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

ORDER MO-2484

Appeal MA08-303

Corporation of The Town of Kearney

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NATURE OF THE APPEAL:

The Town of Kearney (the Town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for access to the following records:

1. Site Plan approval and any Site Plan Agreement entered by the Town of Kearney with the Owner of the property (Part Lot 35, Conc. 11 - Plan 42R-15715) - may have been registered on April 2, 2001. A further site plan drawing was prepared for [a named company] and [another named company] by [third company identified by initials] Project #2004KBTL-SP, dated June 16, 2006, Drawing #: SP, Rev #: R2 - see further reference below to this site plan drawing in paragraph 3.

2. A copy of any minutes of council or other committee meetings and any correspondence related to the closure of the original shore road allowance for the subject property.

3. A copy of all building permit applications filed with the Town of Kearney respecting the subject property since 2004, including any site plan drawings or sketches (as noted in paragraph 1) and all accompanying building plans and drawings, grading plans, servicing plans, elevations, etc.

4. A copy of all building permits, partial building permits, conditional building permits, foundation permits or any other permits issued by the Town of Kearney building official(s) with respect to the subject property on or after January 1, 2004.

The Town issued a decision granting access to a number of records but denying access to 28 pages of responsive records pursuant to the exemptions at sections 15(1)(b), 17(1)(a), 19, and 14(2)(a) of the *Freedom of Information and Protection of Privacy Act*, which is the provincial version of the municipal *Act*. The corresponding sections of the municipal *Act*, which is the *Act* that applies to the Town, are sections 9(1)(d) (relations with other governments), 10(1)(a) (third party information), 12 (solicitor-client information) and 8(2)(a) (law enforcement) of the *Act*.

The requester, now the appellant, appealed the Town's decision.

During mediation, the Town provided this office with an index of records listing the records not disclosed to the appellant, indicating, as in its decision letter, the exemption claims as listed in the provincial *Act*. The mediator advised the Town that it is governed by the municipal *Act* rather than the provincial *Act* and identified the corresponding exemptions.

During mediation, the appellant provided the mediator with some background information about his request for information. He explained that he is seeking information that might shed some light on how a developer received approval to develop a lot behind an elderly couple who lives between the developer's land and the shore. He explained that the developer's construction has blocked the access route for the couple. As a result of the circumstances surrounding his request,

he advised the mediator that he takes the position that there is a public interest in the disclosure of the information responsive to his request. Accordingly, section 16, the compelling public interest override provision, was added as an issue in this appeal.

As further mediation was not possible, the file was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry.

I began my inquiry into this appeal by sending a Notice of Inquiry setting out the facts and issues to the Town and three affected parties who might have an interest in the disclosure of the records. Neither the Town, nor any of the affected parties chose to submit representations.

I then sent a copy of the Notice of Inquiry to the appellant inviting representations. The appellant provided representations in response. As the appellant's representations raised issues to which I believed that the Town should be given an opportunity to reply, I sent a copy of the appellant's representations to the Town. The Town provided a brief letter in response advising that it appears that the appellant is searching for information not contained in the documents that he is requesting. I provided a copy of the Town's letter to the appellant asking whether he wished to continue with the appeal. The appellant advised that he did.

RECORDS:

The responsive information that remains at issue in this appeal can be divided into 8 separate records:

Record 1 - Site Plan Approval, 3 pages (SP (a), (b), (c)). Section 9(1)(d) claimed.

Record 2 - Correspondence, 3 pages (C1 (a), (b), (c)). Section 10(1)(a) claimed.

Record 3 - Correspondence, 5 pages (C2 (a), (b), (c), (d), (e), (f)). Section 10(1)(a) claimed.

Record 4 - Correspondence, 2 pages (C3 (a), (b)). Section 10(1)(a) claimed.

Record 5 - Correspondence, 2 pages (C4 (a), (b)). Section 12 claimed.

Record 6 - Correspondence, 2 pages (C5 (a), (b)). Section 12 claimed.

Record 7 - Correspondence, 5 pages (C6 (a), (b), (c), (d), (e), (f)). Section 12 Claimed.

Record 8 - Building Permit Application, 4 pages (BPA (a), (b), (c) (d)). Sections 10(1)(a) and 8(2)(a) claimed.

DISCUSSION:

RELATIONS WITH GOVERNMENTS

The Town submits that the mandatory exemption at section 9(1)(d) applies to exempt Record 1, the Site Plan Approval, from disclosure. Section 9(1)(d) must be read with sections 9(1)(a), (b), and (c) of the *Act*. Those sections state:

> A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,
>
> (a) the Government of Canada;
>
> (b) the Government of Ontario or the government of a province or territory in Canada;
>
> (c) the government of a foreign country or state;
>
> (d) an agency of a government referred to in clause (a), (b) or (c);

The purpose of this exemption is "to ensure that governments under the jurisdiction of the *Act* will continue to obtain access to records which other governments could otherwise be unwilling to supply without having this protection from disclosure" [Order M-912].

For this exemption to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, 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 [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

If disclosure of a record would permit the drawing of accurate inferences with respect to information received from another government, it may be said to "reveal" the information received [Order P-1552].

For a record to qualify for this exemption, the institution must establish that:

1. disclosure of the record could reasonably be expected to reveal information which it received from one of the governments, agencies or organizations listed in the section; and

2. the information was received by the institution in confidence [Orders MO-1581, MO-1896 and MO-2314].

Analysis and finding

The Town claims that the "relations with other governments" exemption applies to Record 1. On its index of records the Town states that "this is the only copy of file, and is a faxed copy of the site plan held by the North Bay-Mattawa Conservation Authority." As the Town did not submit representations, this is the only information that it has provided in support of its application of this exemption to the record. Record 1 consists of three pages that are marked at the top as having been sent by fax from the North Bay-Mattawa Conservation Authority (NB-MCA). Page 1 is a site plan of an identified project. Page 2 is a pre-printed form entitled "Approved Sewage System Design Specifications as Submitted to the North Bay-Mattawa Conservation Authority." Page 3 is a completed pre-printed form entitled "Sewage System Permit." Based on the evidence before me, I find that the mandatory exemption at section 9(1)(d) does not apply to this information.

In considering the possible application of section 9(1)(d), the first requirement that must be established is whether the information in question was received from an agency of the Government of Canada, the Government of Ontario, the government of any other province or territory in Canada, or the government of a foreign country or state. It appears that the Town claims that Record 1 originates from the NB-MCA and that the MB-MCA is an agency of one of the governments listed in section 9(1). From my review of the notations on Record 1 that indicate that it was sent by fax from the NB-MCA, I accept that it was received by the Town from that Conservation Authority. I must now determine whether it is an agency of the Government of Ontario or any other government listed in section 9(1) of the *Act*.

Previous orders of this office have addressed the issue of whether a Conservation Authority qualifies as an agency of the Government of Ontario, within the meaning of section 9(1)(d). For example, in Order MO-2471, Adjudicator Daphne Loukidelis found that the Grand River Conservation Authority (GRCA) qualified as an "agency" of the provincial government for the purposes of section 9(1)(d). Adjudicator Loukidelis stated:

> I note that the GRCA operates under the *Conservation Authorities Act of Ontario* (R.S.O. 1990, CH. C.27), and instrument through which various municipalities manage the water and natural resources I the area. The Minister of Natural Resources is the minister responsible for that statute and, through it, the GRCA. In the circumstances, therefore, I am also satisfied that the GRCA is an "agency" of the provincial government for the purposes of section 9(1)(d) of the *Act*.

As with the GRCA, the NB-MCA operates under the *Conservation Authorities Act of Ontario*. In accordance with Adjudicator Loukidelis' reasoning in Order MO-2471, I accept that it falls under the responsibilities of the Minister of Natural Resources. Accordingly, I also accept that the NB-MCA is an "agency" of the Government of Ontario, for the purposes of section 9(1)(d) of the *Act*.

The second requirement that must be established for section 9(1)(d) to apply is that the information was "received in confidence" by the Town. Past orders have found that for information to "have been received in confidence" there must have been an expectation of

confidentiality on the part of the supplier and the receiver of the information [Orders MO-1896 and MO-2314]. I have not been provided with any evidence which would demonstrate that in the circumstances of this appeal either the Town or the NB-MCA had an explicit or implicit expectation of confidentiality regarding the information in Record 1.

As noted above, given that the Town chose not to submit representations, the only information that it has provided in support of its claim that section 9(1)(d) applies to Record 1 is a statement on the index of records that explains that the exemption applies "as this is the only copy on file, and is a faxed copy of the site plan held by the North Bay-Mattawa Conservation Authority." In my view, neither the fact that it is the only copy on file nor the fact that it was faxed amounts to evidence demonstrating that disclosure would reveal information that was received by the Town from the NB-MCA "in confidence."

Moreover, from my review of the record itself, I am not persuaded that the Town has provided the requisite detailed and convincing evidence of any explicit or implicit expectation of confidentiality with respect to this three-page record. None of the pages that make up the record contain an explicit notation to indicate that this information is to be kept in confidence. Additionally, from my review of the information, there is nothing that reveals that there is an implicit expectation of confidentiality on the part of either the Town or the NB-MCA. With respect to page 3, the permit itself, part of the pre-printed portion of the form indicates that the permit must be posted onsite prior to construction. In my view, this statement clearly indicates that there was no expectation of confidentiality, either explicit or implicit, with respect to page 3 of Record 1.

Accordingly, I find that the evidence before me is simply not sufficiently detailed and convincing to demonstrate that disclosure of any portion of Record 1 could reasonably be expected to reveal information the Town has received in confidence from an agency of the Government of Ontario, namely, the NB-MCA. Therefore, I find that Record 1 is not exempt from disclosure pursuant to the mandatory exemption at section 9(1)(b) of the *Act*. As no other exemptions have been claimed for this record, I will order that it be disclosed to the appellant.

THIRD PARTY INFORMATION

Section 10(1)

The Town claims that the mandatory exemption at section 10(1)(a) applies to exempt Records 2, 3, 4, and 8 from disclosure. That section states:

> 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,
>
> > prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

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. Those that might be relevant in the circumstances of this appeal have been described as follows:

> *Trade secret* means information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which
>
> (i) is, or may be used in a trade or business,
>
> (ii) is not generally known in that trade or business,
>
> (iii) has economic value from not being generally known, and
>
> (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy [Order PO-2010].
>
> *Scientific information* is information belonging to an organized field of knowledge in the natural, biological or social sciences, or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of a specific hypothesis or conclusion and be undertaken by an expert in the field [Order PO-2010].

> *Technical information* is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. While it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing [Order PO-2010].
>
> *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].
>
> *Financial information* refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs [Order PO-2010].

I have reviewed the information in Records 2, 3, 4, and 8 and find that some portions of these records qualify as the type of information listed in section 10(1) of the *Act* while others do not.

Record 2 is correspondence from an affected party surveying company that encloses a two-page survey plan of an identified property. In my view, this information, including the one-page letter which describes the survey plan, qualifies as technical information within the meaning of part 1 of the section 10(1) test. Specifically, the information contained in Record 2 belongs to an organized field of knowledge as it was prepared by a professional land surveyor and describes a particular property. Accordingly, I find that part 1 of the section 10(1) test has been met for Record 2.

Record 3 is correspondence from an affected party general contracting and consulting company. It consists of a one-page letter, a completed transfer/deed of land form, the top half of a tax bill, a site plan of a particular piece of property, and a two-page survey plan of a particular piece of property. In my view, the letter, which describes the site plan and survey plan, and the plans themselves, qualify as technical information within the meaning of part 1 of the section 10(1) test. Specifically, the information was prepared by a professional land surveyor and amounts to technical plans that describe a specific piece of property. Accordingly, I find that pages 1, 4, 5, and 6 of Record 3 meet the requirements of part 1 of the section 10(1) test.

With respect to pages 2 and 3 of Record 3, I find that they do not contain any of the types of the information described in part 1 of the section 10(1) test. The transfer/deed of land form contains information about the property as well as information about the transferors and transferee that may qualify as personal information. I will address below whether this information qualifies as personal information and may be exempt under section 14(1) of the *Act*. The tax bill contains information about the property and information about the title holder, which is a named

corporation. It does not contain any information about the amount owed. In my view, none of this information qualifies as a trade secret, or technical, commercial, financial, scientific or labour relations information within the meaning of part 1 of the section 10(1) test. Accordingly, I find that part 1 has not been established for pages 2 and 3 of Record 3.

Record 4 is a two-page letter from an affected party's lawyer to the Town. I have reviewed the letter and find that it does not contain any of the types of information described in part 1 of the section 10(1)(a) test. Accordingly, part 1 has not been established for Record 4.

Record 8 is a completed, pre-printed form entitled "Application for a Permit to Construct or Demolish" and two attached schedules which are also completed, pre-printed forms. Having reviewed all of the information on all three of these forms, I find that none of it qualifies as any of the types of information described in part 1 of the section 10(1) test. The information at issue is either factual in nature or amounts to the business contact information for individuals who are to be involved in the completion of the building project for which the permit is being sought. In my view, none of it can be said to qualify as a trade secret or information of a scientific, technical, commercial, financial or labour relations nature. Accordingly, I find that part 1 has not been established for Record 8.

As I have found that the first part of the section 10(1) test has been met for Record 2 and pages 1, 4, 5, and 6 of Record 3, I will go on to determine whether they were supplied in confidence to the Town, within the meaning of part 2 of the test.

As all three parts of the test must be met for section 10(1) to apply, pages 2 and 3 of Record 3 as well as Records 4 and 8 do not qualify for exemption under the mandatory exemption at section 10(1) of the *Act*. As no other exemptions have been claimed for Records 3 or 4, I will order page 3 of Record 3 and Record 4, in its entirety, be disclosed to the appellant. Page 2 of Record 3 contains information that may qualify as personal information. Accordingly, I will go on to determine whether the mandatory exemption at section 14(1) of the *Act* applies to exempt the personal information on page 2 from disclosure. With respect to Record 8, as the Town has also claimed that section 8(2)(a) of the *Act* exempts it from disclosure, I will go on to determine whether this exemption applies to it.

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].

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]

On the face of the records, it is clear that none of the information contained in Record 2 or in pages 1, 4, 5 and 6 of Record 3 originated with the Town. Therefore, I accept that it was supplied to it by the affected parties. However, none of these pages contain any indication that there was an explicit expectation that this information was to be kept in confidence. In the absence of representations from the Town or any of the affected parties, it is difficult for me to determine whether in the circumstances of this appeal, the affected parties who supplied this information to the town had a reasonable expectation of confidentiality when they supplied the information. However, in light of my findings under the harms components of the section 10(1) test, it is not necessary for me to make a finding on whether the information in Record 2 or in pages 1, 4, 5, and 6 of Record 3 was supplied in confidence within the meaning of part 2 of the section 10(1) test.

Part 3: harms

To meet this part of the test, the institution and/or the affected parties claiming that the information should not be disclosed 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].

Section 10(1)(a): prejudice to competitive position

The Town claims the application of section 10(1)(a) but does not provide any representations in support of this assertion. Neither do the affected parties. In the absence of representations from any of the parties resisting disclosure, I find that I have not been provided with the kind of "detailed and convincing" evidence required to establish a reasonable expectation that the affected parties would suffer prejudice to their competitive position that were the information contained in the records disclosed.

In Order PO-2435, Assistant Commissioner Brian Beamish commented on the need for "detailed and convincing" evidence and the burden of proof which falls on the parties in addressing a claim that the exemption at section 17(1), the provincial equivalent of section 10(1) of the *Act*:

> Lack of particularity in describing how harms identified in the subsections of section 17(1) could reasonably be expected to result from disclosure is not unusual in representations this agency receives regarding this exemption. Given that institutions and affected parties bear the burden of proving that disclosure could reasonably be expected to produce harms of this nature, and to provide "detailed and convincing" evidence to support this reasonable expectation, the point cannot be made too frequently that parties should not assume that such harms are self-evident or can be substantiated by self-serving submissions that essentially repeat the words of the Act.

The Assistant Commissioner goes on to state that the "need for public accountability in the expenditure of public funds is an important reason behind the need for "detailed and convincing" evidence to support the harms outlined in section 17(1)." In my opinion, this principle is equally applicable to this appeal.

In the circumstances of this appeal, I have not been provided with the requisite "detailed and convincing" evidence to establish a "reasonable expectation" of any of the identified harms listed in sections 10(1), including section 10(1)(a), resulting from the disclosure of the information at issue. Accordingly, I find that part 3 of the section 10(1) test has not been established for Record 2 and pages 1, 4, 5, and 6 of Record 3. As all three parts of the section 10(1) test have to be met for the exemption to apply, I find that this information is not exempt under the mandatory exemption at section 10(1) of the *Act* and I will order it disclosed to the appellant.

In summary, I have found section 10(1) of the *Act* does not apply to any of Records 2, 3, 4, and 8 from disclosure. As noted above, as page 2 of Record 3 may contain information that qualifies as personal information within the meaning of the *Act*, I will determine whether the mandatory exemption at section 14(1) applies to that information. Additionally, as the Town has also claimed section 8(2)(a) for Record 8, I will also go on to determine whether that exemption applies to that record.

PERSONAL INFORMATION

In order to determine whether the mandatory exemption at section 14(1) might apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1), in part, as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

As noted above, although not claimed by the Town, page 2 of Record 3 appears to contain information that might qualify as personal information and the mandatory exemption at section 14(1) of the *Act* might apply. Page 2 of Record 3 is a completed transfer/deed of land form regarding an identified property. Having reviewed this information closely, I find that it contains the names, together with other personal information of the transferors of the property, including their signature (paragraph (c)), address (paragraph (d)), and marital status (paragraph (a)). Specifically, I find that all of the information found in boxes 8, 9, 10 and 13 of page 2 qualifies as personal information in accordance with paragraph (h) of the definition of that term in section

2(1). I will therefore, go on to determine whether this information is exempt from disclosure pursuant to the mandatory exemption at section 14(1) of the *Act*.

I find that the remainder of the information on page 2 of Record 3 does not qualify as personal information within the meaning of that term as defined in section 2(1) of the *Act*. The remainder of the information either relates to the property or to the transferee, which is a corporation. In my view, none of this information relates to an identifiable individual as required by the definition of personal information as set out in the *Act*. Only information that qualifies as personal information can qualify for exemption under section 14(1). Accordingly, I will order that the information that does not qualify as personal information be disclosed to the appellant.

PERSONAL PRIVACY

Having determined that some of the information contained on page 2 of Record 3 is the personal information of identifiable individuals, the mandatory exemption at section 14(1) requires that the Town refuse to disclose the information unless one of the exceptions to the exemption at section 14(1)(a) through (f) applies. In my view, the only exception which could have any application in the present appeal is set out in section 14(1)(f), which states:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy within the meaning of section 14(1)(f). Section 21(2) provides criteria to consider in making this determination, section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has ruled that once a presumption against disclosure has been established under section 14(3), it cannot be rebutted by either one or a combination of the factors set out in section 14(2). A section 14(3) presumption can be overcome, however, if the personal information at issue is caught by section 14(4) or if the "compelling public interest" override at section 16 applies (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

If none of the presumptions in section 14(3) applies, the institution must consider the factors listed in section 14(2), as well as all other relevant circumstances.

Analysis and findings

Having reviewed the information on page 2 of Record 3 that qualifies as personal information, I find that none of the presumptions at section 14(3) of the *Act* are relevant in the circumstances.

Additionally, in my view, none of the factors listed in section 14(2) of the *Act*, weighing either for or against disclosure of the information, are relevant. In the absence of evidence to establish that disclosure of this information would *not* constitute an unjustified invasion of the personal privacy of the individuals to whom the personal information relates, the exception at section 14(1)(f) does not apply and disclosure of the information would amount to an unjustified invasion of personal privacy.

As section 14(4) does not apply and there is no evidence that there is a compelling public interest in the disclosure of this information, I find that section 14(1) applies to exempt all of the personal information in boxes 8, 9, 10 and 13 of page 2 of Record 3 from disclosure. For greater clarity, I will provide the Town with a highlighted copy of page 2 of Record 3, highlighting in yellow the information that *should not* be disclosed to the appellant.

LAW ENFORCEMENT

The Town submits that section 8(2)(a) applies to Record 8 which is a Building Permit Application with two attached schedules.

Section 8(2)(a) states:

> (2) A head may refuse to disclose a record,
>
> > (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

The term "law enforcement" is used in several parts of section 8(2)(a), and is defined in section 2(1) as follows:

> "law enforcement" means,
>
> > (a) policing,
> >
> > (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
> >
> > (c) the conduct of proceedings referred to in clause (b)

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

Where section 8(2)(a) uses 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*].

Section 8(2)(a): law enforcement report

In order for a record to qualify for exemption under section 8(2)(a) of the *Act*, the institution must satisfy each part of the following three-part test:

1. the record must be a report; and

2. the report must have been prepared in the course of law enforcement, inspections or investigations; and

3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Orders 200 and P-324]

The word "report" means "a formal statement or account of the results of the collation and consideration of information". Generally, results would not include mere observations or recordings of fact [Orders P-200, MO-1238, MO-1337-I].

The title of a document is not determinative of whether it is a report, although it may be relevant to the issue [Order MO-1337-I].

Section 8(2)(a) exempts "a report prepared in the course of law enforcement *by an agency which has the function of enforcing and regulating compliance with a law*" (emphasis added), rather than simply exempting a "law enforcement report." This wording is not seen elsewhere in the *Act* and supports a strict reading of the exemption [Order PO-2751].

As noted above, the Town claims that the section 8(2)(a) applies to exempt Record 8 from disclosure. Record 8 is a Building Permit Application with two attached schedules. The information contained in Record 8 amounts to a series of entries on pre-printed forms. These entries include information about the project for which the permit is being sought (the legal and municipal address of the property), information relating to the applicant (address and contact information), the purpose of the application and the proposed use of the building, information about the individual responsible for the design activities (address and contact information), the type of design activities to be undertaken, information about the individual who is to install a sewage system (address and contact information) and a declaration of the applicant.

I have carefully reviewed the information at issue on Record 8 and, in my view, it does not contain a formal statement or account of the results of the collation and consideration of the information by the individuals who prepared them. Rather, Record 8 contains only factual information about the project for which a building permit is being sought and information about those who are to be involved. Accordingly, I find that Record 8 does not qualify as a "report" within the meaning of the first part of the three-part section 8(2)(a) test.

As all three parts of the test must be satisfied in order for the exemption to apply, Record 8 does not qualify for exemption under section 8(2)(a) of the *Act*. As I have already found that section 10(1) does not apply to this record and no other exemptions have been claimed for it, I will order the Town to disclose Record 8 to the appellant.

SOLICITOR-CLIENT PRIVILEGE

The Town submits that Records 5, 6, and 7 are exempt, in their entirety, pursuant to the solicitor-client privilege exemption in section 12 which states as follows:

> 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. Branch 1 arises from the common law. Branch 2 is a statutory privilege. The onus is on the Town to establish that at least one branch applies.

Branch 1 of the section 12 exemption encompasses two heads of privilege, as derived from the 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) 257 (S.C.C.) (also reported at [2006] S.C.J. No. 39)].

Under Branch 1, the actions by or on behalf of a party may constitute waiver of common law solicitor-client privilege [Orders PO-2483, PO-2484]. Common law litigation privilege may be lost through termination of litigation or the absence of reasonably contemplated litigation [P-1551].

Branch 2 is a statutory exemption that is available in the context of counsel employed or retained by an institution giving legal advice or conducting litigation. The statutory exemption and common law privileges, although not necessarily identical, exist for similar reasons. Branch 2 applies to a record that was "prepared by or for counsel employed or retained by an institution for use in giving legal advice." Branch 2 also applies to a record that was prepared by or for counsel employed or retained by an institution "in contemplation of or for use in litigation." Note that termination of litigation does not affect the application of statutory litigation privilege under Branch 2 [*Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer)* (2002), 62 O.R. (3d) 167 (C.A.)].

Analysis and finding

The Town does not identify which branch it relies upon in applying the exemption in section 12 to Record 5, 6, and 7. I will first consider whether either of the heads of privilege in Branch 1 apply to Records 5, 6, or 7. If Branch 1 applies to any of these records, it is not necessary for me to determine whether Branch 2 also applies.

As section 12 is a discretionary exemption, the Town was required to establish that one or the other (or both) branches apply. Although the Town did not make any submissions explaining how this exemption applies, based on my review of the records for which it was claimed, I will uphold the Town's claim, in part.

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 [Orders PO-2441, MO-2166 and MO-1925].

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. A letter from the client containing information may end with such words as "please advise me what I should do." But, even if it does not, there will usually be implied in the relationship an overall expectation that the solicitor will at each stage, whether asked specifically or not, tender appropriate advice. Moreover, legal advice is not confined to telling the client the law; it must include advice as to what should prudently and sensibly be done in the relevant legal context [*Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.), cited in Order P-1409].

Record 5 consists of two, one-page letters from outside legal counsel who appears to have been retained by the Town, to another legal counsel who appears to have been retained by one of the affected parties. Record 6 is a two-page letter, also written by the Town's outside counsel, addressed to the affected party's counsel. The letters are clearly communications between counsel for different parties. From their content it is not clear to me that these parties share a common interest. In my view, based on the evidence before me, neither of these letters can be described as "direct communications of a confidential nature between a solicitor and a client, or their agents or employees, made for the purpose of obtaining or giving professional advice." Rather, these letters appear to represent correspondence between opposing counsel. Accordingly, I find that the Town has not established that Records 5 and 6 qualify for exemption under the solicitor-client communication privilege of Branch 1.

Record 7 however, is a two-page letter to the Town from its lawyer attaching two, two-page statements of account detailing legal services rendered and listing the fees for those services. I have reviewed the content of the two-page letter and accept that it amounts to a direct communication of a confidential nature between a solicitor and a client. I also accept that it was made for the purpose of giving legal advice. Accordingly, I find that the two-page letter portion of Record 7 qualifies for exemption under the solicitor-client privilege of Branch 1.

The remaining four pages of Record 7 are the two statements of account. The application of solicitor-client privilege to legal billing information was canvassed by the Supreme Court of Canada's decision in *Maranda v. Richer,* [2003] 3 S.C.R. 193 ("*Maranda*"). In the access to information context, and specifically the solicitor-client exemption at section 19 of the *Freedom of Information and Protection of Privacy Act* (the provincial equivalent of section 12 of the municipal *Act*), the Ontario Courts have applied *Maranda* and upheld Orders PO-1922 and PO-1952, which ordered disclosure of legal fee information in fairly summary form. The Divisional Court ruling on Orders PO-1922 and PO-1952, reported at *Ontario (Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)* (2004), 70 O.R. (3d) 779, was upheld by the Court of Appeal in *Ontario (Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)* [2005] O.J. No. 941 (*Attorney General*).

Although they differ in their particulars, Senior Adjudicator John Higgins' decisions in Orders PO-2483 and PO-2484 both conclude by requiring disclosure of aggregate fees and disbursements. In *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner*), [2007] O.J. No. 2769 the Divisional Court also upheld the Senior Adjudicator's decision that the bottom line legal fee amounts appearing on legal accounts were not exempt under the solicitor-client privilege exemption.

In Order PO-2483 (which was not subject to an application for judicial review) Senior Adjudicator Higgins carefully described the progression of jurisprudence relating to the application of privilege to information about lawyer's fees. Specifically, he quotes extensively from the decision of the Supreme Court of Canada in *Maranda* and relies on the reasoning contained therein. He states:

> Maranda involved the search of a lawyer's office for documents relating to fees and disbursements charged to a client suspected of money laundering. The Supreme Court judgment in Maranda sets out a new approach for determining the application of privilege to lawyers' billing information. Unlike previous cases on this subject, the Supreme Court adopts the principle that information about lawyer's fees is presumptively privileged. The presumption of privilege is rebutted where the information is "neutral", i.e. does not disclose, either directly or inferentially, information that is subject to solicitor-client privilege.
>
> In formulating this approach, the Supreme Court rejects the "facts" and "communications" distinction as the sole or primary basis for the rule in relation to privilege as applicable to lawyers' billing information. This distinction had been discussed in the context of legal billing information in Stevens v. Canada (Privy Council) (1998), 161 D.L.R. (4th) 85 (F.C.A.) ("Stevens", discussed in

more detail below), and was also relied on by the Quebec Court of Appeal in that court's Maranda decision. The Supreme Court states (at paras. 30-33):

> [The] rule cannot be based on the distinction between facts and communication… The distinction is made in an effort to avoid facts that have an independent existence being inadmissible in evidence. It recognizes that not everything that happens in the solicitor-client relationship falls within the ambit of privileged communications…
>
> However, the distinction does not justify entirely separating the payment of a lawyer's bill of account, which is characterized as a fact, from acts of communication, which are regarded as the only real subject of the privilege. The existence of the fact consisting of the bill of account and its payment arises out of the solicitor-client relationship and of what transpires within it. That fact is connected to that relationship, and must be regarded, as a general rule, as one of its elements.
>
> Because of the difficulties inherent in determining the extent to which the information contained in lawyers' bills of account is neutral information, and the importance of the constitutional values that disclosing it would endanger, recognizing a presumption that such information falls prima facie within the privileged category will better ensure that the objectives of this time-honoured privilege are achieved. That presumption is also more consistent with the aim of keeping impairments of solicitor-client privilege to a minimum.… [emphases added]

The decision goes on to find that the approach set forth in *Maranda* applies in both the criminal and the civil context, in accordance with the approach taken by the Court of Appeal in Attorney General. In that decision, the Court of Appeal set out the test for rebuttal of the presumption of privilege as follows:

> 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. (4th) 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.

In Order PO-2483, Senior Adjudicator Higgins summarized the above-noted approach as follows:

> Accordingly, 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 the reasoning set out by Senior Adjudicator Higgins above and adopt it in the circumstances of this appeal.

The statements of account in Record 7 list the legal services rendered for two separate time periods. Both statements list the date, identify the specific work that was done, set out the aggregate fee for those services, breakdown and describe the fee for disbursements, list the taxes on the services and disbursements, and identify the total fee due for services rendered. Having reviewed this information closely, I accept that were the narrative portions of the accounts (the portions that describe the legal services rendered) disclosed, they would reveal confidential communications between a solicitor and a client (in this case, the Town and its outside counsel), made for the purpose of obtaining or giving legal advice.

However, with respect to the aggregate total of the fees and disbursements listed, I do not accept that there is a reasonable possibility that disclosure of the amounts paid will directly or indirectly reveal any communication protected by the privilege; nor do I accept that there is a reasonable possibility that an assiduous inquirer, aware of background information available to the public, could use this information concerning the amount of fees paid to deduce or otherwise acquire communication protected by the privilege. Accordingly, I find that common law solicitor-client privilege does not apply to the aggregate total of the fees and disbursements listed on the accounts in Record 7.

As I have found that the two-page letter portion of Record 7 and the narrative portions of the attached statements of accounts qualify for exemption under the solicitor-client privilege of Branch 1, it is not necessary for me to determine whether the common law litigation privilege in Branch 1, or the statutory privileges in Branch 2 apply to this information.

Litigation privilege

Litigation privilege protects records created for the dominant purpose of existing or reasonably contemplated litigation [Order MO-1337-I; *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.)]. The purpose of this privilege is to protect the adversarial process by ensuring that counsel for a party has a "zone of privacy" in which to investigate and prepare a case for trial. The privilege prevents such counsel from being compelled to prematurely produce documents to an opposing party or its counsel [*General Accident Assurance Co.*, cited above, and Order PO-2006 [aff'd, [2003] O.J. No. 3522 (Ont. Sup C.J.].

Courts have described the "dominant purpose" test as follows:

> A document which was produced or brought into existence either with the dominant purpose of its author, or of the person or authority under whose direction, whether particular or general, it was produced or brought into existence, of using it or its contents in order to obtain legal advice or to conduct or aid in the conduct of litigation, at the time of its production in reasonable prospect, should be privileged and excluded from inspection [*Waugh v. British Railways Board*, [1979] 2 All E.R. 1169 (H.L.), cited with approval in *General Accident Assurance Co.*; see also Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.)].

For the remaining information (Records 5, 6 and the portions of Record 7 that relate to the fees) to be exempt under this component of section 12, three requirements must be satisfied:

1. The record must have been created with existing or contemplated litigation in mind.

2. The record must have been created for the dominant purpose of existing or contemplated litigation.

3. If litigation had not been commenced when the record was created, there must have been a reasonable contemplation of litigation at that time, i.e. more than a vague or general apprehension of litigation [Order MO-1337-I].

In the absence of representations on this issue, it is difficult for me to determine whether Records 5 and 6 have been created for the dominant purpose of existing or contemplated litigation. It is not clear from my review of the records themselves whether litigation involving the Town was contemplated or on-going. In my view, the Town has failed to establish that any of the three requirements of the "dominant purpose" test are met with respect to Records 5 and 6. This lack of evidence of "existing or reasonably contemplated litigation" must, in my view, results in the failure of the Town's claim of litigation privilege. As I have not been provided with sufficient evidence to establish that litigation existed or was reasonably contemplated at the time of the records' creation, I find that common law litigation privilege does not apply to Records 5 and 6.

With respect to the statements of account in Record 7, it is clear that they have not been created for the dominant purpose of existing or contemplated litigation. The statements of account were prepared for the dominant purpose of charging the Town for the solicitor's services. Accordingly, I find that the common law litigation privilege does not apply to the remaining portions of Record 7.

Statutory Communication Privilege

The statutory communication privilege applies to a record that was "prepared by or for counsel employed or retained by an institution for use in giving legal advice." For the same reasons outlined above in my discussion on the common law solicitor-client communication privilege, I find that the Town has not established that Records 5 and 6 and the portions of the statements of account in Record 7 that remain at issue were prepared "for use in giving legal advice." Accordingly, I find that the statutory communication privilege does not apply to this information.

Statutory Litigation Privilege

The statutory litigation privilege applies to records that were prepared by or for counsel employed or retained by an institution "in contemplation of or for use in litigation." For the same reasons outlined above in my discussion on the common law litigation privilege, I find that the Town has not established that Records 5 and 6 and the aggregate fees listed of the statements of account in Record 7 were prepared "in contemplation or for use in litigation." Accordingly, I find that the statutory litigation privilege does not apply to this information.

In sum, I have found that the solicitor-client privilege exemption at section 12 of the *Act* applies to exempt the two-page letter and the narrative portions of the attached statements of account in Record 7. Therefore, I will uphold the Town's decision not to disclose it. Additionally, I have found that the solicitor-client privilege does not apply to Records 5, 6 and the fee information in Record 7. As no other exemptions have been claimed for this information, I will order the Town to disclose it to the appellant.

PUBLIC INTEREST OVERRIDE

The appellant takes the position that there is a compelling public interest in the disclosure of the records at issue and that section 16 of the *Act* applies. That section states:

> An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

In *Criminal Lawyers' Association v. Ontario (Ministry of Public Safety and Security)* (2007), 86 O.R. (3d) 259 (leave to appeal granted, November 29, 2007, File No. 32172 (S.C.C.)), the Ontario Court of Appeal held that the exemptions in sections 14 and 19 of the provincial *Act*, which are equivalent to sections 8 and 12 of the *Act*, are to be "read in" as exemptions that may be overridden by section 23, the provincial equivalent to section 16 of the *Act*. On behalf of the majority, Justice LaForme stated at paragraphs 25 and 97 of the decision:

> In my view s. 23 of the Act infringes s. 2(b) of the *Charter* by failing to extend the public interest override to the law enforcement and solicitor-client privilege exemptions. It is also my view that this infringement cannot be justified under s. 1 of the *Charter*. … I would read the words "14 and 19" into s. 23 of the *Act*.

For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Orders P-984, PO-2607]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Orders P-984 and PO-2556].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347 and P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

A public interest is not automatically established where the requester is a member of the media [Orders M-773 and M-1074].

The word "compelling" has been defined in previous orders as "rousing strong interest or attention" [Order P-984].

Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)]. If there is a significant public interest in the non-disclosure of the record then disclosure cannot be considered "compelling" and the override will not apply [Orders PO-2072-F and PO-2098-R].

The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

Representations

The appellant submits that there is a compelling public interest in the disclosure of the information at issue in this appeal. He states that "the underlying situation to this appeal involves a very elderly couple … late 80's and early 90's. We therefore believe this matter (appeal) to be of a 'compelling public interest.'"

The appellant explains that he first became involved in the situation when he volunteered to resolve a "'blocked' deeded 'right-of-way'" accessing an identified property in the Town. He submits:

> The records we seek are essential in both determining the 'rights' granted by the Town to [named individual], and also in determining what remedial action can be reasonably encouraged to resolve the matter of the 'road closure'. The road closure has denied the [named individuals] access to their properties and has also created a severe health and safety situation for a very elderly couple.

The appellant attached a number of supporting documents to his representations describing some of the background to this matter.

Analysis and findings

As indicated above, in this order I have found that the majority of the information withheld by the Town is not exempt under the exemptions claimed and will order that it be disclosed to the appellant. I have upheld the Town's claim that the discretionary exemption at section 12 applies to portions of Record 7, specifically, the two-page letter and the narrative portion of the attached statements of account. I have also found that the personal information on page 2 of Record 3 is exempt from disclosure pursuant to the mandatory exemption at section 14(1). Accordingly, my determination of whether the public interest override applies is limited to this information only.

The appellant's representations on the issue of a compelling public interest in the disclosure of the information that has been withheld raise matters which, in my view, appear to be of a private nature. The appellant describes a conflict between two parties regarding "right of way" access to a specified property within the Town, which also appears to be involved in this conflict. As noted above, a public interest does not necessarily exist where the interests being advanced are essentially private in nature. In my view, this is the case in this appeal. Moreover, this private interest does not appear to raise issues of a more general application. Therefore, I find that a public interest of a compelling nature has not been established. Even if a compelling public interest were to exist, considering the amount of information that remains at issue and the nature of that information, I find that its disclosure would not serve to address any such compelling public interest. Therefore, I find that the public interest override at section 16 of the *Act* has no application in the current appeal.

ORDER:

1. I order the Town to disclose to the appellant, Records 1, 2, 4, 5, 6, and 8, in their entirety, the portions of Record 3 that I have found do not qualify as personal information, and the information relating to the legal fee and disbursement amounts on the two statements of account in Record 7, by **January 24, 2010** but not before **January 18, 2010**. For the sake of clarity, I have enclosed a copy of that page 2 of Record 3 identifying in *yellow* the personal information that *should not* be disclosed to the appellant. I have also enclosed a copy of the statements of account in Record 7, identifying in *green* the information relating to the fees and disbursements that *should* be disclosed to the appellant.

2. I uphold the decision of the Town to deny access to the personal information contained on page 2 of Record 3 and the two-page letter and the narrative portion of the statements of account attached to Record 7.

3. In order to verify compliance with Order Provision 1, I reserve the right to require the Town to provide me with a copy of the records that I have ordered disclosed to the appellant.

Original Signed by: December 15, 2009
Catherine Corban
Adjudicator