

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER MO-3419-I

Appeal MA15-139

Lakefront Utility Services Inc.

March 16, 2017

Summary: Lakefront Utility Services Inc. (LUSI) received a multi-part request for access to information pertaining to a Casing Pipe under Highway 401 at a specified location. After mediation, the only remaining issues were the appellant's request for access to information in the Minutes of a Meeting dated August 14, 2014, emails, a legal invoice and a legal opinion. The appellant also took the position that LUSI did not conduct a reasonable search for records. Relying on section 11 of the *Act* (economic and other interests) LUSI denied access to the minutes and emails and relying on section 12 (solicitor-client privilege) it denied access to the legal invoice and legal opinion. In the course of adjudication, LUSI changed its position and decided to disclose to the appellant the portion of the minutes that related to the Casing Pipe. The appellant sought additional information contained in the minutes. In this order, the adjudicator partly upholds LUSI's decision but orders it to disclose certain information to the appellant as well as conduct another search for responsive records.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 11(d), 12 and 17.

Order Considered: PO-1894.

Case considered: *Maranda v. Richer* [2003] 3 SCR 193, 2003 SCC 67.

BACKGROUND:

[1] Lakefront Utility Services Inc. (LUSI) received a multi-part request under the

Municipal Freedom of Information and Protection of Privacy Act (the *Act* or *MFIPPA*) for access to information pertaining to a Casing Pipe under Highway 401 at a specified location.

[2] In its decision letter, LUSI advised that certain records sought by the requester did not exist, referred the requester to a specific LUSI By-Law regarding authority to enter into an agreement to sell a specific asset and relied on sections 11(a), (c), (d) and (e) (economic and other interest) and 12 (solicitor-client privilege) to deny access to certain responsive records.

[3] The requester (now the appellant) appealed the decision.

[4] At the close of mediation, the following issues remained to be addressed in the appeal:

- whether LUSI is entitled to rely on section 11 (economic or other interests) of the *Act* to deny access to records it identified as responsive to the appellant's request for "[d]ocuments, including emails, from [named individual] and [named individual] confirming the content of the [named individual's] document as factual".
- whether LUSI can rely on section 11 of the *Act* to deny access to a record it identified as responsive to the appellant's request for "Minutes of meeting of the Board of Directors of LUSI including date and members present, authorizing the sale of the casing".
- whether LUSI can rely on section 12 (solicitor-client privilege) of the *Act* to deny access to records that it identified as responsive to the appellant's request for "[o]n invoice [specified invoice], item 1 refers to a legal review of request for information and relevant law legislation. Please provide documents, reports, emails, memos and notes pertaining to this item ..."
- whether LUSI conducted a reasonable search for responsive records

[5] Mediation did not fully resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[6] I commenced my inquiry by sending LUSI a Notice of Inquiry setting out the facts and issues in the appeal. LUSI provided representations in response to the Notice of Inquiry. In its representations, LUSI advised that as negotiations were at an end pertaining to the Casing Pipe, LUSI was prepared to disclose to the appellant the portion of the minutes of a meeting dated August 14, 2014 that was responsive to his request. LUSI also took the position that portions of its representations should be withheld due to confidentiality concerns.

[7] LUSI then issued a supplementary decision letter releasing a severed version of

the Minutes of a meeting dated August 14, 2014. The appellant was not satisfied with the decision and as set out in his correspondence to this office he "clearly expected to at least be advised of what members were present".

[8] I then sought representations from the appellant on the facts and issues set out in a Notice of Inquiry as well as LUSI's non-confidential representations. In light of the position taken by the appellant, I added scope of the request/responsiveness of the records as an issue in the appeal. The appellant provided responding representations. Those representations were shared with LUSI who provided representations in reply.

[9] In this interim order, I partly uphold LUSI's decision but order it to disclose certain information to the appellant as well as to conduct another search for responsive records.

ISSUES:

- A. What is the scope of the request/what records are responsive to the request?
- B. Did the institution conduct a reasonable search for records?
- C. Do the discretionary exemptions at sections 11(a), (c), (d) and/or (e) apply to the emails at issue?
- D. Does the discretionary exemption at section 12 apply to the records for which it is claimed?
- E. Did the institution exercise its discretion under sections 11(d) and 12? If so, should this office uphold the exercise of discretion?

RECORDS:

[10] Meeting Minutes dated August 14, 2014, emails, a legal invoice and a legal opinion.

Issue A: What is the scope of the request/what records are responsive to the request?

[11] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

. . .

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[12] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.¹

[13] To be considered responsive to the request, records must "reasonably relate" to the request.²

[14] As set out above, LUSI decided to disclose a severed copy of the minutes to the appellant. LUSI withheld other portions of the minutes taking the position that they were not pertinent to the appellant's request.

[15] The appellant disagreed. As set out above, he objected to the withholding of the names of the individuals who were present at the meeting.

[16] I have reviewed the minutes of the August 14, 2014 meeting. I find that the other narrative portions of the minutes, which were not provided to the appellant, are not responsive to the request. The request was for access to information pertaining to a Casing Pipe under Highway 401 at a specified location. Those other portions deal with matters unrelated to a Casing Pipe under Highway 401 at a specified location. I do not agree however, that the names of the attendees or other administrative information relating to the meeting as set out in points 1 and 2 of the minutes should be severed. In my view, that information puts the portion relating to the Casing Pipe in context and is also responsive to the request.

[17] As the LUSI has withdrawn its reliance on section 11 of the *Act* with respect to the meeting minutes at issue, and I find that the names on the minutes appear in a professional rather than personal capacity³ because the LUSI has already disclosed the responsive portion of the minutes to the appellant, I will also order that the LUSI disclose to the appellant the names of the individuals who were present at the meeting

¹ Orders P-134 and P-880.

² Orders P-880 and PO-2661.

³ See section 2(2.1) of the *Act* which provides that "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. In that regard, I also find that disclosing the names of the attendees would not reveal something of a personal nature about those individuals.

that day as well as the administrative information relating to the meeting as set out in points 1 and 2 of the minutes. This information appears on the first page of the record.

Issue B: Did the institution conduct a reasonable search for records?

[18] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.⁴ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[19] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.⁵ To be responsive, a record must be "reasonably related" to the request.⁶

[20] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.⁷

[21] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁸

[22] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.⁹

LUSI's representations

[23] LUSI submits that its initial search for records resulted in the location of "several old files pertaining to [the] request and the contents were provided to [the appellant], as requested".

[24] It adds:

A thorough search of records was conducted in the Water Treatment & Distribution office, the basement storage area, as well as the vault in the administration area of our offices, with no further success. Electronic files

⁴ Orders P-85, P-221 and PO-1954-I.

⁵ Orders P-624 and PO-2559.

⁶ Order PO-2554.

⁷ Orders M-909, PO-2469 and PO-2592.

⁸ Order MO-2185.

⁹ Order MO-2246.

were searched with no success. All existing files from that period in time have been located.

[25] LUSI states that there have been staff turnovers in the management of the water department since 1997, as well as multiple office renovations and moves, but that “[a]ll existing files relating to the 401 casing were located and the information provided to [the appellant].”

[26] With respect to the late discovery of a responsive email dated May 29, 2014, LUSI submits:

The initial search included emails between the Manager of Water Treatment & Distribution and our Engineering Consultants. It was not until further discussions took place in October 2015 with staff that an email from May 29, 2014 was realized. This email referenced the current day costing of the casing. This email was forwarded to the IPC in my letter of October 20, 2015 for IPC use only.

[27] LUSI also provided an affidavit from its Corporate Secretary in support of its position that it conducted a reasonable search for responsive records.

The appellant’s representations

[28] The appellant asserts that LUSI made no attempt to contact its former Manager of Water Services who, based on documentation that this individual provided to the appellant, would be in possession of responsive records.

[29] The appellant states in his representations:

We are attaching one of the pieces of information sent to me on [specified date] when I advised LUSI there was a casing under 401 which they did not have any record showing its existence. I asked the [former] Manager of Water Services to look into records to see if he could find any record. His reply is attached with photos.

For your information, there was no attempt by anyone to ask [the former Manager of Water Services] for any documentation which he sent me including photos and surveys as well as other information.

[30] The appellant submits that this individual “sent several emails to me with some of the documents requested” which demonstrates that additional responsive records ought to exist.

LUSI’s reply representations

[31] In reply, LUSI submits that with respect to the documentation that the appellant

included with his representations:

... This is the first time that I have seen these documents and photos. They were not included in the files provided to me during my search for information for [the appellant].

Analysis and finding

[32] As set out above, the *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.¹⁰ I conclude that LUSI have not conducted a reasonable search for records responsive to the appellant's request for the following reasons.

[33] The appellant has referred to specific records he received from an individual, then working at LUSI, that appear to be responsive to his request. LUSI's response is that it was not aware of these records and they were not provided to the Corporate Secretary during her searches. That, however, does not address the question of whether these records and further responsive records exist and whether appropriate searches were conducted for such records.

[34] Accordingly, I conclude that LUSI has not conducted a reasonable search for records responsive to the appellant's request. As a result, I will order them to conduct focussed searches regarding any records that may have been in the possession of its former Manager of Water Services and to provide a reasonable amount of detail to this office regarding the results of those searches.

Issue C: Do the discretionary exemptions at sections 11(a), (c), (d) and/or (e) apply to the emails at issue?

[35] LUSI claimed that the emails at issue qualify for exemption under sections 11(a), (c), (d) and/or (e) of the *Act*.

[36] Those sections read:

A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical Information that belongs to an institution and has monetary value or potential monetary value.

¹⁰ Orders P-624 and PO-2559.

- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;
- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution;

[37] The purpose of section 11 is to protect certain economic interests of institutions. Generally, it is intended to exempt commercially valuable information of institutions to the same extent that similar information of non-governmental organizations is protected under the *Act*.¹¹

[38] For sections 11(c) or (d) to apply, the institution must provide detailed and convincing evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.¹²

[39] The failure to provide detailed and convincing evidence will not necessarily defeat the institution's claim for exemption where harm can be inferred from the surrounding circumstances. However, parties should not assume that the harms under section 11 are self-evident or can be proven simply by repeating the description of harms in the *Act*.¹³

[40] The fact that disclosure of contractual arrangements may subject individuals or corporations doing business with an institution to a more competitive bidding process does not prejudice the institution's economic interests, competitive position or financial interests.¹⁴

LUSI's representations

[41] LUSI provides both confidential and non-confidential representations in support of its position that the email dated May 29, 2014 should not be disclosed. LUSI submits that the email contains confidential financial information. In the non-confidential portion of its representations, referring to section 11(a), it submits that the email should not be

¹¹ *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (the Williams Commission Report) Toronto: Queen's Printer, 1980.

¹² *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

¹³ Order MO-2363.

¹⁴ Orders MO-2363 and PO-2758.

disclosed:

... due to the confidential financial information regarding the value of a LUSI asset as it would have, and continues to, compromise potential negotiations on the sale with other interested parties for this asset and is therefore an economic interest factor.

[42] LUSI submits that the appellant was provided with the final negotiated price of the casing however, an actual offer to purchase was never presented to LUSI.¹⁵

[43] LUSI further adds that the emails qualify for exemption for the following reasons:

Section 11 (c) disclosure of this information would have prejudiced [LUSI's] economic interests and competitive position in our negotiations with a potential purchaser of the casing.

Section 11 (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of [LUSI] - Disclosure of this information would have had a downward effect to the sale price of the casing.

Section 11 (e) disclosure of [LUSI's] position and plans would have impacted our negotiations with the purchaser.

[44] It submits that:

... LUSI staff was considering many different options to utilize the casing in the future. This casing is a potential link between the Town of Cobourg and the Township of Hamilton for water, sewer, fiber optics, hydro, etc. and there are other interested parties. The release of this information can hamper LUSI negotiations in the future as well.

The appellant's representations

[45] The appellant asserts that potential negotiations for the purchase of the pipe casing is not an issue as "... they know it cannot be sold to other than a municipality".

Analysis and findings

[46] I will address the possible application of section 11(d) first. Having reviewed the records, I am satisfied that information which relates to the possible uses or value of the Casing Pipe qualifies for exemption under this section. I accept that a sale of the Casing Pipe did not materialize however, there may be future efforts to find a new purchaser for the Casing Pipe. If that were to occur, disclosure of the information in the

¹⁵ It would appear that the Casing Pipe was never sold.

emails at issue could place LUSI in a disadvantageous position with future potential purchasers. Furthermore, disclosure of prospective uses and the value placed on the Casing Pipe by LUSI could similarly be disadvantageous. I find that disclosure of this information could reasonably be expected to be injurious to LUSI and thereby qualifies for exemption under section 11(d) of the *Act*.¹⁶

[47] As I have found that the information at issue is exempt under section 11(d) it is not necessary for me to also consider whether the information also qualifies for exemption under sections 11(a), 11(c) and/or 11(e) of the *Act*.

Issue D: Does the discretionary exemption at section 12 apply to the records for which it is claimed?

[48] Section 12 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.

[49] Section 12 contains two branches. Branch 1 ("subject to solicitor-client privilege") is based on the common law. Branch 2 ("prepared by or for counsel employed or retained by an institution...") is a statutory privilege. The institution must establish that one or the other (or both) branches apply.

Branch 1: common law privilege

Solicitor-client communication privilege

[50] 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.¹⁷ The rationale for this privilege is to ensure that a client may freely confide in his or her lawyer on a legal matter.¹⁸ The privilege covers not only the document containing the legal advice, or the request for advice, but information passed between the solicitor and client aimed at keeping both informed so that advice can be sought and given.¹⁹

[51] The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice.²⁰

¹⁶ See in this regard the discussion in Order PO-1894.

¹⁷ *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

¹⁸ Orders PO-2441, MO-1925 and MO-2166.

¹⁹ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).

²⁰ *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.

[52] Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication.²¹ The privilege does not cover communications between a solicitor and a party on the other side of a transaction.²²

[53] Legal billing information is presumptively privileged unless the information is "neutral" and does not directly or indirectly reveal privileged communications.²³

LUSI's representations

[54] LUSI explains that the appellant's request was the first request it received since the introduction of the *Act*. It submits that it is a "small organization with minimal administrative staff; management and the Board of Directors agreed that legal advice was a prudent business decision".

[55] With respect to the application of section 12, LUSI submits that the records at issue fall within the scope of confidential solicitor-client communications:

All communication between LUSI and our solicitor(s) is done based on complete confidentiality. Confidentiality is an essential component of the privilege.

... our contact with our solicitor was to obtain professional legal advice as there was no 'in-house' expertise on the subject. LUSI should have the right to seek legal advice with the knowledge that the information/advice shared is to be kept confidential, both by the solicitor and LUSI.

We did share a copy of the legal invoice with the IPC attached to our letter of [specified date], however, LUSI remains firm that it will not share this invoice and any legal advice or opinion with [the appellant].

The appellant's representations

[56] The appellant states that the entry in the fee invoice he received that refers to a charge for "Legal review of request for information and relevant law/legislation" leads to a conclusion "that Management and the Board of Directors requested a legal review ..." and the appellant requests copies of the requested responsive records.

[57] The appellant questions the bona fides of LUSI claiming the application of the

²¹ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

²² *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.)

²³ *Maranda v. Richer*, [2003] 3 S.C.R. 193; Order PO-2484, upheld on judicial review in *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 2769 (Div. Ct.); see also *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 941 (C.A.).

section 12 exemption and submits that it is "... to maintain a darkness over the information sought".

[58] The appellant further submits that:

- communications between a lawyer and a client are not privileged when the client attempts to obtain legal advice that would facilitate a crime or fraud; this would (hopefully) never occur in a government context.
- the privilege extends only to communications and does not protect from disclosure certain facts discovered in the course of a solicitor/client relationship by either solicitor or client.

[59] Referring to a number of orders of this office²⁴, the appellant submits that invoices and accounts from a lawyer to his or her client are not automatically covered by the common-law solicitor/client privilege and the institution must determine whether the contents of the legal account relate in a tangible and direct way to the seeking, formulating or provision of legal advice.

Analysis and finding

[60] I will address the invoice first and then the legal opinion.

[61] The invoice at issue in this appeal is a legal invoice submitted by the solicitor to their client, and is clearly legal billing information. The appellant asserts that LUSI has failed to establish that the information in the invoice qualifies for exemption under section 12 of the *Act*. I note, however, that the Supreme Court of Canada decision in *Maranda v. Richer*²⁵, specifically found that information in legal invoices is presumptively privileged and, therefore, qualifies for exemption unless it can be established that the information is neutral. Accordingly, in these circumstances, the burden of proof does not rest with LUSI, and the information is exempt unless I find that the information (or any portions of the information) is "neutral." In this appeal, any information that is responsive to the request appears to involve the appellant's request and based on his knowledge of the underlying matters indicates to me that he would qualify as being "assiduous" and "knowledgeable" about many aspects of the information in the legal invoice, and I find that the disclosure of the information in the invoice, in combination with his knowledge of the matter, could reveal privileged information²⁶.

[62] I am also satisfied that a legal opinion setting out the legal advice received from

²⁴ Orders M-213, M-258, M-274, P-126, P-624, P-667 and P-676.

²⁵ [2003] 3 SCR 193, 2003 SCC 67. See also the authorities set out in footnote 23, *supra*.

²⁶ In his representations the appellant seeks access to the entire invoice, and does not appear to simply seek access to the bottom line invoice amount. Accordingly, I make no finding in that regard.

LUSI's outside counsel represents a confidential communication between a solicitor and client, made for the purpose of giving professional legal advice. As a result, I find that the legal opinion is properly exempt under the solicitor-client communication aspect of Branch 1 of section 12.

[63] There is no evidence before me that privilege has been waived by LUSI.

[64] Accordingly, I find that the legal invoice and the legal opinion qualify for exemption under section Branch 1 of section 12.

Issue E: Did the institution exercise its discretion under section 12? If so, should this office uphold the exercise of discretion?

[65] The sections 11(d) and 12 exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[66] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[67] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.²⁷ This office may not, however, substitute its own discretion for that of the institution.²⁸

LUSI's representations

[68] LUSI submits that it provided the appellant with all information from the files that they were able locate. They submit:

... At no point in time have we withheld anything in bad faith. Information that has been withheld is considered to be confidential, as stated above, and the release of information could have a negative impact on the financial position, negotiating position, operation and future business potential of the organization.

[69] LUSI submits that "[o]ur staff cooperated with [the appellant] to provide him the

²⁷ Order MO-1573.

²⁸ Section 43(2).

most accurate information possible about the value and replacement cost of the casing”.

The appellant’s representations

[70] The appellant submits that there is no justification to shield a non-substantive record of this nature from public scrutiny, particularly in times when public bodies have to ensure that tax dollars are spent wisely.

Analysis and finding

[71] I have reviewed the circumstances surrounding this appeal and the representations pertaining to the manner in which LUSI exercised its discretion. I have considered the appellant’s position and in all the circumstances, I am satisfied that LUSI exercised its discretion in a proper manner in deciding not to disclose to the appellant the information that I have found to qualify for exemption under sections 11(d) and 12 of the *Act*, taking into account all relevant factors and not taking into account any irrelevant factors. Furthermore, I am not satisfied that LUSI exercised its discretion in bad faith or for an improper purpose.

ORDER:

1. I order LUSI to disclose to the appellant the names of the individuals who were present at the meeting, as well as the administrative information relating to the meeting, as set out in points 1 and 2 of the Minutes of a Meeting dated August 14, 2014, which appears on the first page of the record by sending it to the appellant by **April 24, 2017**.
2. I order LUSI to conduct further searches for records responsive to the request that may have been in the possession of its former Manager of Water Services. I order LUSI to provide me with an affidavit sworn by the individual(s) who conducts the search(es), **by April 24, 2017** deposing their search efforts. At a minimum, the affidavit(s) should include information relating to the following:
3. The affidavit(s) referred to above should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8. The affidavit(s) provided to me may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in *IPC Practice Direction 7*.
 - a. information about the individual(s) swearing the affidavit describing his or her qualifications, positions and responsibilities;

- b. a statement describing their knowledge and understanding of the subject matter of the request;
 - c. the date(s) the person conducted the search and the names and positions of any individuals who were consulted;
 - d. information about the type of files searched, the nature and location of the search, and the steps taken in conducting the search;
 - e. the results of the search;
 - f. if as a result of the further searches it appears that responsive records existed but no longer exist, details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.
4. If, as a result of the further searches, records responsive to the request are identified, I order LUSI to provide a decision letter to the appellant regarding access to these records in accordance with sections 19, 21 and 22 of the *Act*.
5. In order to ensure compliance with paragraphs 1 and 4 of this order, I reserve the right to require the LUSI to send me a copy of the pages of the records that I have ordered to be disclosed to the appellant as well as a copy of any decision letter issued to the appellant.
6. I remain seized of this appeal with respect to compliance with this interim order.

Original Signed by: _____
Steven Faughnan
Adjudicator

_____ March 16, 2017