Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-2719

Appeal MA11-215

The Corporation of the City of Cambridge

April 24, 2012

Summary: The City of Cambridge received a request for access to records relating to contraventions of a sign by-law for a specified period of time. The city denied access to the records, in whole, claiming sections 8(1)(c), 10(1)(c), 14(1) and 32 of the *Act*. During the inquiry of this appeal, the city also claimed section 8(2)(a) and took the position that the request was frivolous and vexatious. In this order, the adjudicator finds that the request is not frivolous or vexatious and denies the city's late raising of a discretionary exemption. In addition, the adjudicator finds that the records do not contain personal information, and therefore, does not uphold the city's decision and orders the city to disclose the records, in full, to the appellant.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of personal information), 4(1)(b), 8(1)(c), 10(1)(c), 32, Regulation 823 section 5.1.

Orders and Investigation Reports Considered: M-454, M-850, MO-1168-I, MO-1701, MO-1893, MO-2226, MO-2342, PO-122, PO-1614, PO-1893, PO-2197, PO-2206, PO-2225, and Investigation Report PC-990034-1.

OVERVIEW:

[1] This order disposes of the issues raised as a result of an appeal of an access decision made by the City of Cambridge (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) in response to an access request for

records relating to contraventions issued by the city in January, February and March, 2011 of its sign by-law no. 191-03.

[2] The city located responsive records and issued a decision, denying access to the responsive records, in their entirety, relying on sections 8(1)(c) (law enforcement), 10(1)(c) (third party information), 14(1) (invasion of privacy) and the wording of section 32 of the *Act*. The requester (now the appellant) subsequently filed an appeal of that decision with this office.

[3] During the mediation of the appeal, the city agreed that section 32 was not applicable and advised that it was no longer relying on it. In addition, the city indicated that it relies upon the exemptions in sections 8(1)(c), 10(1)(c) and 14(1) for all of the records, in their entirety.

[4] The appeal then moved to the adjudication stage of the process, where an adjudicator conducts an inquiry under the *Act*. I sought and received representations from the city and the appellant. Representations were shared in accordance with the IPC's *Practice Direction 7*.

[5] A number of issues were raised in the parties' representations. The appellant confirmed that he is seeking access to the records at issue and not to the by-law contravention notices that are posted by city staff on the actual signs. The appellant provided an example[1] of the records he seeks, which is similar in nature to the records at issue.

[6] It its representations, the city again raised section 32 of the *Act*, and for the first time relied on the discretionary exemption in section 8(2)(a). Finally, the city has now claimed that the request is frivolous and vexatious, as contemplated by section 4(1)(b) of the *Act*.

[7] For the reasons that follow, I do not find the request to be frivolous and vexatious, nor do I allow the late raising of the section 8(2)(a) discretionary exemption. In addition, I find that the records do not contain personal information and I do not uphold the exemptions claimed. Finally, I order the city to disclose the records, in full, to the appellant.

RECORDS:

[8] The records consist of 11 pages of tagged sign by-law contraventions for the time period specified in the request.

[1] The appellant provided a record of tagged violations from 2010, which he stated he had received from the city in a previous access request under the *Act*.

ISSUES:

A. Is the request frivolous and vexatious?

B. Should I allow the late raising of the discretionary exemption at section 8(2)(a)?

C. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

D. Does the mandatory exemption at section 10 apply to the records?

E. Does the discretionary exemption at section 8(1)(c) apply to the records?

DISCUSSION:

Issue A. Is the request frivolous and vexatious?

[9] The *Act* and Regulations provide institutions with a summary mechanism to deal with requests that an institution views as frivolous or vexatious. Past orders of this office state that these legislative provisions "confer a significant discretionary power on institutions which can have serious implications on the ability of a requester to obtain information under the *Act*," and that this power should not be exercised lightly.[2]

[10] Provisions of both the *Act* and Regulations are relevant to the issue of whether a request is frivolous or vexatious. Section 4(1)(b) of the *Act* states:

> Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,
>
> > the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

[11] Sections 20.1(1)(a) and (b) of the *Act* go on to indicate that a head who refuses to provide access to a record because the request is frivolous or vexatious must state this position in his or her decision letter and provide reasons to support the opinion.

[12] Section 5.1 of Regulation 823 under the *Act* outlines the grounds required to establish a frivolous or vexatious claim. Section 5.1 states:

---

[2] Order M-850.

> A head of an institution that receives a request for access to a record or personal information shall conclude that the request is frivolous or vexatious if,
>
> (a) the head is of the opinion on reasonable grounds that the request is part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution; or
>
> (b) the head is of the opinion on reasonable grounds that the request is made in bad faith or for a purpose other than to obtain access.

[13] On appeal, the onus of demonstrating that there are reasonable grounds for concluding that a request is frivolous or vexatious is on the institution,[3] in this case the city.

[14] The city submits that the purpose for which the appellant seeks the records is frivolous and vexatious and that the records should be withheld on the basis of section 4(1)(b) of the *Act*. The city states that it believes the appellant seeks the records to assist in advertising and marketing his business. The city states:

> It is understood that [the appellant] wants the information so that he can advertise particularly to those businesses, his mobile sign business, as opposed to advertising to all businesses or conducting his own research about who he wants to advertise to.
>
> . . .
>
> While all others who wish to advertise to mobile sign personnel are conducting their research in the yellow pages and internet etc. about who may be interested, [the appellant] would be able to unfairly have a shortcut to accessing them.

[15] As previously stated, the request is for contraventions issued by the city in January, February and March of 2011 in relation to sign by-law no. 191-03. The city's decision letter stated that access to the records was denied under sections 8(1)(c), 10(1)(c), 14(1) and 32 of the *Act*. The city did not indicate at any point in its decision letter that it was denying access to the record on the basis that the request was frivolous or vexatious.

---

[3] See note 2.

[16] The appellant notes in his representations that he had received similar records for 2010 from the city in response to a previous access request under the *Act*.

Pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the city

[17] As indicated above, section 5.1(a) of Regulation 823 provides that a request is frivolous or vexatious if, among other things, it is part of a "pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution." Previous orders of this office have canvassed the meaning of this phrase.

[18] In Order M-850, former Assistant Commissioner Tom Mitchinson commented on the meaning of "pattern of conduct." He stated:

> [I]n my view, a "pattern of conduct" requires recurring incidents of related or similar requests on the part of the requester (or with which the requester is connected in some material way).

[19] Additionally, in establishing whether a "pattern of conduct" exists, the focus should be on the cumulative nature and effect of a requester's behaviour.

[20] The determination of what constitutes "an abuse of the right of access" has been informed by both the jurisprudence of this office, in addition to the case law dealing with that term. In the context of the *Act*, it has been associated with a high volume of requests, taken together with other factors. Generally, the following factors have been considered as relevant in determining whether a pattern of conduct amounts to an "abuse of the right of access":[4]

- *the number of requests* – whether the number is excessive by reasonable standards;
- *the nature and scope of the requests* – whether they are excessively broad and varied in scope or unusually detailed or whether they are identical to or similar to previous requests;
- *the timing of the requests* – whether the timing of the requests is connected to the occurrence of some other related event, such as court proceedings; and
- *the purpose of the requests* – whether the requests are intended to accomplish some objective other than to gain access without reasonable or legitimate grounds. For example, are they made for

[4] Orders M-618, M-850, MO-1782, MO-1810.

> "nuisance" value, or is the requester's aim to harass the government or to break or burden the system.

[21] It has also been recognized that other factors particular to the case under consideration can also be relevant in deciding whether a pattern of conduct amounts to an abuse of the right of access.[5]

[22] In my view, the appellant's request for the by-law contraventions for a three month period in 2011 does not amount to a "pattern of conduct" at all. The request is neither excessively broad nor unusually detailed, is not connected to the occurrence of some other related event such as a court proceeding, and was not made for "nuisance" value or to harass the city or to break or burden the operations of the city.

[23] In addition, the city has provided no evidence of a reasonable basis for its argument that the request demonstrated a pattern of conduct that amounts to an abuse of the right of access or that would interfere with the operations of the city as required by section 5.1(a). Therefore, I find that section 5.1(a) is not applicable to this request.

Bad faith

[24] Under the "bad faith" portion of section 5.1(b), a request will qualify as "frivolous" or "vexatious" where the head of the institution is of the opinion, on reasonable grounds, that the request is made in bad faith. If bad faith is established, the institution need not demonstrate a "pattern of conduct."[6]

[25] In Order M-850, former Assistant Commissioner Mitchinson commented on the meaning of the term "bad faith." He stated that "bad faith" is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of a dishonest purpose or moral underhandedness. He went on to conclude that it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with secret design or ill will.

[26] Based on the argument before me, I am not persuaded that the appellant has engaged in underhanded behaviour. The city has failed to demonstrate how the appellant's request might be construed as having been made in "bad faith" as defined above. The fact that the appellant may use the records, if disclosed, to assist him in marketing and advertising his business is neither dishonest nor immoral, and in no way approaches "bad faith" for the purposes of section 5.1(b).

---

[5] Order MO-1782.
[6] See note 2.

For a purpose other than to obtain access

[27] Similarly, under the "bad faith" portion of section 5.1(b), a request will qualify as "frivolous" or "vexatious" where the head of the institution is of the opinion, on reasonable grounds, that the request was made in for a purpose other than to obtain access. A request is made for a purpose other than to obtain access if the requester is motivated not by a desire to obtain access, but by some other objective.[7]

[28] Previous orders have discussed whether requests made for a purpose other than to obtain access qualify as "frivolous or vexatious" within the meaning of section 5.1(b) of Regulation 823. In particular, in Order MO-1168-I, Adjudicator Laurel Cropley stated that:

> In my view, the fact that once access is obtained, the appellant intends to use the document for a particular purpose, for example to take issue with the Board's decision-making or to bring action against the Board, does not mean that the request is "for a purpose other than to obtain access" within the meaning of section 5.1(b) of the Regulation.

[29] In keeping with my finding that the city has failed to provide sufficient evidence that the appellant's request was made in "bad faith," I also find that the city has not provided me with cogent evidence that the request was made "for a purpose other than to obtain access." Applying the approach taken by Adjudicator Cropley, I find that the appellant's use of the information in the records, if disclosed, to market and advertise his business does not mean that the request is "for a purpose other than to obtain access."

[30] In summary, I find that the city has failed to demonstrate that the request was made in "bad faith" or "for a purpose other than to obtain access" as required by section 5.1(b).

[31] As previously stated, the onus of demonstrating that there are reasonable grounds for concluding that a request is frivolous or vexatious is on the institution.[8] The city has failed to provide sufficient evidence that this is the case. Consequently, I find that the appellant's request is not frivolous or vexatious.

[32] In addition, I note that the city did not raise this issue until the inquiry stage. A claim that a request is frivolous or vexatious must be made at the request stage. I remind the city that sections 20.1(1)(a) and (b) of the *Act* state that a head who refuses to provide access to a record because the request is frivolous or vexatious must

---

[7] *Ibid*.
[8] See note 2.

state this position in his or her decision letter and provide reasons to support the opinion. The city did not do so.

Issue B. Should I allow the late raising of the discretionary exemption at section 8(2)(a)?

[33] In its representations, the city has raised for the first time the discretionary exemption at section 8(2)(a). This exemption was not claimed in the city's decision letter, nor was it raised during the mediation of the appeal. This exemption permits an institution to refuse to disclose 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.

[34] However, it is unnecessary for me to consider the merits of the new exemption claim because I have concluded that the city should not be permitted to rely upon it in the circumstances of this appeal. My reasons for this decision follow.

[35] Institutions are required to claim discretionary exemptions no later than 35 days after the Notice of Mediation is sent by this office. Section 11.01 of the *IPC Code of Procedure* states:

> In an appeal from an access decision, excluding an appeal arising from a deemed refusal, an institution may make a new discretionary exemption claim only within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.

[36] In Order MO-2226, former Senior Adjudicator John Higgins summarized this office's approach to the late raising of discretionary exemptions. He stated:

> An institution's right to claim a discretionary exemption is governed by the *Act* and this office's *Code of Procedure* (the *Code*). The head of an institution is required to give notice under section 19 of the *Act* to the requester within thirty days as to whether or not access to a record or a part of it will be given (section 19). As mentioned above, the notice of refusal to give access to a record or part of a record (i.e. the decision letter) shall, among other things, state the specific provision of the *Act* under which access is refused and the reason the provision applies to the record (section 22).
>
> There have been circumstances when the institution decides to raise

> discretionary exemptions after the decision letter referred to in section 19 has been issued. Section 11 of the *Code* permits an institution to claim a new discretionary exemption within 35 days after it has been notified of the appeal. In an appeal before this office, the adjudicator may *decide not to consider a new discretionary exemption* where the claim is made after the 35 day period [emphasis in original].
>
> Section 11 of the *Code* and the provisions of the *Act* that set out the procedures an institution must follow in the event that it wishes to claim the application of discretionary exemptions have been considered by a number of previous orders. The principles established by these orders were recently reviewed in Order PO-2500. In that order, I stated:
>
> > The purpose of this office's 35-day policy is to provide institutions with a window of opportunity to raise new discretionary exemptions, but only at a stage in the appeal where the integrity of the process would not be compromised and the interests of the requester would not be prejudiced. The 35-day policy is not inflexible, and the specific circumstances of each appeal must be considered in deciding whether to allow discretionary exemption claims made after the 35-day period.[9] **The 35-day policy was upheld by the Divisional Court in *Ontario (Ministry of Consumer and Commercial Relations) v. Fineberg*** (21 December 1995), Toronto Doc. 110/95, leave to appeal refused [1996] O.J. No. 1838 (C.A.) [emphasis added] …
>
> Order PO-2500 and the other decisions it cites underline the point that the procedures established by this office in relation to the late raising of discretionary exemptions are designed to protect the integrity of the process and the rights of the appellant. …

[37] I agree with and adopt the approach taken by former Senior Adjudicator Higgins. Section 8 is a discretionary exemption that falls within the scope of section 11 of the *Code*. In this appeal, the Notice of Mediation was sent May 18, 2011 and the deadline for claiming additional discretionary exemptions was June 22, 2011. The Notice of Mediation sent to the city stated the following (in bold):

> Please be advised that if your institution wishes to claim discretionary exemptions in addition to those set out in your decision letter, you are permitted to do so by June 22, 2011. Should your institution wish to

[9] Orders P-658, PO-2113.

> claim these exemptions, you will be required to issue a new decision letter to the appellant with a copy to [this office…].

[38] The section 8 exemption was raised by the city for the first time in its initial representations, received at this office well after the deadline of June 22, 2011. The city did not indicate in its representations why it should be permitted to raise a new discretionary exemption during the inquiry. In my view, the city had ample time to review the 11 pages of records, and to confirm the discretionary exemptions on which it wished to rely as the appeal proceeded through the mediation stage of the process.

[39] In addition, I am not aware of a new decision letter being issued to the appellant and this office claiming section 8(2)(a). The obligation to send a revised decision letter regarding a new discretionary exemption claim is a requirement of the *Code*. The requirement exists because the Legislature has seen fit to give the institution that has custody or control of a record the responsibility to advise the individual seeking access to it of the basis for a denial of access, and the concomitant responsibility to prove that the exemption applies.

[40] Although the appellant was provided access to the city's representations in which it made the section 8(2)(a) exemption claim, and was given the opportunity to reply, the introduction of a new exemption at a late stage only gives the appellant the time allowed for providing representations to consider it. Earlier identification of an exemption claim permits an appellant the time to consider and reflect on its application, consult on the issue if desired, and to address the exemption claim in mediation.

[41] Therefore, I find that the integrity of the appeals process would be compromised and the interests of the appellant prejudiced if I were to allow the city to rely on section 8(2)(a) with respect to the records at issue. Consequently, I will not permit the city to claim this discretionary exemption. Given this finding, I am not required to consider the application of section 8(2)(a) in this appeal.

Issue C. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[42] In order to determine if section 14 of the *Act* may apply, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates. That term is defined in section 2(1) 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,

> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[43] 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.[10]

[44] Sections (2.1) and (2.2) also relate to the definition of personal information. These sections state:

> (2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (2.2) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their

[10] Order P-11.

> dwelling and the contact information for the individual relates to that dwelling.

[45] 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.[11]

[46] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.[12]

[47] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[13]

[48] The city states that the majority of entities that have applied for and received sign permits are either corporations or other forms of business entities. The city argues that a corporation holds all of the same rights as an individual person and that a corporation is an individual for the purposes of the *Act*. Consequently, the city submits, the information in the records is personal information recorded about an individual.

[49] In support of its position, the city cites legislation and the common law. The city states that under the *Ontario Business Corporations Act* and section 27 of the *Ontario Interpretation Act*,[14] a corporation is a person and as a legal person, enjoys the same rights and freedoms as any other person, including the protection of personal information under the *Act*.

[50] The city also referred to the common law recognition of corporations as individuals in the context of legal rights,[15] constitutional rights,[16] and in respect of its acts.[17]

[51] In addition, the city states that boards and tribunals in Canada have appropriately treated corporations as having the rights of individuals and these boards, the city argues, have applied and upheld these rights with respect to corporations. The

---

[11] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[12] Orders P-1409, R-980015, PO-2225 and MO-2344.
[13] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).
[14] I note that this Act was repealed on July 25, 2007. The relevant legislation is the *Legislation Act, 2006*, S.O. 2006, Chapter 21, Schedule F.
[15] *Great Northern Railway Company v. Great Central Railway*, [1899] Railway and Canal Traffic Cases 266 (EWHC). The city states that this English case is often cited in Canada.
[16] *R. v. Big M. Drug Mart Ltd.*, (1985), 18 D.L.R. (4th) 321 (S.C.C.).
[17] *R. v. Sommers* (No. 4), (1958), 26 W.W.R. 246 (B.C.S.C.).

city cites two cases before the Ontario Labour Relations Board in which the board declined to add corporations to employer liability lawsuits even though the corporations were related to those already named in the lawsuits.[18]

[52] The city goes on to submit that a decision of the Ontario Superior Court of Justice[19] is "most analogous" to the facts of this appeal. In *Dodge*, the issue was whether a tax exemption in the *Land Transfer Tax Act*, which used the word "individual" and not "person," included corporations. The city submits that, after careful consideration of Canadian law and the definition of individual in *Black's Law Dictionary*,[20] the Court concluded that to exclude a corporation, which is a legal person, from having the same rights as an individual person and thus, "being an individual actor in society, would constitute an absurd result."

[53] The city states that in *Dodge*, the court agreed with the approach taken in a Manitoba case[21] where the word "individual" was not defined in the relevant legislation. In *Blue Star* the court held that if the legislature meant to exclude a corporation from the definition of the word individual, it should have done so. The city states that the Court concluded that not having excluded corporations from the word "individual," they should be included.

[54] The city states:

> In *Dodge*,[22] the Ontario Superior court found the [m]inistry's argument that the word individual meant a human being because two different words, "person" and "individual" were used in different areas of the statute to be utterly unpersuasive, not only because the term individual was not defined in the legislation and was contrary to long established Canadian law, but because it was a logical folly to presume that an individual meant natural person.

[55] The appellant's representations do not address the issue of whether the records contain personal information.

[56] As previously stated, in order to determine if the personal privacy exemption of the *Act* may apply, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates. That term is defined, in part, in section 2(1) as meaning recorded information about an identifiable individual.

---

[18] *Graphic Arts International Union v. Total Marketing Incorporated*, [1983] O.L.R.B. Rep. April 616 (Ont. L.R.B.) at para. 3 and *Retail Wholesale and Department Store Union – Local 414 v. Dominion Stores Ltd.*, [1985] O.L.R.B. Rep. March 516 (Ont. L.R.B.) at para. 5.
[19] *Upper Valley Dodge v. Minister of Finance*, [2003] CanLii 10521 (Ont. S.C.J.) (*Dodge*).
[20] 6th ed.
[21] *Blue Star Enterprises Ltd. v. Rural Municipality of Elton*, [1998] 3 W.W.R. 661 (Man. Q.B) (*Blue Star*).
[22] Paras. 18 and 37-38.

[57] In addition, sections (2.1) and (2.2) also relate to the definition of personal information. These sections state:

> (2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (2.2) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[58] I have reviewed the records. They list the names of sign companies and of tenants of properties at specified addresses. All of the tenants listed in the records are either businesses or community organizations. The names of identifiable natural persons are not contained in the records. Consequently, the issue to be decided is whether the identified businesses, including the sign companies, and the community organizations listed in the records are "individuals" for the purposes of the definition of personal information in section 2 of the *Act*.

[59] Several orders of this office have considered whether information pertaining to certain types of business operations constitutes personal information.[23] These orders have come to different conclusions regarding the issue depending on the circumstances of each case. In Order M-454, former Senior Adjudicator Higgins summarized the issue as follows:

> Many previous orders have held that information about businesses, including partnerships and sole proprietorships, does not qualify as personal information. For example, in Order 16, former Commissioner Sidney B. Linden made the following comments in this regard:
>
> > The use of the term "individual" in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended "identifiable individual" to include a sole proprietorship, partnership, unincorporated association or corporation, it could and would have used the appropriate language to make this clear.
>
> Former Commissioner Linden went on to state in Order 113 that:

[23] Orders PO-2295, PO-1986, P-364, M-454.

> It is, of course, possible that in some circumstances, information with respect to a business entity could be such that it only relates to an identifiable individual, that is, a natural person, and that information might qualify as that individual's personal information.

[60] In Order PO-1893, Adjudicator Donald Hale found that two of the records at issue in the appeal contained information relating to corporations which held mining and exploration leases in Ontario. He held that information "about" a corporation cannot qualify as "personal information" within the meaning of section 2(1) as it is not "about" an identifiable individual. He adopted the reasoning first expressed by former Commissioner Linden in Order 16 to find that information about business entities such as corporations did not qualify as information about an identifiable individual.

[61] Furthermore, in Investigation Report PC-990034-1, former Assistant Commissioner Mitchinson found that the registered name of a company, the operating name of a company, information regarding charges laid against the company and the date, name and address of the court where the company was scheduled to appear in relation to charges laid against it, did not satisfy the requirements of the definition of "personal information" in section 2(1) of the provincial equivalent of the *Act*, as it was information about a company.

[62] Therefore, I conclude that information about businesses and community organizations does not qualify as personal information as they are not "about" an identifiable individual for the purposes of the definition of that term in section 2(1) of the *Act*.

[63] In Order PO-2225, former Assistant Commissioner Mitchinson further enunciated the approach taken by this office in determining the personal information/business information distinction:

> Based on the principles expressed in these [previously discussed] orders, the first question to ask in a case such as this is: "*in what context do the names of the individuals appear*"? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?
> …
>
> The analysis does not end here. I must go on to ask: "*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual*"? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

[64] The approach set out in Order PO-2225 has been applied in many orders of this office including Order MO-2342, in which the information at issue was the name of individual defendants charged by a municipality's mobile enforcement team under the *Municipal Code*. This mobile enforcement team dealt with the enforcement of licenses and permits issued to "non-stationary" businesses. The individuals charged by the enforcement team owned or operated businesses such as driving schools, refreshment vehicles, horse-drawn vehicles, tow trucks, taxicabs, limousines and school buses.

[65] In that order, Adjudicator Colin Bhattacharjee found that an individual who obtains a business licence or permit from a municipality is clearly operating in a business context, even if that individual had not formally incorporated the business. He stated that, for example, an individual who obtains a business license or permit from a municipality to operate a hot dog cart is doing so for the purpose of realizing income and making a profit by selling food to the public. In other words, the license was obtained for a business purpose. He also found that the charges laid by the city against individual defendants all related to alleged misconduct in carrying out their business activities, not their personal activities.

[66] Applying the approach taken in Order MO-2342, even if a business or community organization was an "individual" for the purposes of the definition of personal information in section 2(1) of the *Act*, I would find that an individual who has obtained a permit from the city to display mobile signs is endeavoring to generate income and make a profit by advertising their services to the public. Even those community organizations that may be of a not-for-profit nature are advertising their business, and not personal, services to the public. I am also of the view that information about any violations of the city's sign by-law relates to alleged misconduct in carrying out their business, and not personal, activities.

[67] Therefore, I conclude that the records do not contain personal information as defined in section 2(1) of the *Act*. Consequently, the personal privacy exemption at section 14(1) which the city claimed cannot apply to the records, which only exempts information that qualifies as "personal information."

[68] I note that the city also made extensive representations on the application of section 32 of the *Act* to the records. The city states that section 32 of the *Act* prohibits an institution from disclosing personal information unless certain criteria apply. It goes on to submit that the criteria set out in section 32 have not been met, and that the records should, therefore, be withheld under section 32.

[69] The city states:

> [I]t is submitted that the permits may be denied to [the appellant] because it offends the private interests of section 14, which makes its release contrary to release allowances under section 32(a) and the release

> is not for the intended purpose of collecting the record, which is an improper purpose, contrary to the release allowance under section 32(c).

[70] Section 32 of the *Act* falls within Part II of the *Act*. Past orders of this office have distinguished Part I from Part II of the *Act*.[24] Part I of the *Act* deals with "Access to Records." Section 4, which is included in Part I, provides individuals with a general right of access to records within the custody or control of institutions, subject to a number of exemptions outlined in sections 6 through 15. Section 14 is the mandatory exemption that protects the personal privacy of individuals other than the requester.

[71] Part II of the *Act* deals with the "Protection of Personal Privacy." Section 36(1), which is included in Part II, provides individuals with a general right of access to their own personal information, subject to a number of exemptions outlined in section 38. Part II of the *Act* also sets out the legislative requirements with respect to the collection, use and disclosure of personal information.

[72] The appellant's request was for sign by-law contraventions issued by the city in January, February and March of 2011. The appellant is not seeking access to his own personal information. Access requests for information other than the requester's own personal information are made under Part I of the *Act*.

[73] In response to the request, the city issued a decision letter, claiming the exemptions set out in sections 8(1)(c), 10(1)(c), 14(1) and also 32 of the *Act*. The decision letter also advised the appellant of his right to file an appeal of the decision to this office. During mediation, the city agreed with the mediator that section 32 was not applicable and agreed to remove it from the scope of the appeal. Despite that, the city has now claimed it again in its representations.

[74] In my view, it is clear that the appellant's request was made under Part I of the *Act* and that the city treated the request as having been made under Part I of the *Act* by virtue of its decision letter. Part II of the *Act*, including section 32, does not apply to a request made under Part I. Therefore, the city cannot claim that section 32 is applicable to this access request.

Issue D. Does the mandatory exemption at section 10 apply to the records?

[75] The city claims that section 10(1)(c) applies to the records. Section 10(1)(c) states:

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

[24] Orders MO-1275-I, MO-1277-I and MO-1353-I.

> supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,
>
> > result in undue loss or gain to any person, group, committee or financial institution or agency;

[76] Section 10(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[25] 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.[26]

[77] 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

[78] The city submits that the type of information contained in the records is commercial information. The appellant's representations do not address this issue.

[79] Commercial information has been discussed in prior orders of this office as being 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.[27]

[80] Having reviewed the records, I am satisfied that they contain commercial information. Although the records relate to contraventions of the city's sign by-law, there is information in the records that reveals that certain businesses and community

---

[25] *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.)], leave to appeal dismissed, Doc. M32858 (C.A.).
[26] Orders PO-1805, PO-2018, PO-2184, MO-1706.
[27] Order PO-2010.

organizations[28] rented mobile signs from sign companies. Therefore, I find that part one of the test has been satisfied.

Part 2: supplied in confidence

[81] 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.[29]

[82] 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.[30]

[83] The city submits that the commercial information in the records was supplied to the city by the sign permit holders. The city states:

> Corporations and businesses apply to the [c]ity . . . in confidence to receive a permit for mobile signs. Such is a private application for a particular purpose, to receive a permit. It is the [c]ity's position that the corporations and businesses applying have a privacy interest in their legal permits and that has a legitimate expectation that its legal permits be its own.
>
> . . .
>
> [S]uch disclosure could under section 10(1)(a), "prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization" and/or as per section 10(1)(b), "result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied."
>
> The [c]ity has indicated that the information in their possession is one supplied implicitly in confidence, the disclosure of which could reasonably be expected to prejudice the competitive position of other similar businesses or its prospective purchasers and direct competitors.
>
> . . .

[28] Tenants of commercial properties.
[29] Order MO-1706.
[30] Orders PO-2020, PO-2043.

> Given the privacy interests that businesses have in the permits they apply for, the city submits that the names cannot be separated from the permit information and be provided because to do so would cause the city to breach its relationship with permit applicants and provide [the appellant's] business with an unfair advantage over his other competitors in targeting those businesses with permits, which would see the city's disclosure be the cause of harm to all of those competitors in their loss of business and is properly not disclosed pursuant to section 10(1)(c). It is the view of the city that permit applications are private and that [the appellant's] business should compete on a level playing field with other businesses.

[84] The appellant's representations do not address whether the commercial information in the records was supplied to the city.

[85] As previously stated, the records consist of 11 pages, listing sign by-law contraventions issued in January, February and March of 2011.

[86] Past orders of this office have found that information is not "supplied" to an institution where its employees conduct inspections of third parties, collect information and create reports. This has been found to apply to an audit of a restaurant's operations,[31] a property inspection,[32] an environmental inspection,[33] an organizational audit,[34] a school inspection,[35] and an inspection relating to animals used in research.[36]

[87] In my view, it is clear from reviewing the by-law contraventions that the information, which largely consists of the observations of city staff regarding actions taken in light of the contraventions, was not "supplied" by the sign permit holders but rather was compiled by city staff based on their own observation and inspection. Therefore, I conclude that the information does not meet part two of the section 10(1) test, and consequently, that section 10(1) does not apply to exempt the records from disclosure.

Issue E. Does the discretionary exemption at section 8(1)(c) apply to the records?

[88] The city is claiming section 8(1)(c), which states:

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

---

[31] Order MO-1893.
[32] Order PO-122.
[33] Order MO-1701.
[34] Order PO-2206.
[35] Order PO-1614.
[36] Order PO-2197.

> reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

[89] The term "law enforcement" is used in several parts of section 8, 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)

[90] The term "law enforcement" has been found to apply to a municipality's investigation into a possible violation of a municipal by-law.

[91] Except in the case of section 8(1)(e), where section 8 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.[37]

[92] 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* fulfillment of the requirements of the exemption.[38]

[93] In order to meet the "investigative technique or procedure" test, the institution must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public.[39]

[94] The techniques or procedures must be "investigative". The exemption will not apply to "enforcement" techniques or procedures.[40]

---

[37]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.).
[38]Order PO-2040; *Ontario (Attorney General) v. Fineberg*.
[39]Orders P-170, P-1487, MO-2347-I and PO-2751.
[40]Orders PO-2034, P-1340.

[95] The city submits that the records reveal investigative techniques and procedures used in law enforcement. In particular, the city states that the records reveal the name of the sign holder, the location of the business and the process of how the fine was dealt with and the people involved in any charges. These investigative techniques and procedures, the city argues, are currently in use or likely to be used within its law enforcement division.

[96] The appellant's representations do not address this exemption.

[97] As previously stated, the term "law enforcement" has been found to apply to a municipality's investigation into a possible violation of a municipal by-law.

[98] Having reviewed the records carefully, I find that they do not reveal "investigative" techniques or procedures. The records simply list the names of the sign companies, the tenants,[41] the address, the date and time of the contravention, and the action taken with respect to the sign. In my view, none of this information constitutes an investigative technique or procedure. The information in the records, in my view, relates to the enforcement of a by-law contravention, and does not contain any information that would qualify as an investigative technique or procedure. Furthermore, in order to meet the "investigative technique or procedure" test, the city must provide "detailed and convincing" evidence that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization.

[99] The city has not provided sufficiently detailed representations to demonstrate, first, how the records reveal investigative techniques or procedures and, second, how disclosure of the records could reasonably be expected to hinder or compromise any investigative technique's or procedure's effective utilization.

[100] Therefore, I find that the exemption at section 8(1)(c) does not apply to the records at issue. Having found that the exemption at section 8(1)(c) does not apply, it is not necessary for me to determine whether the city properly exercised its discretion.

[101] In conclusion, I find that the request was not frivolous or vexatious. I do not allow the late raising of the section 8(2)(a) discretionary exemption. I also find that the records do not contain personal information and I do not uphold the section 14(1), 10(1) and 8(1)(c) exemption claims by the city.

ORDER:

1. I order the city to disclose the records in their entirety to the appellant by **May 30, 2012** but not before **May 25, 2012**.

[41] As previously stated, all of the tenants are businesses and/or community organizations.

2. To verify compliance with this order, I reserve the right to require the city to send me a copy of the records disclosed pursuant to order provision 1.

Original Signed by: April 24, 2012
Cathy Hamilton
Adjudicator