Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-2166

Appeal MA-050145-1

City of Hamilton

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NATURE OF THE APPEAL:

The City of Hamilton (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records related to a third party's involvement with the Red Hill Creek Expressway. The request specifically stated:

> I would like access to all records related to [a named individual's] involvement on behalf of the City of Hamilton as a consultant with respect to the Red Hill Creek Expressway. I would like these records to include any records related to [named individual] personally or company or companies she may have represented.
>
> I would like this request to include records related to her duties, her contract with the City of Hamilton, the amount of hours she billed the City of Hamilton for her work, the amount of money that she was paid, including expenses she may have incurred and any correspondence between her and the City of Hamilton.
>
> I would also like these records to include any work products submitted by [named individual] or her company related to her duties on behalf of the City.

The City located 1,333 records responsive to the request and denied access to all of them pursuant to section 12 (solicitor-client privilege) and section 10(1) (third party information) of the *Act*. The decision letter stated in part:

> In response to your request, Corporate Services staff undertook searches responsive to your request. Staff identified a total of one thousand, one hundred and thirty-three pages of records as responsive. The records consist of bills of account from [named individual], [named company]; correspondence between [named individual] and [named lawyer], of the law firm Gowling Lafleur Henderson LLP (which uses the named "Gowlings" for business purposes); correspondence between [named lawyer] and the City of Hamilton Legal staff; and internal correspondence between the City of Hamilton Legal staff.

The requester, now the appellant, appealed that decision.

During mediation, the City specified that it was only applying section 10(1) to deny access to portions of some of the records. Specifically, the City was applying section 10(1) to deny access to all references to the named individual's (the affected party's) hourly, daily or monthly rate of payment in Records 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 15, and 18.

As further mediation was unsuccessful, the file was referred to adjudication.

I began my inquiry into this appeal by sending a Notice of Inquiry to the City, initially. A lawyer from the law firm, retained to represent the City on the Red Hill Creek Expressway matter, submitted representations on behalf of the City. I also sent a copy of this Notice to the affected party and received representations in response.

In their representations, both the City and the affected party raised the possible application of the mandatory exemption at section 14(1) (invasion of privacy) and the discretionary exemptions at sections 7(1) (advice and recommendations) and 8 (law enforcement).

I then sent a revised Notice of Inquiry to the appellant that included discussion on the late raising of discretionary exemptions, as well as the application of the exemptions at sections 7(1), 8, and 14(1). Along with the revised Notice of Inquiry I sent a copy of the non-confidential portions of both the City and the affected party's representations. The appellant submitted representations in response.

As the appellant's representations raised issues to which I felt the City and the affected party should be given an opportunity to reply, I provided the City and the affected party with an opportunity to provide reply representations. Both the City and affected party submitted reply representations.

RECORDS:

The records at issue in this appeal include bills of account and correspondence between the lawyer at the firm retained to represent the City on the Red Hill Creek Expressway matter, the affected party and various City staff including the City's own legal counsel. The pages that make up the records total 1,133. The City divided the pages into 19 discrete records and provided an index of records as detailed below. I have added a reference to the section 10(1) exemption claim by the City, where it is relevant. As well as the section 7(1), 8 and 14(1) exemption claims which were raised by both the City and the affected party in their representations.

RECORD NO.	RECORD DESCRIPTION	EXEMPTION APPLIED
	Invoices	
1	From [named individual] dated June 1, 2002 (14 pages)	S. 12; S.10(1)
2	From [named individual] dated July 1, 2002 (8 pages)	S. 12; S.10(1)
3	From [named individual] dated August 1, 2002 (11 pages)	S. 12; S.10(1)
4	From [named individual] dated August 1, 2002 (20 pages)	S. 12; S.10(1)
5	Retainer letter from [named law firm], dated June 27, 2003 (11 pages)	S. 12; S.10(1)
6	From [named individual] dated October 13, 2003 (3 pages)	S. 12
7	From [named individual] dated November 1, 2003 (1 page)	S. 12; S.10(1)

8	From [named individual] dated December 1, 2003 (1 page)	S. 12; S.10(1)
	Correspondence and notes between [named individual] and [named lawyer] (8 cerlox bound books)	
9	May 2002 part 1 (143 pages)	S. 12; S.10(1); S.14(1); S.7(1); S. 8
10	May 2002 part 2 (183 pages)	S. 12; S.10(1); S.14(1); S.7(1); S. 8
11	May 2002 part 3 (159 pages)	S. 12; S. 14(1); S.7(1); S. 8
12	June 2002 part 1 (86 pages)	S. 12; S.10(1); S.14(1); S.7(1); S. 8
13	June 2002 part 2 (97 pages)	S. 12; S.14(1); S.7(1); S. 8
14	July 2002 part 1 (148 pages)	S. 12; S.14(1); S.7(1); S. 8
15	July 2002 part 2 (223 pages)	S. 12; S.10(1); S.14(1); S.7(1); S. 8
15.1	July 2002 part 3 (214 pages)	S. 12; S.14(1); S.7(1); S. 8
16	Email from [city solicitor], dated June 16, 2003 (4 pages)	S. 12; S.14(1); S.7(1); S. 8
17	Memo from [named lawyer], dated July 10, 2003 (17 pages)	S. 12; S.14(1); S.7(1); S. 8
18	Correspondence from [named lawyer], dated November 11, 2002 (4 pages)	S. 12; S.10(1); S.14(1); S.7(1); S. 8

DISCUSSION:

SOLICITOR-CLIENT PRIVILEGE

The City submits that section 12 of the *Act* applies to exempt all of the records at issue in this appeal, in their entirety. Section 12 reads:

> 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.

Section 12 contains two branches as described below. To rely on this exemption, the City must establish that one or the other (or both) branches apply.

In this case, the City relies on the application of both branch 1 and branch 2 of section 12.

Branch 1 derives from the first part of section 12, which permits the City to refuse to disclose "a record that is subject to solicitor-client privilege".

Branch 2 derives from the second part of section 12 and it is a statutory exemption that is available in the context of institution counsel giving legal advice or conducting litigation. The

statutory exemption and common law privilege, although not necessarily identical, exist for similar reasons.

Branch 1: common law solicitor-client privilege

Branch 1 of the section 12 exemption encompasses two heads of privilege, as derived from common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. In order for branch 1 of 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. [Order PO-2538-R; *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 457 (S.C.C.)].

Solicitor-client communication privilege

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

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].

The privilege applies to "a continuum of communications" between a 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 [*Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.)].

The privilege may also 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].

The 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. The confidentiality attaches to all communications made within the framework of the solicitor-client relationship … [*Descôteaux v. Mierzwinski*, supra)].

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 [*General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.)].

Litigation privilege

Litigation privilege protects records created for the dominant purpose of existing or reasonably contemplated litigation [Order MO-1337-I; *General Accident v. Chrusz, supra*].

Branch 2: statutory privileges

Branch 2 is a statutory solicitor-client privilege that is available in the context of institution counsel giving legal advice or conducting litigation. Similar to branch 1, this branch encompasses two types of privilege, as derived from common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. The statutory and common law privileges, although not necessarily identical, exist for similar reasons. One must consider the purpose of the common law privilege when considering whether either of the statutory privileges apply.

Representations

The City submits that despite the fact that much of it was prepared by an affected party, the information contained in the records qualifies as solicitor-client privileged because the affected party was retained by a named law firm to assist a named lawyer in providing legal advice to the City:

> [The affected party] was retained both in 2002 and 2003 by [named lawyer], a [named law firm] partner and environmental law specialist, in order to assist [named lawyer/named law firm] to provide legal advice to the City with respect to completing the Expressway Project, including anticipated litigation/law enforcement arising from persons and groups opposed to Expressway completion.

Addressing specifically whether the records at issue qualify for exemption under section 12, the City submits that:

> Records 9, 10, 11, 12, 13, 14, 15, 15.1, consist of communications between outside counsel, [named law firm] and their agent [the affected party] and [named law firm's client, the City], including in some instances direct communications between City staff and [the affected party]. Given the scope of [the affected party's] retainer with [named law firm], set out above, it was clearly necessary for [the affected party] to communicate at times directly with key City staff. Such communication and records are clearly of a confidential nature and were obviously created for the purpose of formulating legal advice. The large volume of records are a continuum of communications which are subject to solicitor-client privilege.
>
> It is important to appreciate that these Records (the eight cerlox volumes) came to the City Solicitor for a very specific purpose. Had there not been a request for an audit these eight volumes would never have been provided to the City Solicitor.

> As their cover clearly indicates, they were assembled specifically for the then City Solicitor, [named individual]. The City Solicitor requested they be assembled and provided to him in order to allow an audit of [the affected party's] accounts to be undertaken. The documents were clearly marked as solicitor and client privileged and the audit was arranged through the City Solicitor's office, so that the documents remained privileged. The City's Access and Privacy Officer has confirmed that, in response to the request which initiate this appeal, these eight volumes were provided to the Access and Privacy Officer by the City Solicitor's office. In other words, these documents have always been exclusively in the control of the City Solicitor and solicitor and client privilege in these documents has never been waived.
>
> ...
>
> Record 16, an email dated June 16, 2003 from [named individual], acting City Solicitor, to her law clerk, [named individual,], is obviously privileged, as is the attached letter from [the affected party] to [named lawyer] (4 pages). That letter is marked solicitor and client privileged, and specifically references the intended retainer arrangements with [named law firm]. Therefore, the discretionary exemption in section 12 of the *Act* applies.
>
> Record 17, a July 10, 2003 memo from [named law firm] to the acting City Solicitor, [named individual], is not only marked solicitor and client privileged but also, the subject matter clearly provides advice in respect of anticipate unlawful activity and the options for law enforcement/litigation.
>
> Record 18 is correspondence/memo from [named law firm] to [named individual], the acting City Solicitor, and again is marked solicitor and client privileged.
>
> The invoices from [the affected party's company] (Records 1, 2, 3, 4, 6, 7, and 8) contain information of a confidential nature which would reveal the substance of legal advice requested or provided, and legal strategies considered, advised or pursued. Hence, the City asserts that these invoices are also subject to the discretionary exemption under section 12.

In the affected party's representations, she explains that she was retained by the external law firm hired to represent the City "to provide expert advice and assistance to [named law firm] so that [named law firm] in turn could provide legal advice to the City". She submits that the particular lawyer from the law firm working on the City's file hired her specifically because of her experience that made her "uniquely qualified to contribute significantly to legal strategies". She submits that her professional services were retained to assist the particular lawyer "to prepare legal strategies and provide legal services and advice to the City". The affected party also explains that the law firm, and in particular, the lawyer, "was tasked with providing the broadest possible legal services in a very difficult and often ambiguous legal environment" and in her

view, "the scope of legal advice necessarily crossed a number of dimensions because of the complexity of the project and the breadth of the issues". Addressing her specific role, the affected party submits:

> My role was to … draw upon my professional background and experience to provide expert advice, obtain and provide information and analyze information from others to assist [named lawyer] in providing legal services to the City of Hamilton.

Because of the nature of her role and the scope of her retainer detailing her professional services, the affected party submits that she:

> conducted all work on the basis that it was solicitor-client privileged and confidential from the perspective of the client, the City of Hamilton, and also confidential from my perspective… Given the very real and well publicised potential for violence and/or disruption, and given the need for me to seek out and analyze a significant amount of information, operating within a framework of confidentiality was necessary and certainly reasonable in the circumstances.

She also submits that:

> All work which I under took during 2002 and 2003 was scrutinized and amended by [named lawyer], as necessary, prior to submission to the City. Where any material was submitted directly to the City by me, it was at [named lawyer's] specific instruction, or he was copied on the material as a means of keeping him alerted to ongoing legal issues. In these circumstances, the material was retrospectively reviewed by [named lawyer] and amendments made at that stage, if necessary.
>
> Moreover, when City officials communicated directly to me, it was to provide me with information I could take into account as I sought to provide integrated advice to [named lawyer] for his ultimate legal advice and opinions to the City. It was my perspective that when City officials were communicating with me, they knew they were communicating with [named lawyer's] office, that their communications were therefore solicitor and client privileged, and that any responses I provided them or work I did reflect the application of [named lawyer's] legal advice. In other words, it was my understanding that [named lawyer's] legal advice to the City very much depended on a detailed understanding of the merging context, politically and operationally, and on the general dynamics facing the city across a number of different dimensions. It was my job to ensure [named lawyer] understood the developing context, was alerted to issues that could have legal consequences, and was advised on matters that would meet his legal objectives.

Specifically addressing how the records fall within the scope of the section 12 exemption, the affected party submits generally:

> It is my submission that all communications between me and [named lawyer] and amongst us and City officials were made confidentially and formed a continuum of legal advice, which included advising the City as to what should be done in the relevant legal context. It is my submission, thus, that all Records in this Appeal should be exempted on the basis of section 12 of the [*Act*].

The affected party also makes specific submissions on how each of the records falls within the continuum of communications covered by solicitor-client privilege.

The appellant submits at the outset of his representations that since taxpayer money paid for the affected party's professional services, taxpayers have the right to know how their money is being spent. He submits:

> At issue in this FOI request are 1,347 pages of records. The City and the affected party argue that every single one of those 1,347 pages should not be released. I would argue that it defies belief that there is not a single page that is fit to be released either in whole or in part.
>
> It is true that the Red Hill Creek Expressway project has been a controversial topic in Hamilton for many years. However, the fact that the Expressway project is controversial is not a reason, in and of itself, to shield information from the public. In fact, I argue the opposite. The high level of attention that the Expressway project has received is all the more reason to make as much information public as possible.
>
> As both [named lawyer] and [the affected party] have pointed out, there has been court activity associated with this issue. That shows however that the courts – and the City – are fully capable of handling the sensitive issues related to this project.
>
> …
>
> I suggest that one key issue that needs to be addressed by the Adjudicator is the question of solicitor-client privilege. My understanding is that [the affected party] is not a solicitor, so that rules her out as being the direct solicitor in this case. Nor would she be the client.
>
> …
>
> It is also clear from the representations that [the affected party] had direct dealings with the City, and not [named lawyer], on more than one occasion. I ask

> the Adjudicator to consider if these dealings also qualify as solicitor-client privilege.

The appellant also questions whether, if the affected party was not a lawyer at the time the advice was being provided, she can provide legal advice to the City.

Analysis and findings

Branch 1: Common law solicitor-client privilege

Solicitor-client communication privilege

In order for a record to be subject to the common law solicitor-client communication privilege, the institution must provide evidence that the records satisfy the following test:

1. there is a written or oral communication, and
2. the communication is of a confidential nature, and
3. the communication must be between a client and a legal advisor, and
4. the communication must be directly related to the seeking, formulating or giving of legal advice.

[Orders 49, M-2, M-19]

Parts 1 and 2: written or oral communications of a confidential nature

The records at issue in this appeal are clearly all written communications, and having reviewed them closely, I am satisfied that they were communicated in circumstances of confidentiality. Accordingly, I find that parts 1 and 2 of the test are met.

Part 3: communications between a client and a legal advisor

As for the third part of the four-part test for common law solicitor-client communication privilege, I acknowledge that claims for solicitor-client privilege are usually framed in terms of communications that pass directly between a client and a solicitor. It is, however, well settled that solicitor-client privilege can extend to communications between a solicitor and client or a third party.

The case law involving claims to solicitor-client privilege over third party communication is not extensive. However, there has been a general recognition that communications made to or by third parties who are classified as "agents" of the lawyer or the client will be protected by

solicitor-client privilege: see Manes and Silver, *Solicitor-Client Privilege in Canadian Law* (Toronto: Butterworths, 1993), pp. 73-79:

> Different treatment is given to communications from agents versus those from third parties. Agents act in place of the solicitor/client or under the solicitor's/client's directions. Third parties act for themselves.
>
> Where the communication between a solicitor and client is made by or through an agent of the solicitor and/or an agent of the client, the communication remains privileged as a direct communication, as long as it relates to the receiving or giving of professional legal advice.

A party has been found to be an agent (and thus solicitor-client communication privilege applied) where, for example, the communication was made between a client of a law firm and an accountant employed by the law firm [*United States v. Kovel*, 296 F. 2d 918 (C.A.N.Y., 1961)].

In Order MO-1339, Senior Adjudicator David Goodis applied the agency approach in circumstances that closely parallel those in the current appeal. Senior Adjudicator Goodis found that solicitor-client communication privilege applied to accounts rendered by a number consultants hired by a named law firm to assist them in providing advice to the City (then the Regional Municipality of Hamilton-Wentworth) on certain environmental aspects of the Red Hill Creek Expressway project. Senior Adjudicator Goodis stated

> Based on the representations of [named law firm], the Region and the affected parties, including the sample retainer letters provided by [named law firm], I am persuaded that [named law firm] retained the consultants to act as agents for both [named law firm] and the Region. The representations and the retainer letters indicate that the consultants were acting under the direction of [named law firm] and the Region, for example, in respect of confidentiality issues, attendance at meetings and the nature of the consulting services to be given. Accordingly, I find the that the invoices which comprise Record 4 should be treated in the same fashion as Records 1, 2, and 3 with respect to the third part of the test for solicitor-client privilege.

The agency approach was recently modified slightly in *General Accident v. Chrusz, supra*. In his dissenting opinion, Doherty J. also discussed situations where solicitor-client privilege extends to a third party. Justice Doherty's analysis on this point was adopted by Rosenberg J., speaking for the majority. Although it is phrased in terms of a third party acting on behalf of the client, rather than the solicitor, as in the circumstances of this appeal, his analysis can be of guidance. Justice Doherty's position can be summarized as follows:

> Whether a third party is an agent of either the lawyer or the client under the general law of agency is not determinative of whether the principle of solicitor-client communication privilege extends to cover that third party. The

> determination of the extension of the solicitor-client privilege should depend on the third party's function. If the third party's retainer extends to a function essential to the existence or operation of the client-solicitor relationship, then the privilege should cover any communications that are in furtherance of that function and that meet the criteria for client-solicitor privilege. For privilege to attach, the third party must be empowered to obtain legal service or to act on legal advice on behalf of the client. If the third party is authorized only to gather information from outside sources and pass it on to the solicitor so that the solicitor might advise the client, or if the third party is retained to act on legal instructions from the solicitor (presumably given after the client has instructed the solicitor), then the third party's function is not essential to the maintenance or operation of the client-solicitor relationship and should not be protected; therefore, it is not the case that client-solicitor privilege extends to all material deemed useful by the lawyer to properly advise the client.

In *Descoteaux v. Mierzwinski, supra*, Lamer J., writing for the court found that individuals, whose task it is to professionally assist a lawyer, have also been found to fall within the scope of the solicitor-client privilege. He first stressed the importance of a client's right to have communications with his or her legal adviser kept confidential and went on to state:

> Seeking advice from a legal adviser includes consulting those who assist him professionally (for example his secretary or articling student) and who have as such had access to the communication made by the client for the purpose of obtaining legal advice".
>
> There are exceptions. It is not sufficient to speak to a lawyer or one of his associates for everything to become confidential from that point on. The communication must be made to the lawyer or his assistants in their professional capacity; the relationship must be a professional one at the exact moment of the communication.

Courts have also found that the solicitor-client communication privilege can apply to third parties who act as experts. In *Smith v. Jones,* [1999] 1 S.C.R. 455, the Supreme Court of Canada found the privilege can extend to experts:

> …Tradition and case law support the extension of this privilege to include communications, by conversation or otherwise, between the accused and the expert in the same way as in the traditional solicitor-client relationship.
>
> Courts in Canada, Australia, the United Kingdom and the United States have all concluded that client communications with third party experts retained by counsel for the purpose of preparing their defence are protected by solicitor-client privilege: see *R. v. Perron* (1990), 54 C.C.C. (3d) 108, [1990] R.J.Q 752 (C.A.);

> *R. v. L. (C.K.)* (1987), 62 C.R. (3d) 131 (Ont. Dist.Ct.); *R. v. King*, [1983] 1 All E.R. 929 (C.A.); *R. v. Ward* (1981), 3 A. Crim. R. 171 (N.S.W. Ct. Cr. App.).
>
> …
>
> [In *Perron*], the court concluded that communications between and accused and a psychiatrist come within the scope of the solicitor-client relationship and create the solicitor-client privilege. A privilege that goes to the heart of the ability of an accused to seek counsel and present a full answer and defence to the charges proffered against him.
>
> The Quebec Court of Appeal concluded in *Perron* , supra, at p.111, CCC.:
>
> > When counsel requires the services of an expert in order to help him better prepare his defence he acts within the scope of his mandate. It is the interest of his client which compels counsel to confer on a specialist the charge of evaluating the case and it follows that the accused must be able to undergo the evaluation in the same climate of confidence and in complete confidentiality as it he were communicating with counsel.
>
> This reasoning is persuasive, and confirms that conversations with defence experts, such as psychiatrists, fall within the solicitor-client privilege and attract permanent and substantive privilege: see *Calcraft v. Guest*, [1898] 1 Q.B. 759 (C.A.), *Descôteaux v. Mierzwinski*, *supra*.

I have reviewed the representations submitted by the parties involved in this appeal. I am persuaded that solicitor-client communication privilege extends to protect communications made to or from the affected party, provided those communications meet the requirements of solicitor-client communication privilege.

As noted above, the approach laid out in *General Accident v. Chrusz, supra,* states that the determination of the extension of the solicitor-client privilege depends not on whether the third party is an agent, but on the third party's function. The Court goes on to explain that if the third party's retainer extends to a function that is essential to the existence or operation of the solicitor-client relationship, then the privilege should cover any communications that are in furtherance of that function and that meet the criteria for solicitor-client.

Based on the representations of the parties involved in this appeal, including the information about the affected party's retainer, I am persuaded that the law firm retained the affected party to act for the law firm, specifically acting under the direction of the lawyer responsible for the City's file, to assist in providing the most comprehensive and accurate legal advice to the City on the complicated matter that is the Red Hill Creek Expressway project. I find that her assistance and her specific expertise related to that which the lawyer was retained to advise upon, and was

essential to the operation of the solicitor-client relationship, namely the provision of legal advice to the City.

The fact that the affected party was not a lawyer does not negate the application of solicitor-client privilege in this case. Manes and Silver, *supra,* comment at pp.76 -77:

> The changing complexities of a modern law practice have been recognized in the United States to give rise to a wider ambit of privileged communications in the context of agents or employees. Obviously, in a modern law practice, it would be impossible for litigation to be properly conducted if solicitors could not rely on the confidential information given to them by technical experts, e.g. physicians, engineers, private investigators, etc., as well as their own internal employees.
>
> It is submitted that there is an ever-expanding scope for solicitor-client agents and employees to participate in a privileged communication. This is natural because **solicitors and clients increasingly hire outside or internal consultants**, enter into affiliate arrangements with other firms, contract out for various services, and sign on a variety of in-house experts and staff… [emphasis added]

In her representations, the affected party submits that her role was to draw upon her "professional background and experience to provide expert advice" to assist the lawyer in providing legal services to the City. She submits that the lawyer's advice to the City depended on her expertise to understand the developing situations related to the Red Hill Creek Expressway matter, to ensure he was alerted to issues with potential legal consequences and generally provided him with a detailed understanding of the merging context, politically, legally and environmentally.

Considering *Smith v. Jones*, *supra*, in which the Supreme Court of Canada acknowledged that tradition and case law support the extension of the solicitor-client privilege to include communications with an expert, the affected party can also be described as an expert, required by the lawyer to provide the necessary legal advice to his client. As such, I find that her communications may be subject to solicitor-client privilege provided they meet part four of the test.

Whether characterized as a consultant whose function was essential to the solicitor-client relationship, or as an expert hired for her professional services to inform the lawyer on political, environmental, and other aspects of the Red Hill Creek Expressway matter, I accept that the affected party was part of the legal "team" provided by the law firm to represent the City on the complex matter that surrounds the construction of the Red Hill Creek Expressway.

The legal issues surrounding the Red Hill Creek Expressway matter are obviously very complex, with many legal, political, environmental and other aspects which are inter-related in a number of ways. It stands to reason, and I am satisfied based on the material before me, that the services provided by the affected party were essentially integrated into the legal services provided by the

law firm through the retained lawyer. In my view, no clear distinction can be drawn between the legal advice and services provide by the lawyer to the client, the City, and the advice and other services provided by the affected party to the lawyer and/or the City.

As a result, I find that, for the purpose of solicitor-client communication privilege, there is no distinction between the legal advice provided by the affected party and that provided by the lawyer. Therefore, communications made by or to the affected party may be subject to the solicitor-client privilege, provided that those communications meet part four of the test for solicitor-client communication privilege.

Accordingly, part three of the solicitor-client communication privilege test has been met.

Part 4: communications related to the seeking, formulating or giving of legal advice.

The fourth part of the test for solicitor-client communication privilege requires that the communication be directly related to the seeking, formulating or giving legal advice. The privilege extends to any communication that "falls within the usual and ordinary scope of the professional relationship" and, "the privilege, once established, is considerably broad and all-encompassing" [see: *Pritchard v. Ontario (Human Rights Commission)*, [2004] 1 S.C.R. 809, para. 16]. It extends to all communications "within the framework of the solicitor-client relationship, which arises as soon as the potential client takes the first steps, and consequently even before the formal retainer is established" [see: *Pritchard*].

It is not necessary that the communication specifically requests or offers advice, as long as it can be placed within the continuum of communication in which the solicitor tenders advice; it is not confined to telling the client the law and it includes advice as to what should be done in the relevant legal context [see: *Maranda*]. All information which must be provided or disclosed in order to obtain legal advice, and which is given in confidence, is protected.

Correspondence: Records 9, 10, 11, 12, 13, 14, 15, 15.1, 16, 17 and 18

Having carefully reviewed the contents of all the correspondence at issue, in my view, Records 9, 10, 11, 12, 13, 14, 15, 15.1, 16, 17 and 18 fall squarely within the scope of common law solicitor-client communication privilege. The content of all of the records relate to the seeking, the formulation or the provision of legal advice and they were created in the context of a solicitor-client relationship.

The records are diverse in nature. They consist of faxes, letters and email chains and other types of correspondence passing between City staff and their legal advisors, namely, the lawyer and the affected party. This correspondence outlines matters to be discussed at meetings, provides answers to information sought by the lawyer, information from City staff, and describes specific legal advice both sought and provided. Attached to many of these letters and email chains are documents including comments, notes, memoranda, information from various City employees

and newspaper or scholarly articles which contain information relating to the legal at issue at hand.

In my view, were any of these records disclosed (for example, retainers defining the scope of the affected party's services, details relating to the affected party's fees for specific tasks, agendas for meetings, information provided by City employees, notes made by the lawyer or the affected party), it could reasonably be expected to permit an assiduous requester to discern the legal advice sought and provided. In my view, even emails concerning the affected party's travel arrangements (which often include information related to what is to be discussed at the meetings to which she is travelling to) and biographical information about her might well reveal (based on dates, duration and location of travel, and areas of expertise), the nature of the legal advice being sought and/or given. Taken as a whole, the disclosure of these records could reasonably be expected to reveal the strategic legal framework being advised.

I found above that the correspondence in Records 9, 10, 11, 12, 13, 14, 15, 15.1, 16, 17 and 18 qualify as confidential communications passing between a solicitor and his client that are directly related to the provision or the seeking of legal advice relating to the legal matter at hand. These are communications that pass directly between the City and the lawyer, whether through the affected party or not.

In addition, I find that other records attached to the correspondence fall within the "continuum of communications" passing between the lawyer and the City and are exempt from disclosure under the solicitor-client communication aspect of the section 12 exemption following the reasoning expressed in *Balabel, supra*. These records include notes which contain information outlining legal advice received from the lawyer, such as draft documents, agendas or descriptions of matters to be discussed at meetings and compilations of documents and memoranda relating to the legal issue at hand.

Finally, I find that records, including newspaper or scholarly articles, reports and notes taken from meetings, are exempt from disclosure within the ambit of a "legal advisor's working papers directly related to the seeking, formulating or giving legal advice" as described in *Susan Hosiery, supra*. These records formed part of the solicitor's research and study of the issue under consideration and may properly be considered as part of his "working papers".

Accordingly, I find that Records 9, 10, 11, 12, 13, 14, 15, 15.1, 16, 17 and 18 are exempt under the solicitor-client communication privilege part of section 12.

Retainer: Record 5

Record 5 is the retainer agreement between the City's law firm and the affected party. It consists of a three-page letter outlining the terms of the affected party's retainer with an eight-page addendum that details the scope of the professional services to be provided by her. The affected party was retained by the law firm for her specific professional and educational experience and expertise to assist the lawyer in providing legal advice to the City. The retainer is detailed in its

description of what the affected party has been retained to do and outlines information that, were it disclosed, would directly or indirectly reveal communications protected by the privilege, including legal advice that was provided by the lawyer to the City.

Accordingly, I find that Record 5 is a communication that is directly related to the giving of legal advice and therefore falls within branch 1 of the solicitor-client privilege, and is exempt under section 12 of the *Act*.

Invoices: Records 1, 2, 3, 4, 6, 7, and 8

Records 1, 2, 3, 4, 6, 7, and 8 are invoices with supporting documentation from the affected party to the lawyer. The City submits that they contain information of a confidential nature which would reveal the substance of legal advice and legal strategies. The appellant argues that the advice for which the invoices were rendered cannot be characterized as "legal advice" as the affected party was not, at that time, a lawyer.

Having established that these invoices meet part three of the test for common law solicitor-client privilege, that is, that they qualify as communication between a client and a legal advisor, I must now determine whether these invoices qualify as "communications directly related to seeking, formulating or giving legal advice" as required by part four.

In Order PO-2483, Senior Adjudicator John Higgins provided a comprehensive review of some of the recent case law regarding solicitor-client privilege and legal invoices or accounts. Senior Adjudicator Higgins interpreted the Supreme Court of Canada's decision in *Maranda v. Richer*, [2003] 3 S.C.R. 193 (*Maranda*) as overruling the Courts prior discussion on legal billing information in *Stevens v. Canada (Privy Council)* (1998), 161 D.L.R. (4th) 85 (F.C.A.) (*Stevens*). He took the position that in *Maranda*, the Supreme Court adopted the principle that information about a lawyer's fee is presumptively privileged but that the privilege is rebuttable where the information is "neutral" i.e. does not disclose, either directly or inferentially, information that is subject to solicitor-client privilege. Senior Adjudicator Higgins stated that by formulating this approach, the Supreme Court rejected the "facts" (which are not privileged) and "communications" (which are privileged) distinction that was previously set out in *Stevens* as the sole or primary basis for determining whether privilege applies to lawyers' billing information.

Senior Adjudicator Higgins also looked at how *Maranda* was interpreted in *Ontario (Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)* (2004), 70 O.R. (3d) 779 (Div. Ct.) (*Attorney General*). In *Attorney General*, the Court discussed the test for the rebuttal of the presumption that information contained in lawyers billing information is privileged:

> The presumption will be rebutted if there is no reasonable possibility that disclosure of the amount of the fees paid will directly or indirectly reveal any communication protected by the privilege. In determining whether disclosure of the amount paid could compromise the communications protected by the privilege, we adopt the approach in *Legal Services Society v. Information and*

> *Privacy Commissioner of British Columbia* (2003), 226 D.L.R. 94th) 20 at 43-44 (B.C.C.A). If there is a reasonable possibility that the assiduous inquirer, aware of background information available to the public, could use the information requested concerning the amount of fees paid to deduce or otherwise acquire communications protected by the privilege, then the information is protected by the client/solicitor privilege and cannot be disclosed. If the requester satisfies the IPC that no such reasonable possibility exists, information as to the amount of fees paid is properly characterized as neutral and disclosable without impinging on the client/solicitor privilege. Whether it is ultimately disclosed by the IPC will, of course, depend on the operation of the entire *Act*.

Taking these cases into consideration, in Order PO-2483, Senior Adjudicator Higgins concluded:

> As expressed above, *Maranda* overrules *Stevens* and is not limited to the criminal law context, and it limits the applicability of the three British Columbia cases referred to above. Accordingly, *Maranda* and its interpretation in *Attorney General #*1 represent the most authoritative law with respect to whether the amount paid for legal services, including actual invoices, is privileged. In determining whether or not the presumption has been rebutted, the following questions will be of assistance: (1) is there any reasonable possibility that disclosure of the amount of the fees paid will directly or indirectly reveal any communication protected by the privilege? (2) Could an assiduous inquirer, aware of background information, use the information requested to deduce or otherwise acquire privileged communications? If the information is neutral, then the presumption is rebutted. If the information reveals or permits solicitor-client communications to be deduced, then the privilege remains.

I agree with Senior Adjudicator Higgins' conclusions in Order PO-2483 and adopt them for the purposes of the current appeal.

The first page of the invoices that are Records 1, 2, 3, 4, 7 and 8, are in essence, the true invoice. These pages describe the different type of work done in narrative terms, list the fee for each itemized "type" of work done, list the disbursements, as well as the grand total amount (per invoice) to be paid for the affected party's services. Records 7 and 8 consist solely of this one-paged invoice while Records 1, 2, 3 and 4 are lengthy.

The remaining pages of Records 1, 2, 3 and 4 are all entitled "invoice supplement" and generally consists of many pages of lengthy narrative description of the services rendered by the affected party within the time frame covered by the invoice. The invoice supplements identify and describe at length the work done by the affected party for the lawyer under her retainer in connection with the Red Hill Creek Expressway matter. They provide chronological and cumulative detail about the specific tasks undertaken by the affected party and how much time was spent on each task, as well as detailed disbursement related information.

Record 6 consists of three pages, the first is an invoice similar to the cover pages described for the invoices above but this invoice details only a global figure for disbursements. The second and third pages of consist of an itemized list of those disbursements.

The City and the affected party both submit that disclosure of all of the information in the invoices and their attached supplements could directly or indirectly disclosed privileged communications between the City and the lawyer retained by the City.

Having reviewed the invoices and their attached supplements I accept that much the information at issue provides significant detail about the legal representation provided by the lawyer to the City and would therefore reveal the specific legal advice provided to the City. In my view, even the descriptions of the type of work done that is itemized in the invoice itself could allow an assiduous requester to gain access to privileged communication (such as, instructions given by the client or advice given by the lawyer). The narrative descriptions in the invoice supplements are so detailed that even an unsophisticated requester could discern legal advice from the information. Taken as a whole, these records reveal textured information about the solicitor-client relationship that cannot be described as "neutral'.

Accordingly, the presumption that solicitor-client privilege applies is not rebutted for most of the information contained on the invoices, specifically the narrative information and specific details about time spent on tasks undertaken, as I find that it would either directly or indirectly reveal information that qualifies as privileged. Additionally, in my view, the itemized list of disbursements on pages two and three of Record 6 reveals details about the legal representation provided by the law firm and would either directly or indirectly reveal privileged information. I therefore find that this information also qualifies as privileged.

However, I have also concluded that, in my view, there is no "reasonable possibility" that any confidential solicitor-client communication could be revealed (even to the most "assiduous" requester) by disclosing the figure representing the grand total listed on the first page of each invoice of Records 1, 2, 3, 4, 6, 7, and 8, nor could this information be connected with other available information in order to draw an accurate inference about any such privileged communication. In my view, this information is "neutral" and the presumption of privilege is rebutted in relation to it. Accordingly, I will order the City to disclose the grand total of each invoice listed at the bottom of each cover page.

Accordingly, I find that the invoices and their supplements are subject to solicitor-client privilege and, therefore qualify for exemption under branch 1 of section 12, with the exception of the grand totals listed at the bottom of each invoice.

I have found that the grand total listed on Records 1, 2, 3, 4, 6, 7, and 8 is not exempt under branch 1. As common law litigation privilege cannot apply to this information because these particular records, in and of themselves, have clearly not been prepared for the dominant purpose of existing or reasonably contemplated litigation, I will consider whether branch 2 applies to this information.

Branch 2: Statutory privileges

Branch 2 is a statutory solicitor-client privilege that is available in the context of counsel employed or retained by an institution giving legal advice or conducting litigation. It arises from the last part of section 12 and refers to records prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation for use in litigation.

The invoices, Records 1, 2, 3, 4, 6, 7, and 8, which I have found to be partially exempt under branch 1, were prepared by an outside legal advisor. In Order PO-2483, Senior Adjudicator Higgins looked at whether branch 2 applied to internal invoices prepared by a Ministry in order to bill other ministries for certain legal services provided. He stated:

> While I agree with the Ministry, that, but for the litigation, the records at issue would not have been created, this does not in my view lead to an automatic conclusion that they were prepared for use in giving legal advice or in contemplation of or for use in litigation. In my view, the conclusion on this point depends on the meaning of "for use in". I agree with the appellant that invoices are ancillary to the activities referred to in branch 2.
>
> This conclusion is reinforced by my decision in Order MO-2024-I. In that case, I had to determine whether similar information was excluded from the scope of the *Municipal Freedom of Information and Protection of Privacy Act* under section 52(3)1 of that statute, on the basis that the records were collected, prepared, maintained or used "in relation to" proceedings or anticipated proceedings relating to labour relations or to the employment of a person by the institution. The record at issue was a two-page document containing payments made to a law firm on a series of dates, including a total amount, with respect to an action against the City by a former employee. Base on the nature of the request, however, only the total figure was at issue. I stated:
>
> > The question I must decide … is whether the connection between the record and the proceedings is strong enough to mean that the preparation or maintenance of the record was "in relation to" the proceedings, which clearly hinges on the meaning of "in relation to".
> >
> > …
> >
> > In this case, I acknowledge that, but for the proceedings, this record would never have been created. However, in my view, the City's record of payments to a law firm, and particularly the total amount paid, is too remote to qualify as being "in relation" to proceedings for which the law firm was retained by the City. This

> record, which the City states was prepared by its Clerk, appears to be extracts from the City's accounting records, which were created and maintained for accounting reasons that have nothing to do with the proceedings. Based on my examination of the record, there is no obvious relationship between it and the actual conduct of the proceedings, nor is any such relationship explained by the City in its representations.

> Although the phrase, "in relation to" proceedings is different than "for use in" litigation, I believe they are close enough in meaning to make an analogy possible. If anything, "in relation to" is broader than "for use in" and would therefore capture even more information. As in Order MO-2024-I, there is no obvious relationship between the records at issue and the actual conduct of the litigation in this case. In my view, the Ministry's argument that, without the funding provided by charging fees it would not be able to continue providing legal representation, is irrelevant. It does not go to the question before me, namely, whether the records were prepared "for use in" litigation. Another way of asking this question is: were the records prepared *to be used* in actual or contemplated litigation. In my view, they were not.
>
> I find that branch 2 does not apply to any part of the records.

I adopt the approach taken by Senior Adjudicator Higgins for the purposes of the present appeal. I agree that the invoices were prepared by or for counsel employed or retained by an institution. However, I do not accept that they were prepared for use in giving advice or in contemplation of or for use in litigation. In my view, as with the invoices in MO-2483, I find that no obvious relationship between the records at issue and the actual giving of advice or the actual conduct of any possible contemplated litigation; the invoices are ancillary to the activities referred to in branch 2.

I find that the invoices, Records 1, 2, 3, 4, 6, 7, and 8, were not prepared "for use in" giving legal advice, or in litigation. Therefore, I find that branch 2 does not apply to exempt the grand total listed at the bottom of the first page of each invoice.

As the mandatory third party exemption at section 10(1) has also been claimed for Records 1, 2, 3, 4, 7, and 8, I will continue my analysis to determine whether section 10(1) applies to exempt the grand total on each invoice from disclosure. Section 10(1) has not been claimed for Record 6.

THIRD PARTY INFORMATION

The relevant portions of section 10(1) read:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in

> confidence implicitly or explicitly, if the disclosure could reasonably be expected to,
>
> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
>
> (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

Section 10(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions [*Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.)]. Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace [Orders PO-1805, PO-2018, PO-2184, MO-1706].

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

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 10(1) will occur.

Part 1: type of information

The types of information listed in section 10(1) have been discussed in prior orders. As the only remaining information at issue is the grand total of the affected party's fee for professional services, the only type of information that is applicable is "commercial information":

> *Commercial information* is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises [Order PO-2010]. The fact that a record might have

> monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information [P-1621].

I accept that the grand total on the bottom of each invoice consists of commercial information as that term is defined in the context of section 10(1). The fees charged represent the buying and selling of the affected party's professional services. Accordingly, part one of the section 10(1) test has been established.

Part 2: supplied in confidence

Supplied

The requirement that it be shown that the information was "supplied" to the institution reflects the purpose in section 10(1) of protecting the informational assets of third parties [Order MO-1706].

Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party [Orders PO-2020, PO-2043].

The contents of a contract involving an institution and a third party will not normally qualify as having been "supplied" for the purpose of section 10(1). The provisions of a contract, in general, have been treated as mutually generated, rather than "supplied" by the third party, even where the contract is preceded by little or no negotiation or where the final agreement reflects information that originated from a single party [Orders PO-2018, MO-1706].

Although none of the parties make specific representations on whether the information was supplied to the City, it is clear that the grand total fee listed on each invoice was "supplied" to the City within the meaning of the section 10(1) test.

In confidence

In order to satisfy the "in confidence" component of part two, the parties resisting disclosure must establish that the supplier had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis [Order PO-2020].

In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential

- treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization

- not otherwise disclosed or available from sources to which the public has access

- prepared for a purpose that would not entail disclosure [Order PO-2043]

Although none of the parties make specific representations on whether the information was supplied "in confidence" to the City, the invoices are all stamped solicitor-client privileged indicating an intention that this information was not to be disclosed. While a stamp or notation indicating that records were supplied "in confidence" is not necessarily determinative, in my view, in the circumstances of this appeal, the invoices themselves, including the grand total at the bottom of each invoice, were clearly supplied to the City and it was intended that they would be treated confidentially.

Accordingly, part two of the section 10(1) test has been met.

Part 3: harms

To meet this part of the test, the institution and/or the third party must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

The failure of a party resisting disclosure to provide detailed and convincing evidence will not necessarily defeat the claim for exemption where harm can be inferred from other circumstances. However, only in exceptional circumstances would such a determination be made on the basis of anything other than the records at issue and the evidence provided by a party in discharging its onus [Order PO-2020].

Specifically addressing the financial information contained in the records, the affected party submits:

> A number of records constitute, in my submission, financial information, as they relate to pricing practices, and while on the whole, I submit this financial information is subject to solicitor-client privilege, a number of the documents also fall within the ambit of section 10, both for the reason that they explain pricing practices, but also because they contain specific detail that falls within the scope of trade secret, commercial and technical information.

The City makes brief representations on the application of section 10(1) but states that it adopts the representations of the affected party with respect to this exemption. It does, however, submit:

> From the City's perspective, a major concern is that set out in section 10(1)(b) of the *Act*, i.e. that disclosure of the information provided in confidence to [the affected party] in order to assist [the law firm] in provision of legal advice to the City will "result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied". In the event such information is not supplied, the City will be prejudiced in obtaining, appropriately analyzing and making preparations to deal with opposition and actions which would threaten and delay on-going construction of the Expressway project…Generally, disclosure of this type of information would have a chilling effect on any municipality engaged in attempting to undertake projects which are subject to controversy. Further, it is of concern that disclosure of such information would advantage groups and persons intending to act illegally.

As noted above, the only information that remains at issue in this appeal is the grand total of fees paid to the affected party listed at the bottom of each invoice, specifically, the total listed in Records 1, 2, 3, 4, 7, and 8. Given that I have found the majority of the information on the invoices to be exempt under section 12 as solicitor-client communication privileged, the grand totals to be disclosed are not informed by any additional information. Disclosure would not reveal how the affected party charges for services (for example, her fees per hour, per day, per task), the specific tasks performed, or the nature of the disbursements. Without this type of information, in my view, it is impossible to break down the total fee into information that might reasonably be expected to result in any of the harms listed in section 10(1), were it disclosed. Specifically, I find that the disclosure of the grand totals on each invoice, in and of themselves, could not reasonably be expected to prejudice the affected party's competitive position (as contemplated by section 10(1)(a)) or result in the affected party suffering an undue loss (as contemplated by section 10(1)(c)).

Additionally, I do not accept that the argument that were these totals disclosed, similar information would no longer be supplied (as contemplated by section 10(1)(b)) applies in the circumstances of this appeal. The totals listed on the invoices are the amounts due for professional services; it is not reasonable to conclude that such information would no longer be supplied to the City. If it were not provided, any party providing services to the City and the City itself would have no records indicating the fees received or paid for services rendered.

As none of the harms listed in sections 10(1)(a), (b), or (c) have been established, part three of the section 10(1) test has not been established.

As all three parts of the section 10(1) test must be established for the exemption to apply. I find that section 10(1) does not apply to exempt the grand totals listed on each invoice of Records 1, 2, 3, 4, 7, and 8, from disclosure.

As none of the remaining exemptions (sections 7 (advice and recommendations), 8 (law enforcement) or 14 (personal information)) can reasonably be applied to the only information

that I have not found to be exempt under section 12, the totals listed on the invoices, I will order the City to disclose the totals contained in each of the invoices to the appellant.

ORDER:

1. I order the City to disclose the grand total listed at the bottom of the first page of Records 1, 2, 3, 4, 6, 7, and 8 to the appellant by providing him with severed copies by **April 4, 2007** but not before **March 30, 2007**.

2. I uphold the City's decision to deny access to the remaining information contained in Records 1, 2, 3, 4, 6, 7, and 8, as well as Records 5, 9, 10, 11, 12, 13, 14, 15, 15.1, 16, 17 and 18 in their entirety.

3. In order to verify compliance with the terms of Order Provision 1, I reserve the right to require the City to provide me with a copy of the records which are disclosed to the appellant.

Original signed by: February 28, 2007
Catherine Corban
Adjudicator