any further detail the type of financial benefit referred to in the Region's submissions as to do so would reveal the contents of this record.

Based on the submissions of the Region, I am satisfied that the premature disclosure of the contents of Record 84 could reasonably be expected to result in an undue financial benefit to a person and this document is properly exempt from disclosure under section 11(g).

Records 85 and 89

Records 85 and 89 consist of two copies of a 26-page agreement between the Region and a landowner of property adjoining the work site involved in this construction project. The agreement addresses certain easements granted to the Region by the landowner. The Region claims the application of sections 11(a), (c), (d) and (e) to this record as it contains confidential financial, and/or financial information that belongs to the Region and has inherent or potential monetary value and that it "indicates the Region's negotiating position with respect to this agreement.

I have reviewed the agreement which comprises Records 85 and 89 and find that I have not been provided with sufficient evidence to demonstrate that it has either any inherent or potential monetary value. While the agreement contains certain terms which may meet the definition of "financial" or "commercial" information, I cannot agree that they have any value, *per se*. Similarly, I find that the Region has failed to satisfy me that the disclosure of this agreement could reasonably be expected to prejudice its economic interests or competitive position, as contemplated by section 11(c) or be injurious to its financial interests under section 11(d).

Finally, I find that section 11(e) has no application. Because the agreement was entered into over two years ago, it cannot be said that the record contains positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by the Region. The negotiation of the agreement was completed in December 1999, and I have not been provided with any evidence that they are ongoing or may be re-opened in the future.

Record 87

Record 87 is a 63-page proposal prepared by a firm of Landscape Architects with regard to a proposed trail to be constructed near the site of the sewer project. This proposal is best dealt with under my discussion of section 10(1) which will follow in a subsequent order upon my receipt of submissions from its creators.

Records 94 and 103

Records 94 and 103 consist of two letters of requisition prepared by a Region conveyancer for counsel for two landowners prior to the closing of the real estate transaction for the transfer of an easement in certain lands. Record 94 is part of the transaction which is reflected in the agreements listed at Records 85 and 89. The Region takes the position that sections 11(a) and (e) are applicable as the record discloses confidential commercial information including the

negotiating position of the Region and that this information has inherent or potential monetary value which belongs to it.

Based on my review of the record, I cannot agree that it contains information which has any inherent or potential monetary value. The Region has not provided me with sufficient information to enable me to make such a finding. Similarly, the Region's representations are not sufficiently detailed to make out the possible application of section 11(e) to this record and the letter of requisition itself does not make this evident. Accordingly, I find that these exemptions do not apply to exempt Records 94 and 103 from disclosure.

Records 97 and 98

The Region objects to the disclosure of portions of these records, claiming that they include copies of an invoice which contains financial information belonging to the Region which has inherent or potential monetary value. It has provided no evidence to indicate why this information is valuable, however, and it is not apparent from its face. I find that section 11(a) has no application to this portion of Records 97 and 98.

The Region also objects to the disclosure of a portion of certain minutes of a pre-construction meeting held on November 29, 1999. In particular, the Region claims that the contents of paragraph 26 of these minutes, which address certain contract revisions, are exempt under sections 11(c), (d) and (e) because their disclosure "could reasonably be expected to prejudice the economic/financial interests or the negotiating position of the Region and/or its contracting partners."

Again, I find that the Region has not provided me with sufficient evidence to demonstrate that the disclosure of this particular information could reasonably be expected to result in the harms contemplated by sections 11(c), (d) or (e). Nor is it apparent from the face of the record how such harm could reasonably be expected to flow from the disclosure of this information. As a result, these exemptions do not apply to Records 97 and 98.

Record 109

This document is a letter dated November 8, 1999 from the consultants retained by the Region to the Region's Manager of Design and Construction regarding certain changes to the contract prior to commencement of work. The Region claims that the information contained in this record "constitutes confidential advice" and that it contains financial, commercial, scientific and/or technical information that belongs to the Region and has inherent or potential monetary value, within the meaning of section 11(a). It also submits that the disclosure of this information could reasonably be expected to "prejudice the Region's financial/economic interests as well as its negotiating position particularly with respect to future contract negotiations with others" as contemplated by sections 11(c), (d) and (e).

There is nothing on the face of the record or in the representations of the Region which would enable me to make a finding that this information has some monetary value, or potential monetary value. Accordingly, I find that section 11(a) has no application to Record 109. In addition, I find that I have not been provided with sufficient evidence to determine that the

disclosure of the information in Record 109 could reasonably be expected to result in the harms contemplated by sections 11(c), (d) or (e).

As no other exemptions have been claimed for this information and no mandatory exemptions apply to it, I will order that it be disclosed to the appellant.

Records 113 and 114

These documents consist of addenda to the construction contract dated November 1, 1999 relating to certain technical changes in the engineering of the sewer itself and to a contract between the Region and the City of Mississauga. In my view, the Region's submissions, which are identical to those made with respect to Record 109, are not sufficiently detailed or convincing to allow me to make a finding that sections 11(a), (c), (d) or (e) apply. Based upon my review of the contents of the records and the Region's representations, I find that these exemptions do not apply to Records 113 and 114.

Records 115 and 122

Record 115 is a letter with attachments sent by staff with the Region's Property Services Department to a landowner respecting the acquisition of certain easements by the Region. The attachments include a draft Offer to Sell and Agreement of Purchase and Sale which does not include such pertinent information as the price to be paid for the easements. Record 122 is an earlier version of the draft agreement provided by the Region to the landowner. The Region has simply repeated its earlier submissions regarding the application of sections 11(a), (c), (d) and (e) but has not indicated why these exemptions apply to these particular records.

Again, I must find that I am unable to uphold the Region's decision to deny access to these records based on the exemptions in section 11. I have not been provided with any basis to do so in the submissions of the Region and the contents of the records themselves do not make out their application either.

Record 118

Record 118 is a set of minutes dated August 30, 1999 from a meeting between representatives of the Region and the consultant engineers held on August 27, 1999. The Region appears to object to the disclosure of this record on the basis that mention is made of the status of certain negotiations which were then underway with a landowner adjacent to the construction project for the granting of easements to the Region. The Region has again claimed the application of sections 11(a), (c), (d) and (e) to this record.

I find that, based on the representations of the Region, which simply re-state the language of the exemptions, and my review of the record itself, these exemptions do not apply to Record 118. The negotiations referred to took place over two and a half years ago and have long since been completed. I have not been provided with any evidence to substantiate a finding that Record 118 contains positions, plans, procedures, criteria or instructions to be applied to any negotiations

carried on by the Region. I find that the section 11 exemptions claimed do not apply to Record 118.

Record 121

Record 121 is a set of Terms of Reference dated July 7, 1999 and provided by the City of Mississauga to a consultant with respect to a review of a proposed trail. In my view, this record does not reasonably relate to the appellant's request, however broadly framed it is. The appellant's request sought access to records relating to the sewer construction project. Record 121 describes a completely separate, yet to be undertaken, project for the construction of a walking trail in the vicinity of the sewer project lands. In my view, Record 121 does not relate in any tangible way to the request as framed and is not, accordingly, reasonably related to it.

Record 162

The Region submits that section 11(a) applies to Record 162. This document, a sketch received by the Region from the City of Mississauga, indicates the location of the sanitary sewer. The region submits that because the record makes reference to the location of the sanitary sewer, it has inherent or potential monetary value. Based on my review of the record, I disagree and find that Record 162 is not exempt under section 11(a). As no other exemptions have been applied to this record and no mandatory exemptions apply, I will order that it be disclosed to the appellant.

Records 165 and 166

These documents were created during the course of construction and relate to certain claims for damages advanced by a landowner adjacent to the sewer project. The Region has again simply re-stated the wording of the exemptions in sections 11(a), (c), (d) and (e). I find that I have not been provided with sufficient evidence to substantiate a finding that any of these exemptions apply to these records, nor is there anything on their face which would give rise to such a finding.

As no other exemptions have been claimed for these records and no mandatory exemptions apply, I will order that they be disclosed to the appellant.

Records 171 and 172

These documents relate to a dispute between the Region and one of the projects contractors with respect to a deduction of a sum from a payment advance by the Region by way of liquidated damages, in accordance with the provisions of the construction contract. The Region has not provided me with any evidence beyond a simple re-statement of the section 11 exemptions to substantiate a finding that any or all of the sections 11(a), (c) (d) or (e) exemptions apply to these records.

I adopt this interpretation placed on the meaning of the phrase "belongs to" from section 11(a) taken from Order PO-1763 [and referred to above] for the purposes of the present appeal. In my view, it cannot be said that the information contained in Records 171 and 172 "belongs to" the

Region as contemplated by section 11(a). Similarly, I find that I have not been provided with sufficient evidence to enable me to make a finding that sections 11(c), (d) or (e) apply to this information. The Region has failed to demonstrate how the disclosure of the information could reasonably be expected to result in any of the harms contemplated by sections (c) or (d) and has not satisfied me that these records contain the types of information outlined in section 11(e). Accordingly, in my view, none of the section 11 exemptions apply to the information contained in Records 171 and 172.

I find that as section 11 does not apply, and since no other exemptions have been claimed for these records and no mandatory exemptions are applicable, I will order that they be disclosed to the appellant.

Records 197-199, 201 and 206

Each of these documents relates to various claims for deficiencies and items pertaining to contract completion by various companies involved in the sewer construction project. The Region has not made any submissions with respect to the manner in which the sections 11(a), (c), (d) and (e) exemptions claimed apply to this information beyond re-stating the wording in the exemptions. Again, for the reasons stated above, I find that these exemptions do not apply to Records 197-199, 201 and 206. As no other exemptions have been claimed for these records, and no mandatory exemptions apply to them, I will order that they be disclosed to the appellant.

Records 210 and 230

The Region submits that these records constitute or refer to a confidential report regarding geotechnical conditions with respect to the sewer tunnel and, as such, it contains commercial, scientific and/or technical information that belongs to the Region and has inherent or potential monetary value. Based on my review of Record 210, I conclude that it contains both scientific and technical information, belonging to the Region. I further conclude that this information has inherent monetary value as it describes in very detailed terms the nature of the study undertaken and the conclusions which its authors reached. The cost of re-producing this study would be very great and that this record has inherent monetary value. I find, therefore, that section 11(a) applies to exempt Record 210 from disclosure. Record 230 contains no such information, however, as it only makes reference to the existence of Record 210. Record 230 is not, therefore, exempt under this exemption.

Record 248

The Region objects to the disclosure of the cover sheet of Record 248 on the basis that it contains information relating to instructions from the project's consultant to another firm regarding the monitoring of work on the sewer tunnel construction. I find that the cover page to Record 248 contains instructions which were intended to be applied to negotiations or discussions relating to a dispute between the tunnelling contractor and the Region with respect to payment for what the contractor felt to be unforeseen difficulties in completing its work. As such, the information contained in the cover page falls within the ambit of section 11(e) and is exempt under that section.

In summary, I find that Record 84 is exempt under section 11(g), that Record 121 is not responsive to the request, that Record 210 is exempt under section 11(a) and the cover page to Record 248 qualifies for exemption under section 11(e).

SOLICITOR-CLIENT PRIVILEGE

The Region claims the application of the solicitor-client exemption in section 12 of the *Act* to various responsive records.

Section 12 encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. In order for section 12 to apply, the institution must establish that one or the other, or both, of these heads of privilege apply to the records at issue.

Solicitor-client communication privilege

The Region maintains that solicitor-client communication privilege applies to Records 224 and 225. 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 professional legal advice. The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation [Order P-1551].

This privilege has been described by the Supreme Court of Canada as follows:

... all information which a person must provide in order to obtain legal advice and which is given in confidence for that purpose enjoys the privileges attaching to confidentiality. This confidentiality attaches to all communications made within the framework of the solicitor-client relationship ... [*Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 at 618, cited in Order P-1409]

The privilege has been found to apply to “a continuum of communications” between a solicitor and client:

. . . the test is whether the communication or document was made confidentially for the purposes of legal advice. Those purposes have to be construed broadly. Privilege obviously attaches to a document conveying legal advice from solicitor to client and to a specific request from the client for such advice. But it does not follow that all other communications between them lack privilege. In most solicitor and client relationships, especially where a transaction involves protracted dealings, advice may be required or appropriate on matters great or small at various stages. There will be a continuum of communications and meetings between the solicitor and client ... Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach. A letter from the client containing information may end with such words as “please advise me what I should do.” But, even if it does not, there will usually be implied in the relationship an overall expectation that the solicitor will at each

stage, whether asked specifically or not, tender appropriate advice. Moreover, legal advice is not confined to telling the client the law; it must include advice as to what should prudently and sensibly be done in the relevant legal context [*Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.), cited in Order P-1409].

Solicitor-client communication privilege has been found to apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice [*Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27, cited in Order M-729].

Record 224

Record 224 is a memorandum dated September 5, 2000 from the Region's Senior Counsel to its Manager of Engineering and Construction regarding a claim received by the Region for payment of damages. I find that this document represents a confidential communication between a solicitor and client relating directly to the provision of legal advice. As such, it falls directly into the solicitor-client communication component of the section 12 solicitor-client exemption.

Record 225

Record 225 is a letter from the Region's Senior Counsel to the solicitors for a landowner adjacent to the sewer construction project addressing a claim made on behalf the landowner. The Region claims that this record discloses a recommendation which its counsel would be prepared to make to the Region in response to the claim and that this falls within the ambit of solicitor-client privilege.

I find that communications between opposing counsel are not privileged under the solicitor-client communication component of section 12. Any advice which may be contained in this communication has been waived by virtue of it being shared with an opposite party. Accordingly, I find that this document is not exempt under the solicitor-client privilege exemption in section 12. As no other exemptions have been claimed for this record and no mandatory exemptions apply, I will order that it be disclosed to the appellant.

Litigation privilege

The Region takes the position that Records 180, 210, 230, 237, 238, 241, 243 and 248 are exempt from disclosure on the basis that they are subject to litigation privilege. Because I have found that Record 210 and the cover page of Record 248 are exempt from disclosure under sections 11(a) and (e) respectively, it is not necessary for me to determine whether they are also exempt under this aspect of the section 12 exemption.

Litigation privilege protects records created for the dominant purpose of existing or reasonably contemplated litigation [Order MO-1337-I; *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.)].

In *Solicitor-Client Privilege in Canadian Law* by Ronald D. Manes and Michael P. Silver, (Butterworth's: Toronto, 1993), pages 93-94, the authors offer some assistance in applying the dominant purpose test, as follows:

The "dominant purpose" test was enunciated [in *Waugh v. British Railways Board*, [1979] 2 All E.R. 1169] as follows:

A document which was produced or brought into existence either with the dominant purpose of its author, or of the person or authority under whose direction, whether particular or general, it was produced or brought into existence, of using it or its contents in order to obtain legal advice or to conduct or aid in the conduct of litigation, at the time of its production in reasonable prospect, should be privileged and excluded from inspection.

It is crucial to note that the "dominant purpose" can exist in the mind of either the author or the person ordering the document's production, but it does not have to be both.

.

[For this privilege to apply], there must be more than a vague or general apprehension of litigation.

In Order MO-1337-I, Assistant Commissioner Tom Mitchinson found that even where records were not created for the dominant purpose of litigation, copies of those records may become privileged if they have "found their way" into the lawyer's brief [see *General Accident; Nickmar Pty. Ltd. v. Preservatrice Skandia Insurance Ltd.* (1985), 3 N.S.W.L.R. 44 (S.C.); *Hodgkinson v. Simms* (1988), 55 D.L.R. (4th) 577 (B.C. C.A.)]. The court in *Nickmar* stated the following with respect to this aspect of litigation privilege:

. . . the result in any such case depends on the manner in which the copy or extract is made or obtained. If it involves a selective copying or results from research or the exercise of skill and knowledge on the part of the solicitor, then I consider privilege should apply.

In Order MO-1337-I, the Assistant Commissioner elaborated on the potential application of the *Nickmar* test:

The types of records to which the *Nickmar* test can be applied have been described in various ways. Justice Carthy referred to them in *General Accident* as "public" documents. *Nickmar* characterizes them as "documents which can be obtained elsewhere", and [*Hodgkinson*] calls them "documents collected by the ... solicitor from third parties and now included in his brief". Applying the reasoning from these various sources, I have concluded that the types of records that may qualify for litigation privilege under this test are those that are publicly available (such as newspaper clippings and case reports), and others which were

not created with the litigation in mind. On the other hand, records that were created with real or reasonably contemplated litigation in mind cannot qualify for litigation under the *Nickmar* test and should be tested under “dominant purpose”.

The Region submits that each of the records to which litigation privilege has been claimed relate, or refer to the Region’s decision to retain the services of a second consultant to formulate an opinion as to the merits of one of the claims which it had received from its tunnelling contractor. The Region argues that prior to the creation of these records, certain claims for additional payment had been received from the contractor and, from that time, it was reasonably contemplated that litigation would ensue over the claim. It indicates that each of these records was created for the dominant purpose of reasonably contemplated litigation.

The Region also refers to the decision of Assistant Commissioner Tom Mitchinson in Order MO-1337-I in support of its argument that these records meet the test enunciated in *Nickmar*. In my view, Records 180, 230, 237, 238, 241 and 243 cannot be said to be “publicly available” or “documents collected by the ... solicitor from third parties and now included in his brief”. Nor are these documents “the result of research or the exercise of skill and knowledge by the solicitor”. In my view, I must evaluate each on the basis of the “dominant purpose” test as they do not meet the criteria for evaluation outlined in Order MO-1337-I.

The appellant submits that no litigation has been commenced with respect to the claims advanced by the tunnelling contractor to date.

It is apparent from the records themselves that on March 14, 2000, the tunnelling contractor indicated to the Region that it intended to make a claim for the additional time and expense which it was required to expend as a result of certain unforeseen difficulties in completing its work. The Region submits that from that date, it had a reasonably-held expectation that litigation would ensue and that it then took steps to respond to the claim by retaining additional engineering assistance in order to answer the particulars of the claim. In my view, after having evaluated the information contained in these records, the Region took the position that no additional payment was required. The information contained in these records substantiated that position.

I find that the dominant purpose for the creation of Records 180, 230, 237, 238, 241 and 243 was to provide the Region with the response it needed to make following the submission of the tunnelling contractor’s claim for additional payment. In my view, at the time these records were created, it was reasonable for the Region to contemplate that litigation would ensue from this dispute, regardless of the fact that, to date, no legal proceedings have been commenced.

In my view, these records were prepared for the dominant purpose of ensuring that the Region had all of the information it would require to address the additional claims for payment and that litigation over this issue was, at that time, reasonably contemplated.

As a result, I find that Records 180, 230, 237, 238, 241 and 243 are exempt from disclosure under the litigation privilege aspect of the section 12 solicitor-client exemption.

ADVICE OR RECOMMENDATIONS

The Region claims the application of the section 7(1) exemption to a number of records and has made submissions in support of this position for each. In Order 94, former Commissioner Sidney B. Linden commented on the purpose and scope of this exemption. He stated that it "... purports to protect the free-flow of advice and recommendations within the deliberative process of government decision-making and policy-making". Put another way, the purpose of the exemption is to ensure that:

. . . persons employed in the public service are able to advise and make recommendations freely and frankly, and to preserve the head's ability to take actions and make decisions without unfair pressure [Orders 24, P-1363 and P-1690].

A number of previous orders have established that advice or recommendations for the purpose of section 7(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process [Orders 118, P-348, P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.); Order P-883, upheld on judicial review in *Ontario (Minister of Consumer and Commercial Relations) v. Ontario (Information and Privacy Commissioner)* (December 21, 1995), Toronto Doc. 220/95 (Ont. Div. Ct.), leave to appeal refused [1996] O.J. No. 1838 (C.A.)].

In Order P-434 Assistant Commissioner Tom Mitchinson made the following comments on the "deliberative process":

In my view, the deliberative process of government decision-making and policy-making referred to by Commissioner Linden in Order 94 does not extend to communications between public servants which relate exclusively to matters which have no relation to the actual business of the Ministry. The pages of the record which have been exempt[ed] by the Ministry under section 13(1) [of the provincial *Act*] in this appeal all deal with a human resource issue involving the appellant and, in my view, to find that this type of information is exemptible under section 13(1) of the *Act* would be to extend the exemption beyond its purpose and intent.

This approach has been applied in several subsequent orders of this office (Orders P-1147 and P-1299).

Information in records which would reveal the advice or recommendations is also exempt from disclosure under section 7(1) of the *Act*. (Orders 94, P-233, M-847 and P-1709)

Record 104

This record consists of two "Procurement Award Memoranda" dated November 29, 1999 and accompanying supporting documentation. They were prepared by the Region's Manager, South Peel Design and Construction for the Region's Chief Administrative Officer on the subject of the award of tenders for the sewer construction project. The Region submits that the supporting material and the memoranda themselves contain recommendations with respect to the successful tenderer.

I have reviewed the information contained in Record 104 and find that pages 3 to 13 qualify for exemption under section 7(1) as they contain specific recommendations as to the bids received and they recommend a course of action to the Region's decision makers. Pages one and two of Record 104 are an Information Sheet which was made publicly available in December 1999 and do not contain the type of information which falls within the ambit of section 7(1).

Record 107

Record 107 is a letter from the Region's consulting engineers to the Metropolitan Toronto and Region Conservation Authority clarifying a number of concerns which the Authority raised with the Region following a site visit prior to the commencement of the sewer construction work. The Region argues that this letter "features a series of recommendations". I have reviewed the record and find that, in fact, it does not make recommendations to the Authority. On the contrary, the letter simply addresses various environmental, engineering and cosmetic issues which arose prior to the start date of the work. The purpose of the letter was to secure the Authority's permission through the issuance of a permit prior to the commencement of construction, it was not to make recommendations.

I find that section 7(1) has no application to the contents of Record 107.

Records 108 and 115

Record 108 is a letter dated November 16, 1999, along with several attachments, from an Appraiser/Negotiator with the Region's Real Estate Section to counsel for one of the landowners of property adjacent to the construction work. Record 115 is a letter dated October 26, 1999 which comments on a draft agreement prepared by the solicitors for the landowner. These letters set out in great detail the negotiating position of the Region and certain amendments to a draft agreement which it was in the process of arriving at with the landowner. They do not contain any recommendations to the Region or its decision makers; rather, it simply sets out the position the Region has taken with respect to the negotiations for the granting of an easement to it by the landowner. I find that Records 108 and 115 do not contain any "advice or recommendations" for the purpose of section 7(1) and that they are not, therefore, exempt under that section.

Record 112

This record is a one-page facsimile from the Region's consulting engineers to its project Manager recommending an adjustment in "unit prices and payment quantity" as a result of a

revision to the engineering plans. In my view, the contents of this record qualify as advice or recommendations within the meaning of section 7(1) and Record 112 is exempt under that section.

Record 114

Record 114 includes a letter dated October 26, 1999 from the President of the Surety Association of Canada to an official with the Region commenting on the Request for Tenders which had been circulated by the Region. I find that this portion of Record 114 does not qualify for exemption under section 7(1) as the advice proffered in the letter was not made by an officer or employee of the Region or by a consultant retained by it.

Record 116

Record 116 includes a memorandum dated September 29, 1999 from the Region's consulting engineers to its Project Manager setting out a number of recommendations for changes to the final version of the construction contract. These amendments address the results of certain negotiations which took place with an adjoining landowner. I find that this memorandum, located at pages 11 and 12 of Record 116, qualify for exemption under section 7(1). The remaining ten pages do not, however, contain information which qualifies under that section.

Record 117

Record 117 sets out the evaluation criteria established by the Region's consulting engineers for the evaluation of the bidders on the construction project. It contains very specific recommendations as to how this evaluation is to be undertaken and suggests a course of action to be followed by the Region. As such, I find that the requirements of section 7(1) have been satisfied with respect to Record 117 and that it is exempt from disclosure under this exemption.

Records 118 and 119

Record 118 is a copy of minutes of meeting held on August 30, 1999 between representatives of the Region and the consulting engineers. The minutes set out the substance of the discussions between the parties regarding the coordination of the upcoming sewer construction project. In my view, this record simply describes the discussions which took place on that date and do not contain any "advice or recommendations" from the consulting engineers to the Region as that term has been applied under section 7(1). I find that the minutes of the August 30, 1999 meeting are not, accordingly, exempt under that section.

Similarly, Record 119 is a copy of minutes taken at a meeting of the Etobicoke Creek Pedestrian Trail Steering Committee held on August 18, 1999. The meeting involved representatives of the Region, the City of Mississauga, the Toronto Region Conservation Authority and the City of Toronto. I have reviewed this document and find that it too does not contain "advice or recommendations from an officer, employee or consultant to the Region and does not, therefore, qualify for exemption under section 7(1).

Records 175 and 178

Record 175 includes a three-page report dated May 19, 2000 from its consulting engineers to the Region regarding the potential liability of the Region for damage caused by flooding following an unusually heavy rainfall. The report quantifies the potential liability and gives specific recommendations as to the type and extent of remediation work required. I find that this report, contained in the first three pages of Record 175, falls within the ambit of section 7(1) and is exempt from disclosure under this section. Pages 5 to 9 of Record 178 also contains specific advice from the consulting engineers to the Region on the issue of the cost of remediation work. For the reasons described above, I find that this portion of Record 178 is also exempt under section 7(1).

Record 187

The Region submits that Record 180 contains a recommendation to it from its consulting engineers regarding the planting of trees following the completion of the construction project. This information is contained in pages 5 to 8 of Record 187. Based on my review of this document, I find that it qualifies for exemption under section 7(1). The remaining portions of Record 187 contain no such information and are not, therefore, exempt under this section.

Record 214

Record 214 is a letter from the City of Toronto's Emergency Works and Services Department to the Region's consulting engineers dated November 27, 2000 addressing certain common concerns shared by the City and the Region regarding sewer capacities. The letter does not contain any advice or recommendations whatsoever and is not, therefore, exempt under section 7(1). As no other exemptions have been claimed for this document and no mandatory exemptions apply to it, I will order that it be disclosed to the appellant.

Record 217

This is a letter dated September 20, 2000 from the Region's consulting engineers to one of the project's contractors. Again, I find that it contains no advice or recommendations within the meaning of section 7(1) and it is not, therefore, exempt under that section.

Record 221

This record, a one-page facsimile transmission from the consulting engineers to the Region also contains no advice or recommendations and is not exempt under section 7(1).

Record 244

Record 244 is a report dated July 11, 2000 prepared by a firm of consulting engineers on behalf of the Region responding to another engineering report dated June 2000. Record 244 contains a series of recommended questions to be posed to the authors of the original consulting report and offers advice as to how these questions are to be posed and phrased. I find that Record 244

contains “advice and recommendations” made by the consultants to the Region, through its consulting engineers. As such, it qualifies for exemption under section 7(1).

In summary, I find that the following records, or part of records, are exempt from disclosure under section 7(1):

- pages 3 to 13 of Record 104;
- Record 112, in its entirety;
- pages 11 and 12 of Record 116;
- Record 117, in its entirety;
- pages 5 to 9 of Record 178;
- pages 5 to 8 of Record 187; and
- Record 244, in its entirety

and that the exceptions to the section 7(1) exemption in sections 7(2) and (3) have no application to them.

PERSONAL INFORMATION

The section 14(1) personal privacy exemption applies only to information which qualifies as “personal information”, as defined in section 2(1) of the *Act*. “Personal information” is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual [paragraph (c)], the address or telephone number of an individual [paragraph (d)] and the individual's name where 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 [paragraph (h)].

The Region takes the position that the names, telephone numbers and addresses of members of the public which are found in Records 106, 111, 113, 114, 116, 118, 119, 186, 190 and 192 qualify as the “personal information” of these individuals within the meaning of section 2(1).

I have reviewed each of these documents and find that Records 106, 111, the last page of Record 113, page 2 of Record 114, page 10 of Record 116, the home telephone numbers on page 6 of Record 118 and pages 3, 4 and 6 of Record 119, the names, home addresses and telephone numbers on page 7 of Record 186, page 7 of Record 190, page 1 of Record 192, pages 2, 4 and 5 of Record 196, page 6 of Record 199, Record 211 and Record 218 contain information which qualifies as the personal information of a number of residents living in the vicinity of the construction project.

INVASION OF PRIVACY

The Region simply submits that because the records listed above contain the personal information of identifiable individuals, not including the appellant, this information is exempt from disclosure under section 14(1). The appellant has not made any submissions with respect to the application of section 14(1) to the information which I have found to constitute “personal information” in my discussion above.

When records contain the personal information of individuals other than a requester, the mandatory personal privacy exemption in section 14(1) applies. Under this provision, an institution must deny access to this personal information unless one of the exceptions provided in sections 14(1)(a) through (f) are present. The only exception with potential application in the circumstances of this appeal is section 14(1)(f), which reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy

In the absence of representations from the appellant addressing this issue or pointing to the relevance of any factors favouring disclosure of records that do not contain his personal information, or other evidence supporting a finding that disclosure of this personal information would not constitute an unjustified invasion of the personal privacy of the identifiable individuals whose personal information is described in my discussion above, I am unable to find that the section 14(1)(f) exception applies. Accordingly, the personal information of these individuals, which is contained in Records 106, 111, the last page of Record 113, page 2 of Record 114, page 10 of Record 116, the home telephone numbers on page 6 of Record 118 and pages 3, 4 and 6 of Record 119, the names, home addresses and telephone numbers on page 7 of Record 186, page 7 of Record 190, page 1 of Record 192, pages 2, 4 and 5 of Record 196, page 6 of Record 199, Record 211 and Record 218 qualifies for exemption under the mandatory requirements of section 14(1) of the *Act*, and should not be disclosed.

REASONABLENESS OF SEARCH

In his letter of appeal, the appellant argued that the search for responsive records undertaken by the Region was inadequate and that additional records, particularly those responsive to the second part of his request, should exist. The appellant makes specific reference to two documents which he argues demonstrate that the Region has records which fall within the ambit of the second part of his request. During mediation, copies of these records were provided to the Region.

In the final Reply Notice provided to the Region, I specifically asked it to address whether it had conducted an adequate search for these records, in light of the appellant's evidence that it, in fact, had such documents. The Region did not respond to the questions which I posed in the final Reply Notice other than to indicate that it had conducted an adequate search. In its decision letter, the Region advised that it transferred the second portion of the request relating to the construction of the earlier sewer in 1969 to the Ontario Clean Water Agency (the OCWA) under section 18 of the *Act*.

I find that the Region has failed to satisfy me that it has conducted a reasonable search for records relating to the second part of the appellant's request or that it properly transferred the request under section 18. I was not provided with any indication that this transfer actually took

place or that the OCWA has responded in any way. Accordingly, I will order the Region to undertake a search of its record-holdings for records responsive to this part of the request and provide the appellant with a decision letter respecting access to these records, if any are located, within the time frames prescribed by section 19 of the *Act*, using the date of this order as the date of the request.

In his letter of appeal and his submissions, the appellant has listed a number of record types which he believes are responsive to part one of his request. Unbeknownst to the appellant, the records which have been identified and provided to this office at the adjudication stage of the appeal process consist of precisely the kind of records which he indicates he is seeking. Because of the dearth of detail contained in the Index which was provided to him, the appellant was in the dark as to the type of records which had been identified as responsive. Since the records were only received in this office after the adjudication stage of the appeal had begun, this information was not communicated to him during the mediation stage.

I have reviewed the voluminous records identified by the Region and have made rulings on the application of the exemptions claimed, with the exception of section 10(1). I am satisfied that the Region has located and identified the records which are responsive to the first part of the appellant's request. The types of records which he refers to in his letter of appeal and his submissions are represented in the records which were ultimately provided to this office. Accordingly, I am satisfied that the Region has conducted an adequate search for records responsive to the first part of the appellant's request and I dismiss that part of the appeal.

ORDER:

1. I uphold the Region's decision to deny access to Record 84, Pages 3 to 13 of Record 104, the personal information contained in the attachments to Record 106, Records 111 and 112, Pages 10, 11 and 12 of Record 116, Record 117, the personal information contained in Page 6 of Record 118, Pages 3, 4 and 6 of Record 119, Pages 1, 2 and 3 of Record 175, Pages 5 to 9 of Record 178, Record 180, Page 7 of Record 186, Pages 5 to 8 of Record 187, Page 1 of Record 192, Pages 2, 4 and 5 of Record 196, Page 6 of Record 199, 210, 211, 218, 224, 230, 237, 238, 241, 243, 244, 245 and 245(b) and the cover page to Record 248.
2. My decision on access to Records 1-72, 81, 85, 87, 89, 101, 102, 103, 108, 113, 126 to 151, 157, 158, 163, 169, 171, 173, 174, 177, 178, 181, 183, 190, 196, 198, 199, 201, 202, 206, 216, 217, 229, 231, 232, 234, 245 and 245(b) is stayed pending the notification of those third parties whose interests may be affected by the disclosure of the information which they may contain.
3. I order the Region to disclose to the appellant Records 73 to 80, 82, 83, 86, 88, 90-100, Pages 1 and 2 of Record 104, 105, 106 (except the personal information contained in the attachments), 107, 109, 110, 114 (except the personal information on Page 2), 115, 116 (except pages 10, 11 and 12), 118 (except the personal information on Page 6), Pages 1, 2, and 5 of Record 119, 120, 122, 123, 124, 125, 152 to 156, 159 to 162, 164 to 170, 172, 175 (except Pages 1, 2 and 3), 176, 179, 182, 184, 185, 186 (except Page 7), 187 (except Pages

5 to 8), 188, 189, 191, 192 (except Page 1), 193, 194, 195, 197, 200, 203, 204, 205, 207, 208, 209, 212, 213, 214, 215, 219, 220, 221, 222, 223, 225, 226, 227, 228, 233, 235, 236, 239, 240, 242, 246, 247, 248 (except the cover page) and 249 by providing him with copies by **March 26, 2002** but not before **March 21, 2002**.

4. I order the Region to undertake a search for records responsive to the second part of the appellant's request and issue a decision regarding access to any records within the time frames prescribed by section 19 of the *Act*, using the date of this order as the date of the request.
5. I find that the Region conducted a reasonable search for records responsive to part one of the request and I dismiss that aspect of the appeal.

Original signed by: _____
Donald Hale
Adjudicator

February 19, 2002