



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-2300

Appeal MA06-408

City of Toronto



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NATURE OF THE APPEAL:

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for access to specified architectural plans relating to the Don Jail. Specifically, the requester sought access to the following archived files:

PT 345 – 1 to 29

PT 346 – 1 to 8

PT 347 – 1 to 2

The City located the responsive records and upon notification of the Ministry of Community Safety and Correctional Services (the Ministry), a third party whose interest may be affected by disclosure of the records, issued a decision denying access in full to the information requested under sections 8(1)(i), (j), and (k) (law enforcement) of the Act.

The requester (now the appellant), appealed the City's decision.

During mediation, the appellant clarified that he is pursuing access to the Don Jail's original architectural plans created between 1856 and 1860 and that he was not pursuing access to any recent renovation plans which may exist.

Upon discussion with the City, the Mediator contacted the Ministry to clarify the records at issue and to seek its view on disclosure. The Ministry agreed to review the responsive records and to conduct further consultations with respect to disclosure. As a result, the Ministry advised the City that it consented to only the disclosure of four exterior elevation plans.

Upon receipt of the Ministry's consent, the City issued a revised decision granting access to the four elevation plans, described as PT 345-6, PT 345-10, PT 345-18 and PT 345-25, to the appellant. The City further advised that access to the remaining plans was denied pursuant to sections 8(1)(i), (j), and (k) of the Act.

In response, the appellant indicated that he continues to seek access to the remaining plans.

As mediation did not resolve this appeal, the file was transferred to me to conduct an inquiry. I sent a Notice of Inquiry, setting out the facts and issues, to the City and the Ministry, initially. I received representations from both the City and the Ministry in response. I sent a Notice of Inquiry, along with a copy of the City's and Ministry's representations to the appellant. A portion of the City's and Ministry's representations were not disclosed due to concerns about confidentiality. I received representations from the appellant. I provided a copy of the appellant's representations to the City and the Ministry and sought their representations in reply. I received reply representations from the Ministry only. I then sent a copy of the Ministry's reply representations to the appellant and sought sur-reply representations from him. I received sur-reply submissions and then further supplementary representations from the appellant.

RECORDS:

The records consist of 35 historical architectural plans of the proposed Don Jail.

DISCUSSION:

BACKGROUND

The Ministry provided a history of the Don Jail in its representations. It states that:

The Don Jail was constructed during the period 1859 to 1864 based on designs submitted by Architect William Thomas. From 1864 to 1977, the Don Jail provided maximum security accommodation for inmates. The Don Jail (which includes its attached Annex building) currently continues to be used by the Ministry for other program support purposes.

On July 6, 2000, the City of Toronto passed by-law No. 410-2000 designating the Don Jail as being a building of architectural and historical value or interest. The by-law provides historical and other information relating to the Don Jail...

In accordance with the heritage designation agreement in relation to the Don Jail, a level of public access is required. Until June 2001, occasional public access to the Don Jail, such as during the Doors Open Toronto event, was permitted. It should be noted, however, that the event was supervised and visitors were prohibited from entering areas of the closed Don Jail for health and safety reasons. In 2002, a video and still photograph archive of the Don Jail was compiled from a historical architectural perspective. The photographs and video have been made available to various interested parties as an alternate way to address the vast public interest in the Don Jail.

The Toronto Jail was opened in 1958 as the attached east wing of the Don Jail. The Toronto Jail currently operates as a maximum security detention centre where individuals are lawfully detained in custody.

According to the City's representations, the Don Jail was built between 1862 and 1865, with most of the current jail facilities being constructed in the 1950s. Currently, only the newer part of the Don Jail [the Toronto Jail] is being used to handle remand prisoners awaiting trial.

The appellant provided details concerning the architectural history of the Don Jail and submits that:

The Don Jail was intended to be radial in concept and in design... [T]he Don, which, finally, was constructed as a rectangle without a series of additional radiating wings...

Concerning the four elevation plans released to the appellant during the mediation stage of the appeal, he states that:

The drawings being made available seem not all of the same nature. Some show very small windows, while Don has very large windows. Some of the drawings may not be drawings of the Don, or are of versions never realized...

The Don Jail is an empty building. It contains no inmates. As the [City's] submission states, the newer part, the Toronto Jail, contains inmates... [The Don Jail] has held no prisoners since 1977...

Toronto By-Law #410-2000 provided to me states: "That for the remainder of the 20th century [since the 1977 closure], the complex was used for storage and as the setting for film productions."...

The buildings were separately constructed, the Don c.1860, the Toronto Jail c.1950. They are operationally separate. The Toronto Jail, contained within the perimeters of the Toronto Jail building, operates as a maximum security remand facility of the Ministry of Corrections. The Don Jail is an empty heritage building managed by the Ontario Realty Corporation, likely on behalf of Bridgepoint Health Centre...

[I]n the book *William Thomas, Architect*,... published in 1996, by McArthur and Szamosi. ...on p.118 is a floor plan for one of the floors of the Don Jail. This particular plan seems to show both the existing footprint of the building and radiating wings to the rear that were never built. ...The book contains other Don drawings and number of interior photos...

Not in the book, but available to view, is the large drawing, framed behind glass, that hangs in the Toronto Archives just outside the Reading Room. It shows details of Don Jail doors, bars, locks, hinges, perhaps some side views of walls and foundations. It may [be] one of, or a reproduction of, one of the sheets denied me.

Observations Regarding Records

On May 7, 2008, I attended at the City of Toronto Archives to view the original records. I also reviewed the relevant portions of the book concerning the architect William Thomas, referred to by the appellant. The records which are the subject of this appeal are from the period of 1856 to 1858 and consist of exterior plans, portions of interior plans and diagrams of various individual components, such as doors, windows, stairs, skylights, floors, columns and ironwork. As evidenced by the discussion below concerning the book *William Thomas, Architect*, the records reflect the original anticipated design of the Don Jail, as they contain four radiating wings and are based on what is described as the "Eastern model" for prison design. The Don Jail as built

was based on the “Auburn model” for prison design. The Don Jail, as built, does not contain the four radiating wings reflected in the records that I reviewed. As such, the records that show the exterior and interior plans of the building are not the actual architectural plans of the Don Jail as constructed in the 1860s. Nor are the records plans of the abutting building which houses the Toronto Jail, which was constructed in the 1950s.

In support of my findings, the architectural history of the Don Jail is described in *William Thomas, Architect* as follows:

Thomas’s plans [for the Don Jail] were [based on the Eastern model for prisons and were] received by the committee on Police Prisoners in the summer of 1857. The designs called for a structure with four radiating wings. Solitary cells were arranged, for the most part, along the outside walls, and convicted felons were relegated to the rear wings. The latter consisted of back to back cells, surrounded by a corridor for better security. The committee recommended that tenders be received for only the two front wings... It proposed to construct these two wings and the central block of Thomas’s plan that year....

The design and construction of jails generally needed provincial approval. Presumably the Police Board had already received this. For some reason, however, the Board resubmitted the plans to the provincial authorities, and the Provincial Prison Inspectors found them unacceptable. The Inspectors ...had as a model their local prison [in Kingston], which was based on the Auburn principle, whereby prisoners were kept in common workrooms during the day, thus allowing for much smaller individual cells to be used at night.... The Prison Inspectors... requested major revisions [to the plans for the Don Jail]. The following year [1860] the Prison Inspectors approved... the Auburn model [in which the cells are separated from the exterior walls by corridors].

The process of altering the Don Jail plans was described in the Toronto City Council minutes:

The Provincial Prison Inspectors dissented from and objected to the plan [of the Toronto Jail]. The Inspectors object to the construction of the cells along the outer walls of the building and require that the same shall be constructed in the centre, with the hall, or keeper’s walk, between them and the outer walls. The Inspectors also condemn the radiating principle on which the rear wings had been originally projected...

After the plans were redrawn, Thomas personally re-submitted them to the offices [of the Provincial Prison Inspectors] in July 1860...

The main feature of the [Don Jail] is its central block, which underwent a number of design changes before arriving at its final appearance. Thomas's first series of drawings from 1857 show a simple, jutting frontispiece with an octagon panel watchtower at the back...

Six of the plans for the original Don Jail are displayed on the walls of the hallway of the office area of the Toronto Archives, just outside the Reading Room. These records are visible to all staff at the archives and any visitors to the office area. Three of these plans were disclosed to the appellant during the mediation stage of the appeal, Records PT 345-6, PT 345-10, and PT 345-25. These three records are exterior plans and are also contained in the book on William Thomas referred to above. Another record reproduced in the book is PT 345-9, which is an interior plan. This record is also displayed on the wall of the Toronto Archives. This record was not disclosed to the appellant. Also displayed on this wall are interior plans, Records PT 347-2 and PT 345-8. PT 345-8 contains similar details to that in PT 345-9. PT 347-2 shows piecemeal portions of interior features, such as a coal shoot.

On the same wall where the six records are displayed is a plaque entitled "The Architecture of the Don Jail". It describes the origin of the six records on the wall as follows:

William Thomas's original 1857 plans for the Don Jail, shown here, were considered an example of a modern, progressive approach to rehabilitation of those sentenced to spend time inside. The prison was designed to house each person in an individual cell, rather than all being left in one large room as had been the case in prisons of the previous century. While some called such solitary confinement cruel, the Globe reflected the city's goal when it wrote in 1859 that the building would "accomplish the ends of justice and humanity instead of herding people together as so many animals."

Toronto City Council approved Thomas's plans, but Provincial Prison Inspectors objected to the design, preferring a plan in which prisoners were kept in a common workroom during the day and sent to small individual cells at night. Thomas redesigned the building, and the jail, run by the city, opened in 1864. It was praised at the time for its architectural beauty, and modern writers have seen in it an imposing design that emphasizes both its public character and its function as a prison. Subject to overcrowding despite a 1950s addition, it has also been seen as a symbol of all that is outdated and corrupt in the justice system.

Owned by the provincial Ministry of Correctional Services since 1968, the original structure was declared obsolete and closed in 1977. The 1950s addition continues to be used for short-term incarceration. Due to its architectural and historical importance, the 19th century building was saved from demolition, but its future remains uncertain.

In conclusion, based on my observations of the records, the information contained in the book about the architect William Thomas and the parties' submissions, I find that the records at issue are not the architectural plans of the Don Jail as actually constructed in the 1860s.

LAW ENFORCEMENT

I will now determine whether the discretionary exemptions at sections 8(1)(i), (j) and (k) apply to the records.

Section 8(1) states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
- (j) facilitate the escape from custody of a person who is under lawful detention;
- (k) jeopardize the security of a centre for lawful detention; or

Where sections 8(1)(i), (j) and (k) use the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

It is not sufficient for an institution to take the position that the harms under section 8 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

Representations

The City submits that:

The building plans are that of the Don Jail, a building, for which protection is both a reasonable and expected requirement. The plans show specific details of the jail including the location of cells, windows, ventilation shafts, stairs,

centerings, ironwork, lanterns, foundation and floors, roof timbers, girders and other structural supports, doors and doorways, laundry, kitchen, etc.

It is the City's view that the disclosure of such details could allow an inmate to determine the most vulnerable points of the jail, the destination of passage and stairways, the strength of structures, etc. This information could, therefore, facilitate an escape from the Don Jail or permit its security to be endangered both within and without...

If the plans were to fall into unscrupulous hands, the security of the Don Jail could be compromised...

In addition, while these are the plans of the Don Jail, the Ministry has advised that there are other correctional facilities in Ontario with similar physical structures. The disclosure of these plans at issue could equally impact on the security of these other structures and used to assist in the escape from custody by those detained.

The Ministry relies on the confidential affidavit sworn by the Manager of the Toronto Jail Security and Investigations Unit and also states that:

Sections 8(1)(i)

[T]he Toronto Jail is a maximum security correctional institution that accommodates up to 561 inmates. Public dissemination of the requested Don Jail architectural plans may reasonably be expected to compromise the security of a building, systems and procedures that essential for the delivery of correctional services by the Ministry and the safety of staff, inmates and members of the public.

Sections 8(1)(j) and (k)

Release of the undisclosed Don Jail architectural plans may reasonably be expected to help facilitate the escape of an inmate from the Toronto Jail and jeopardize the security of the Toronto Jail...

The withheld architectural plans contain detailed information relating to the construction features of the existing Don Jail structure. The Ministry submits that correctional institutions by their very nature give rise to a reasonable basis for expectation of endangerment should information revealing detailed physical structure and layout be publicly released. As a result of the close physical proximity of the Don Jail and the Toronto Jail (the east wing of the Don Jail), release of detailed design information one would expect to find in architectural plans for jails (such as the layouts and measurements of doors, cells, windows, walls, etc.) may reasonably be expected to disclose information that describes physical security attributes or vulnerabilities that could be exploited by individuals seeking to illegally enter or escape from the Toronto Jail.

Release of the requested information would also leave both the Don Jail and the Toronto Jail more vulnerable to incidents of theft. Given the nature of activities conducted in a correctional services environment, such thefts could involve items that could pose health and safety risks to the general public.

The Ministry is particularly mindful of the fact that release of records in response to an access request is generally viewed as release to the world. Should the requested architectural plans be released to the requester, it is quite possible they would also be subject to disclosure to other members of the public, including inmates or ex-inmates of the Toronto Jail.

In IPC Order 187, former Commissioner Tom A. Wright discussed the application of section 14(1)(j) [the *Freedom of Information and Protection of Privacy Act (FIPPA)* equivalent of section 8(1)(j)] to certain records respecting the physical construction of a centre for lawful detention and concluded that the exemption applied. Former Commissioner Wright commented:

... it is my view that subsection 14(1)(j) of the [FIPPA] applies to them. While it is true that the records do not constitute extremely detailed plans of the maximum security facility, they do set out construction plans, including drawings, for new windows in the facility, existing and proposed types of materials to be used in construction, such as various types of locks and bars, a listing of construction work to be done in the order in which it should be done, a general description of the facility's grounds and surrounding area etc.

I feel that disclosure of these types of records, when they relate to a maximum security facility, could reasonably be expected to result in the harm contemplated by subsection 14(1)(j). In this regard, the word "facilitate" is defined in the Black's Law Dictionary as follows:

Facilitate. To free from difficulty or impediment ... To make easier or less difficult; free more or less completely from obstruction or hindrance; lessen the labour of...

With the types of plans and specifications in issue in this appeal, that is relating to a maximum security facility, it is my view that an appropriate meaning to ascribe to the word "facilitate" as it is used in subsection 14(1)(j), is "to make easier or less difficult".

More recently in Order PO-2332, Adjudicator John Swaigen accepted the Ministry's arguments that disclosure of the exempted parts of a security audit document [Operational Self-Audit Workbook (OSAW)] in relation to a maximum security detention centre could reasonably be expected to jeopardize the security of a centre for lawful detention.

Adjudicator Swaigen commented:

In my view, much of the information in the security audit would be obvious to most people. It is a matter of common sense and common knowledge that certain kinds of security measures, such as locks, fences and cameras would be present in certain locations and would be checked periodically in certain ways and that other practices and procedures described in the OSAW would be routine. However, the Ministry points out that "to a knowledgeable individual, the absence of a particular topic, identified deficiencies, or the unavailability of certain security enhancing measures at a given correctional facility could suggest a potential security vulnerability".

I accept that even information that appears innocuous could reasonably be expected to be subject to use by some people in a manner that would jeopardize security. Knowledge of the matters dealt with in the security audit could permit a person to draw accurate inferences about the possible absence of other security precautions. Such inferences could reasonably be expected to jeopardize the security of the institution by aiding in the planning or execution of an escape attempt, a hostage-taking incident, or a disturbance within the detention centre. As the Ministry states, disclosure of the contents of the security audit to a requester can result in its dissemination to other members of the public as well.

The Ministry submits Adjudicator Swaigen's comments are equally applicable to the current appeal. Notwithstanding that the requested architectural design plans are over 100 years old, because many of the existing internal features of the Don Jail are reflective of William Thomas's designs and because the Don Jail is physically connected to the fully operational Toronto Jail, disclosure of the architectural plans may reasonably be expected to facilitate the escape from custody of individuals incarcerated at the Toronto Jail and jeopardize the security of the Toronto Jail. Additionally, because effective jail design features tend to be repeated in other facilities, the Ministry believes that disclosure of the Don Jail architectural plans could also compromise the security of other operational correctional institutions that are of similar construction...

An Ontario correctional institution such as the Toronto Jail is a unique kind of facility that is responsible for the detention of persons charged with some of the most serious of criminal offences. The maintenance of the security of the institution is an imperative for the preservation of public safety. A correctional institution presents particular security dangers that do not present with a facility of any other kind, and the importance of the preservation of that security and the expertise and judgment of those charged with preserving that security requires careful consideration.

The appellant submits that:

The Toronto Jail is a remand centre. The Don Jail is an empty building. It contains no inmates. As the submission states, the newer part, the Toronto Jail, contains inmates...

The Don Jail being closed - without inmates - the claim that disclosure of the plans could facilitate an inmate's escape from the Don Jail seems difficult to press. If the claim refers to the jail complex as a whole, it remains the case that no plans or drawings of the Toronto Jail have been requested, so we are left with the proposition that plans for an old empty building may ease the escape from a different structure that does operate as a maximum security facility...

The issue here is whether the security of such a building is endangered by sharing architectural drawings that are approximately 150 years old...

The City ...cites a Ministry concern that disclosure of Don Jail plans could disclose architectural and security information about other Ontario jails. Information about 19th century prison architecture seems already available in abundance...

There are internet sites for many Victorian-era prisons, including the prisons in [6 locations, 3 in Ontario]. The Canadian Encyclopaedia - web version - in a long article on Prison Architecture reproduces floor plans for Kingston Penitentiary and Whitby Jail, among others. Some old prisons are hotels. Some prisons, such as those in ...are open to the public and give guided tours. The recently decommissioned provincial jail in Cornwall, Ontario is now open for touring and photography is unrestricted. It contains both 19th and 20th century cellblocks. There are also books such as [3 named books]...

The argument, above and elsewhere in my representations, is that the plans no longer contain sensitive information, and the building is not a secure facility used to house prisoners. Finally, the drawings under consideration have no impact on similar facilities, for similar drawings and similar facilities themselves are widely available to public view...

The Ministry ...refers to a video/photograph archive that is available, in unspecified ways, as an alternative to public access...

Photos of the interior of the Don, which abound, suggest that storing anything in there would invite varieties of mildew and rot, but memory and Google provide a list of television and film productions that have, at a minimum, used the Don Jail as a setting: Night Heat, The Great Detective, Due South, Dead Ringers, 54, Cocktail. In each case the production unit personnel would number between a few dozen and perhaps a few hundred people...

Architectural firms have had access to the Don Jail, probably for the opportunity to explore the building for renovation or restoration purposes...

The buildings were separately constructed, the Don c.1860, the Toronto Jail c.1950. They are operationally separate. The Toronto Jail, contained within the perimeters of the Toronto Jail building, operates as a maximum security remand facility of the Ministry of Corrections. The Don Jail is an empty heritage building managed by the Ontario Realty Corporation, likely on behalf of Bridgepoint Health Centre. ..

Nothing in the Don plans concerns details of windows, construction materials, locks, bars of the Toronto Jail, not in c.1950, not now... Inferences about the security of a building based on century-old working drawings of another building seem perhaps less susceptible to convincing demonstration.

[T]he Ministry stresses that the old Don looks much the way it did when first constructed. It does not stress, or nor does it describe in detail, anything that might suggest that Don security and Toronto Jail security are part of a single security cordon, that at they reinforce each other, that they are connected in any way at all, let alone in any substantial way associated with Toronto Jail security measures. In the absence of that kind of connection, the physical connection of the buildings seems not a security matter...

There seems no clear security relationship between the Don Jail and the abutting Toronto Jail. Toronto Jail security seems ever more associated with the integrity of the Toronto Jail perimeter only. Developments have been allowed or encouraged that have rendered the joined buildings in many important respects, fully separate.

The Don Jail has held, in more than one way, open house over decades without Toronto Jail security being breached. Many of those inside the Don have been carpenters, electricians, technicians, engineers, architects - persons whose professions make them expert in matters such as the strength of materials, the

thickness of walls, the physical layouts of historical and contemporary buildings. Construction details about, 19th century prisons abound in the public domain.

I sought reply representations from the Ministry, as follows:

The appellant states that: “*Architectural firms have had access to the Don Jail, probably for the opportunity to explore the building for renovation or restoration purposes.*” Have these firms been given access to the records at issue in the appeal? If so, in what manner? Are any of the records publicly available from the sources cited by the appellant in his representations?

In reply, the Ministry states that:

[A]rchitectural firms have had site access to the Don Jail as part of the Bridgepoint Health redevelopment plan. The Ministry has not been made aware that any architectural firms have accessed the architectural plans at issue...

The appellant raises the possibility that one of the Don Jail architectural plans at issue (or a copy) is on display at the Archives of Toronto in an internal area which a member of the public might nevertheless have occasion to visit. The Ministry has contacted the City of Toronto and the Archives and noted that given that security exemptions that have been applied to the records, the Archives should ensure that the records at issue are not inadvertently accessed by the public. The Ministry’s position in this regard is time-limited. Once the decommissioning of the Don Jail and the Toronto Jail occurs and the buildings are released to Bridgepoint Health, the Ministry’s security concerns will cease to exist.

With respect to other public sources of information relating to the Don Jail, as cited by the appellant, the Ministry is not in a position to now revisit or review past decisions in this regard that may have allowed some degree of access to information in relation to the Don Jail. We have not been made aware of any prior access request under the [the *Act*] for these architectural plans, and as such, to our knowledge these particular records have not been made available to the public,

I also sought reply representations from the Ministry on the specific claims by the appellant that similar information to that in the records is publicly available. In reply, it relied on its initial representations and the accompanying confidential affidavit of the Manager of the Toronto Jail Security and Investigation Unit. It also stated that:

...the existence of publicly available information relating to various closed facilities in which the Ministry has no security or other interests is clearly distinguishable from the circumstances of the Don Jail, a building in which the Ministry continues to have an ongoing interest...

[T]his particular case concerning records relating to the Don Jail does not call for an inquiry into the security arrangements with respect to various correctional institutions in Ontario, and with respect to decisions made regarding the use of buildings proximate to correctional institutions...

The appellant's [point] that various people, some of whom would have expertise with respect to building layout and building materials, have had access to the Don Jail over the years. The fact that there has been some limited access to the building in the past does not lead to a conclusion that the exemptions do not apply to the records at issue.

While the appellant does not provide details of any such access to the Don Jail, the Ministry acknowledges that at times various individuals working in the building on various projects would have had access to the building.

In sur-reply, the appellant submits that:

No mention is made [in the City's and Ministry's representations] of the possibility of the Ministry and City discovering from the Toronto Archives, for example, the number of times the drawings have been requested or disclosed over the past year, five years, fifty years...

My argument does not suggest only that because other jails are open, Don plans should be released. My argument remains that compromising the security of other jails built in the 19th century and still operating cannot occur through disclosure of Don plans. Don plans disclose nothing not already known...

The opening of decommissioned jails has not created security problems for other jails. Closing courthouses adjacent to, or attached to operational jails has been accomplished without jail security being compromised. The jails continue to operate.

The Ministry claims the Don Jail/Toronto Jail uniquely different from this pattern, but provides no details...

[P]roximity of other buildings, by itself, is no security issue at all for many other jails in Ontario. Jail/Courthouse complexes are commonplace, and the courthouses are open to the public...

[I]nformation about the Don interior in the records at issue was created some 100 years before the Toronto Jail was built. That information therefore, contains no possible reference of any sort to the Toronto Jail.

The appellant subsequently provided me with further representations, and enclosed a copy of the historical architectural video of the Don Jail obtained from the Ontario Realty Corporation and referred to in the Ministry's representations, along with a still photograph from the video entitled "Basement, North Corridor, Access to Toronto Jail".

Analysis/Findings

Based on my review of the parties' representations, including the confidential portions of the City's and Ministry's representations, the records, and the video of the Don Jail, I do not find that the City or the Ministry has provided me with "detailed and convincing" evidence sufficient to establish that disclosure of the records could reasonably be expected to:

- endanger the security of a building;
- facilitate the escape from custody of a person who is under lawful detention; or,
- jeopardize the security of a centre for lawful detention.

In arriving at this conclusion, I have considered the security of both the Don Jail and the abutting Toronto Jail. Based on my own careful review of the records, I conclude that they do not "contain detailed information relating to the construction features of the existing Don Jail structure", as claimed by the Ministry. As explained above, the records do not concern the Don Jail as built in the 1860s. The records are of a proposed jail modeled after the Eastern model of prison construction, which, consists of an entirely different layout than the actual Don Jail, which was constructed following the principles of the Auburn model.

The records are also not that of the Toronto Jail which was constructed in the 1950s. I find that there is nothing in the records that reveals the connection between the Don Jail and the Toronto Jail. The Toronto Jail was constructed approximately 90 years after the Don Jail. The publicly available video of the Don Jail reveals significantly more information about the relationship between the two jails, than do the records which depict a building that was never actually constructed.

Three of the undisclosed records are easily viewed by the staff of the Toronto Archives and any of their visitors. Despite the Ministry's claim in their reply representations of September 18, 2007, that "the Archives should ensure that the records at issue are not inadvertently accessed by the public", these records continue to be easily viewed by the public. Furthermore, both interior and exterior plans of the proposed Eastern model of the Don Jail, as reflected in the records, were published in a book. Based on my review of all of the records, I can find no significant differences in the types of information at issue as between the records published in the book on the architect or displayed on the wall of the Toronto Archives and the undisclosed records. Furthermore, I find that neither the Ministry nor the City has directed me to any specific architectural or historical details in the records that would support the applicability of the claimed exemptions.

The Don Jail has not housed prisoners since 1977. Therefore, release of the records could not reasonably be expected to facilitate the escape from custody of a person who is under lawful detention in the Don Jail or jeopardize the security of a centre for lawful detention.

In addition, I find that the security of the Toronto Jail could not reasonably be expected to be endangered by release of the records. Based on the parties' representations, including the confidential portions of the City's and Ministry's representations, and my review of the records, I do not find that the records contain information that would "disclose information that describes physical security attributes or vulnerabilities that could be exploited by individuals seeking to illegally enter or escape from the Toronto Jail" through the Don Jail, as claimed by the Ministry. The records do not reveal "to a knowledgeable individual, the absence of a particular topic, identified deficiencies, or the unavailability of certain security enhancing measures at a given correctional facility could suggest a potential security vulnerability" [Order PO-2332]. This is particularly so since the records are for a jail facility that was never built.

Even if there are some features in the records that reflect the Don Jail as actually built, I find that I have not been provided with the requisite "detailed and convincing" evidence to establish that disclosure of the records could reasonably be expected to endanger or jeopardize the security of the Toronto Jail building or facilitate the escape from custody of a person who is under lawful detention in the Toronto Jail.

The records are hand sketched drawings of a proposed jail and are not significantly detailed. They do not "set out construction plans, including drawings, for new windows in the facility, existing and proposed types of materials to be used in construction, such as various types of locks and bars, a listing of construction work to be done in the order in which it should be done, a general description of the facility's grounds and surrounding area etc." as was the case in the fact situation that gave rise to Order 187.

Although the Don Jail and Toronto Jail abut each other, the proximity of these two buildings alone is not sufficient to bring the records within the claimed exemptions. As pointed out by the appellant, other public buildings abut lawful detention centres. Similar information to that set out in the records is publicly available through the internet, in books and on the walls of the Toronto Archives. Furthermore, details concerning the interior of the Don Jail as actually built are, and have been in the past, made publicly available. In particular, the interior and exterior of the Don Jail is detailed in the Ontario Realty Corporation video and has also been included in films.

In conclusion, I find that the exemptions set out in sections 8(1)(i), (j) and (k) of the *Act*, do not apply to the records. As no other exemptions have been claimed by the City, I will order the records disclosed.

ORDER:

1. I order the City to disclose a copy of the records to the appellant by **June 19, 2008** but not before **June 12, 2008**.
2. In order to verify compliance with this Order I reserve the right to require the City to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1, upon my request.

Original signed by: _____
Diane Smith
Adjudicator

_____ May 14, 2008