Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3643

Appeal MA15-631

City of Greater Sudbury

July 31, 2018

Summary: The City of Greater Sudbury (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to two affidavits filed by the city in another IPC proceeding involving the city and the appellant. The city took the position that issue estoppel applied in the circumstances of the appeal, the request was frivolous or vexatious and that, in any event, the records would qualify for exemption under sections 12 (solicitor-client privilege) or 14 (personal privacy) of the *Act*. This order finds that allowing the appellant to request access to the affidavits would represent a collateral and indirect means of obtaining access to information that was the subject of another proceeding. Accordingly, the city's decision is upheld and the appeal is dismissed.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 41(1) and 41(13).

Provisions of IPC Code of Procedure considered: Section 7.07 and *Practice Direction 7*.

Orders Considered: Orders P-164, P-207, P-537 and MO-2701.

Case considered: *Toronto District School Board v. Ontario (Information and Privacy Commissioner)*, [2002] O.J. No. 4631 (Div. Ct.).

OVERVIEW:

[1] The City of Greater Sudbury (the city) received a request under the *Municipal*

Freedom of Information and Protection of Privacy Act (the *Act* or *MFIPPA*) for access to two affidavits filed by the city in a previous IPC appeal MA10-412-2, involving the city and the appellant, which culminated in Order MO-2701 issued by Adjudicator Laurel Cropley. Adjudicator Cropley decided that the appellant would not be granted access to the two affidavits during the course of the exchange of representations in that appeal.

[2] The appellant's first request for the two affidavits was worded as follows:

> PER FOI 2010-184, I had requested a copy of all/any affidavits in my file. I received one … . The following should have been provided: missing are 1) Affidavit for [named individual] dated April 4, 2010 2) Affidavit for [named individual] dated April 4, 2010 – both initiated by [named individual] … . I need copies for my files.

[3] As explained in more detail below, the appellant's first request set out above contained the wrong dates, as the affidavits were actually both dated April 4, 2011, but the city had earlier indicated that they were both dated April 4, 2010. The appellant had relied on the wrong dates provided by the city when she made the request.

[4] The city issued a decision letter denying access to the requested affidavits on the basis that no responsive records exist. The city explained in its decision letter that the city made an inadvertent data entry error in an affidavit that referenced the two other affidavits. The city wrote:

> It should be noted that … the correct date of the above - mentioned affidavits is April 4, 2011. As to the records being responsive to your previous Freedom of Information request, FOI 2010-184, the above-mentioned records were not in existence at the time of the request.
>
> The Information and Privacy Commissioner of Ontario has previously denied your request for access to the Affidavit for [named individual] dated April 4, 2011 and the Affidavit for [named individual] dated April 4, 2011 therefore you may not access these records through this process.

[5] The refusal that the city was referring to was when Adjudicator Cropley decided that the appellant would not be granted access to the two affidavits during the course of the exchange of representations in Appeal MA10-412-2.

[6] The appellant appealed the city's access decision and this office opened Appeal File Number MA15-185. However, an Intake Analyst at the IPC closed that file at intake as the appellant had provided the wrong dates in her request. The Intake Analyst therefore concluded that:

> …. After carefully considering your submissions and the circumstances of the appeal, I have decided to dismiss the appeal because it does not

> present a reasonable basis for me to conclude the records you seek from the city exist.

[7] The appellant then made the following request for access to the two affidavits, being the request at issue in this appeal:

> I need a copy of the April 4, 2011 affidavits by [two named individuals] as provided to the IPC. I have a right to correct the "inaccuracies" in my file. I have shown that Building Services lies in affidavits (via misrepresentation, omission, outright lies) and that this municipality allows crimes to be hidden (lying in affidavits, fabricating evidence for tribunal, assisting, consulting, facilitating, allowing non-engineers to practice engineering without a license, knowingly over-valuing properties (i.e. since [named individual] was on MPAC Board of Directors, etc.). My issues are now before U.S. Attorney General, since all this impacts U.S. Financial markets too and U.S. Financial Institution also brought into loop. If "date" on original request was "a mistake" on the part of CGS, it does not mean "the documentation does not exist", because the IPC accepted it previously. If it does not exist for me, it does not exist for the IPC. If it exists for IPC as "evidence", then it exists for me, too! You cannot have it both ways. [Individuals name], if you are getting this it is because as you have known for years, building services has been violating the law and I have zero desire to work with persons who so tried to devastate my family via their lies in affidavits.

[8] In response, the city issued a decision letter denying access to the two affidavits pursuant to section 12 (solicitor-client privilege) of the *Act*. The requester, now the appellant, appealed the city's decision and this appeal was opened. During the course of mediation, the mediator had discussions with the appellant and with the city. The city issued a revised decision during mediation, claiming the additional mandatory personal privacy exemption in section 14 of the *Act*.

[9] The city subsequently issued a further revised decision with respect to the appellant's request for access to the affidavits, claiming the possible application of sections 4(1)(b) (frivolous and vexatious), 8(1)(e) (endanger life or safety) and 13 (danger to safety or health) of the *Act*. The city also took the position that issue estoppel applied in the circumstances of this appeal.

[10] Mediation did not resolve this appeal and it was transferred to the inquiry stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. A Notice of Inquiry setting out the facts and issues in the appeal was sent to the city, initially. As the affidavits included information relating to the appellant, the possible application of sections 38(a) (right to access one's own information) and 38(b) (personal privacy) was raised in the Notice of Inquiry. The city provided representations in response to the Notice of Inquiry.

[11] In its representations, the city confirmed that it is no longer relying on the discretionary exemption in section 8(1)(e). The city did not provide representations on the application of the discretionary exemption in section 13. As a result, in my view, the application of those exemptions are no longer within the scope of this appeal.

[12] A Notice of Inquiry was then sent to the appellant, along with a copy of the city's non-confidential representations. The appellant provided responding representations.

[13] This appeal file was subsequently transferred to me to complete the adjudication process.

[14] In this order, I find that allowing the appellant to request access to the affidavits would represent a collateral and indirect means of obtaining access to information that was the subject of another proceeding. Accordingly, the city's decision is upheld and the appeal is dismissed.

RECORDS:

[15] Remaining at issue in this appeal are two affidavits from named individuals.

DISCUSSION:

The city's representations

[16] The city explains that the individuals who provided the affidavits were employees of the city's Building Services Branch and they were sworn to support the city's submissions in Appeal MA10-412-2, which culminated in Order MO-2701. The city states that the affidavits describe the employees' interactions with the appellant concerning a building services and inspection issue.

[17] The city takes the position that because of the nature of the records requested and the fact that she did not previously appeal a denial of access to the records, the appellant is estopped from appealing the city's decision. The city submits that previous orders[1] have determined that the IPC may dismiss an appeal pursuant to section 41(1) of the *Act* without conducting an inquiry where the appeal involves the same parties, issues and records previously considered.

[18] Section 41(1) reads:

> The Commissioner may conduct an inquiry to review the head's decision if,

[1] The city references Orders MO-1907 and P-1392 in its representations.

> (a) the Commissioner has not authorized a mediator to conduct an investigation under section 40; or
>
> (b) the Commissioner has authorized a mediator to conduct an investigation under section 40 but no settlement has been effected.

[19] The city submits that the appellant had previously made the same access request, which the city denied. The city explains:

> On April 7, 2015, the city denied the request - by stating that the "Information and Privacy Commissioner of Ontario has previously denied your request for access to the Affidavit for [named individual] dated April 4, 2011 and the Affidavit for [named individual] dated April 4, 2011 and therefore you may not access these records through this process." … .

[20] The city submits that the appellant did not then appeal this denial of access. It submits that the appellant "is trying to use this appeal to obtain information from a decision that she failed to appeal in the past". Unfortunately, this is not entirely accurate as the appellant did appeal the decision, but the appeal file was closed by an IPC Intake Analyst for procedural reasons as discussed above.

[21] The city submits that based on the three part test for issue estoppel set out by Justice Binnie in *Danyluk v. Ainsworth Technologies Inc.*[2], the appellant is estopped from proceeding with this request. The city submits:

> … that the parties are the same as in the previous proceedings. In Appeal No. MA10-412-2, the city had provided submissions that a majority of its representations, including the 2 supporting affidavits in question, be not disclosed to the requester. The IPC agreed with the city and did not disclose the city's representations in Order MO-2701. As such, the city submits that the IPC has already decided this question.
>
> The [appellant] did not submit a further appeal to the IPC's decision in MA10-412-2 and therefore the decision creating the estoppels is final.
>
> As such, the city submits that it has met the 3 conditions for issue estoppel in this matter and as such the affidavits should not be disclosed to the requester.

[22] With respect to the residual discretion that the IPC has to proceed in the face of factors favouring issue estoppel, the city submits:

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[2] 2001 SCC 44 at paragraph 25.

> Whether the IPC has to apply issue estoppel also depends on the circumstances at hand. In this case, the requester has been declared a frivolous and vexatious litigant and is limited to one active ongoing FOI request at a time with the city. In that light, the legal context and practical circumstances surrounding the request and the requester has not changed: As such, the city submits that issue estoppel does apply in this case.
>
> In addition, the IPC has to consider that the 2 affidavits in question were generated as part of the city's representations as part of a separate appeal. *MFIPPA* and *FIPPA* both have sections that address access to the other party's representations[3].

[23] The city submits that in filing this appeal for the two affidavits in question, the requester is attempting to obtain access to a portion of the city's representations in MA10-412-2. The city submits that the appellant's request is contrary to section 41(13) of the *Act*, as well as being subject to issue estoppel, and should be denied.

[24] The city submits that the IPC has continually denied requests for representations made by a party and, relying on Order P-207, "to order this correspondence disclosed ... would represent a collateral and indirect means of obtaining access to information that was the subject of another proceeding" and "to grant access to these records would encourage duplicate appeal proceedings and mitigate against finality in the appeals process."

The appellant's representations

[25] In order to better understand the circumstances of this appeal, I have reviewed the voluminous amounts of material that the appellant provided to this office at intake, mediation[4] and at adjudication. The materials are wide-ranging and focus, for the most part, on the appellant's concerns about the city's inspection and suggested remediation of a construction of a house involving the appellant, which then became a concern about the conduct of the city's building department, city staff and elected representatives. One of the appellant's allegations is that the city has fabricated evidence. From my review of the materials provided, it appears the appellant's concerns respecting the city's claim that she is estopped from pursuing her request include:

- that she did not previously request these affidavits
- that the deponents of the affidavits have "nothing to fear" from her

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[3] The city references section 41(13) of the *Act*, discussed in more detail below, in support of this submission.

[4] With the exception of any materials subject to mediation privilege.

- that she has a right to the affidavits generally as well as in order to correct inaccuracies in her building file
- she should not be penalized for two inaccurate dates in an affidavit which she relied on and reproduced in her earlier request
- the affidavits contain falsehoods
- that it is a crime to fabricate evidence and the IPC cannot shield criminals by denying access to information which would further substantiate their crimes
- there is a public interest in the withheld information "because the building inspectors admitted illegal activities"
- there is a conflict of interest at the IPC because, amongst other things, the "IPC reports to the Attorney General"
- a breach of the public trust has occurred
- she is seeking to uncover the truth when "major structural defects impact mortgages and mortgage backed securities … and financial markets … and that means … national security"
- the city is not acting in good faith

Analysis and finding

[26] In Appeal MA10-412-2, which resulted in Order MO-2701 and is the genesis for the current appeal, Adjudicator Laurel Cropley was dealing with the appellant's request to the city for access to the following information:

> [P]lease provide a copy of all interoffice correspondence pertaining to our file since January 1, 2010. This would include any memos, emails, etc., by any building services personnel and/or City Council members and/ or [named CAO, named City Auditor, and seven other identified individuals].
>
> Note: I am simply looking for correspondence on which we were not cc:ed and/or included in the distribution list.

[27] In the cover letter that accompanied the Notice of Inquiry she sent to the city inviting representations on the facts and issues in Appeal MA10-412-2, Adjudicator Cropley wrote:

> The representations you provide to this office should include all of the arguments, documents and other evidence you rely on to support your position in this appeal. Your representations may be shared with other parties to the appeal unless they meet the confidentiality criteria identified

> in *Practice Direction Number 7*, which are reproduced on page three of the enclosed "Inquiry Procedure at the Adjudication Stage". Please ensure that your representations state your position concerning the sharing of your representations.

[28] The affidavits at issue in this appeal were provided by the city in response to a Notice of Inquiry sent to the city in the course of the inquiry into Appeal MA10-412-2. The city asked that portions of those affidavits be withheld from the appellant due to confidentiality concerns. Adjudicator Cropley decided that portions should be withheld. She confirmed her decision in the Notice of Inquiry that she sent to the appellant in Appeal MA10-412-2 as follows:

> … The City has submitted representations. I am now seeking representations from the appellant and have attached the non-confidential representations made by the City to the appellant. I have agreed to withhold portions of the City's representations due to confidentiality concerns. The appellant is asked to review the City's representations and to refer to them, where appropriate in responding to the issues set out below. …

[29] Accordingly, Adjudicator Cropley determined that the appellant should not be given access to the two affidavits. At that stage, if the appellant objected to the withholding of the affidavits she had two options: request a reconsideration of Adjudicator Cropley's decision under the IPC's *Code of Procedure* or commence an application for judicial review of the decision. The appellant did neither. Instead, some time later she made an access request to the city for the information that Adjudicator Cropley had decided to withhold.

[30] On the Merits of Appeal MA10-412-2 Adjudicator Cropley upheld the city's decision to withhold information under sections 38(b) and 38(a), in conjunction with section 12.

[31] Section 41(13) of the *Act* limits a party's right to have access to another party's representations:

> The person who requested access to the record, the head of the institution concerned and any other institution or person informed of the notice of appeal under subsection 39(3) shall be given an opportunity to make representations to the Commissioner, but no person is entitled to have access to or to comment on representations made to the Commissioner by any other person or to be present when such representations are made.

[32] During adjudication, procedural fairness generally requires some degree of mutual disclosure of the arguments and evidence of all parties. Under section 7.07 of

this office's *Code of Procedure*, an Adjudicator may provide some or all of the representations received from a party to the other party or parties in accordance with *Practice Direction 7*. This practice direction states, in part:

> ***Request to withhold representations***
>
> 3. A party providing representations shall indicate clearly and in detail, in its representations, which information in its representations, if any, the party wishes the Adjudicator to withhold from the other party or parties.
>
> 4. A party seeking to have the Adjudicator withhold information in its representations from the other party or parties shall explain clearly and in detail the reasons for its request, with specific reference to the following criteria.
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> ***Criteria for withholding representations***
>
> 5. The Adjudicator may withhold information contained in a party's representations where:
>
> (a) disclosure of the information would reveal the substance of a record claimed to be exempt; or
>
> (b) the information would be exempt if contained in a record subject to the Act; or
>
> (c) the information should not be disclosed to the other party for another reason.
>
> 6. For the purpose of section 5(c), the Adjudicator will apply the following test:
>
> (i) the party communicated the information to the IPC in a confidence that it would not be disclosed to the other party;
>
> (ii) confidentiality is essential to the full and satisfactory maintenance of the relation between the IPC and the party;
>
> (iii) the relation is one which in the opinion of the community ought to be diligently fostered; and
>
> (iv) the injury to the relation that would result from the disclosure of the information is greater than the benefit gained for the correct disposal of the appeal.

[33] In Order P-164, Former Commissioner Sidney Linden made the following comments with respect to the provincial equivalent of section 41(13) of *MFIPPA*:

> ... I agree that the words "no person is entitled" to see and comment upon another person's representations means that no person has the right to do so. In my view, the word "entitled", while not providing a right to access to the representations of another party, does not prohibit me from ordering such an exchange in a proper case. Subsection 52(13) does not state that under no circumstances may I make such an order; it merely provides that no party may insist upon access to the representations.
>
> Counsel for the institution is correct when he states that the *Statutory Powers Procedure Act* does not apply to an inquiry under the [former provincial Act]. Thus, the only statutory procedural guidelines that govern inquiries under the [former provincial Act] are those which appear in that [former provincial Act]. However, while the [former provincial Act] does contain certain specific procedural rules, it does not in fact address all of the circumstances which arise in the conduct of inquiries, I must have the power to control the process. In my view, the authority to order the exchange of representations between the parties is included in the implied power to develop and implement rules and procedures for the parties to an appeal.
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> ...
>
> Clearly, procedural fairness requires some degree of mutual disclosure of the arguments and evidence of all parties. The procedures I have developed ... allow the parties a considerable degree of such disclosure. However, in the context of this statutory scheme, disclosure must stop short of disclosing the contents of the record at issue, and institutions must be able to advert to the contents of the records in their representations in confidence that such representations will not be disclosed.

[34] In *Toronto District School Board v. Ontario (Information and Privacy Commissioner)*[5], a case involving section 41(13) of the *Act*, the Divisional Court endorsed the approach of Former Commissioner Linden concerning the power of an adjudicator to order the exchange of representations between the parties. Mr. Justice Then, speaking for the Court, found that:

> While [section 41(13)] properly interpreted, provides a discretion to the Commissioner to disclose representations, a proper interpretation necessarily imposes limitations on its exercise which are consonant with the purposes of the *Act*. In our view, those limitations are appropriately contained in the guidelines developed by the Commissioner as information

[5] [2002] O.J. No. 4631 (Div. Ct.).

> contained in the representations of the parties may be withheld by the Commissioner in circumstances where:
>
> > (a) disclosure of the information would reveal the substance of a record claimed to be exempt or excluded; or
> >
> > (b) the information would be exempt if contained in a record subject to the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*; or
> >
> > (c) the information should not be disclosed to the other party for another reason.
>
> …[T]o interpret [section 41(13)] in the manner advanced by Commissioner Linden would preserve the policy that the section is meant to foster, namely, full and frank submissions, in circumstances where the parties could more fully exercise their rights to natural justice. The Commissioner, as adjudicator, would reap the benefit of shared submissions, limited only, by the exclusion of those submissions which would expose the privacy rights at issue.

[35] The issue of access to representations that were filed in a previous IPC proceeding involving the same parties arose in Order P-207, a decision of former Commissioner Tom Wright under the provincial Act[6]. In his decision, former Commissioner Wright characterized the issue as follows:

> The appellant has requested the representations made by the institution to the Information and Privacy Commissioner/Ontario (the "Commissioner") in Appeal Number 880007 and the institution has denied access to this record by relying on sections 52 and 19.

[36] His concerns about the case before him were the following:

> In arriving at my decision, I have considered the unique circumstances associated with an appeal. A person has made a request for a record and an institution has denied access to it. The person appeals the decision denying access to the Commissioner who must decide if the appellant is to receive access to the record. If an appellant were provided with access to the record or to other information that would disclose the content of the record, before the decision on access was made, the appeal would be redundant. I believe that this is one of the reasons why the Legislature

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[6] The *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31.

adopted subsection 52(13) of the Act. Subsection 52(13) of the Act reads as follows:

> The person who requested access to the record, the head of the institution concerned and any affected party shall be given an opportunity to make representations to the Commissioner, but no person is entitled to be present during, to have access to or to comment on representations made to the Commissioner by any other person. [emphasis added in original]

[37] Former Commissioner Wright then expanded upon Order P-164, writing that:

> I agree with Commissioner Linden that there is no right of access to the representations made in the course of an inquiry. In my view, the Commissioner or his/her delegate has the fundamental power to control the inquiry process. In *Re Cedarvale Tree Services Ltd. and Labourers' Int'l. Union of North America, Local 183*, [1971] 3 O.R. 832 (Ontario Court of Appeal), Mr. Justice Arnup, at page 841, stated as follows:
>
> > [T]he Board [Ontario Labour Relations Board] is a master of its own house not only as to all questions of fact and law falling within the ambit of the jurisdiction conferred upon it by the Act, but with respect to all questions of procedure when acting within that jurisdiction. In my view, the only rule which should be stated by the Court (if it be a rule at all) is that the Board should, when its jurisdiction is questioned, adopt such procedure as appears to it to be just and convenient in the particular circumstances of the case before it.
>
> In *Practice and Procedure before Administrative Tribunals*, The Carswell Company Limited, Toronto, 1988, Robert MaCaulay, Q.C. states that the above-noted observation of Mr. Justice Arnup with respect to the Ontario Labour Relations Board is of general application to administrative agencies. Further at pages 9-7 and 9-8 he states:
>
> > Generally, subject to any statutory provisions, boards have a common law obligation to run their own affairs as they see fit. This may be construed as a conferral of extensive discretion, but it is subject to the courts' powers to review. To be given wide discretion does not mean that it will be exercised in every case, but rather in the appropriate circumstances.
>
> In *Fishing Vessel Owners' Association of British Columbia et al. v. Canada*, (1985) 57 N.R. 376 (Federal Court of Appeal), Mr. Justice Andy stated, at page 381, as follows:

> Every tribunal has the fundamental power to control its own procedure in order to ensure that justice is done. This, however, is subject to any limitations or provisions imposed on it by the law generally, by statute or the rules of Court.

I believe that it is essential to the integrity of the inquiry system and to the effective operation of the appeal process set out in the Act that either the Commissioner or his/her delegate be the one who decide the question of whether an appellant will have access to the representations made by an institution in the course of an inquiry.

It is the practice of the Commissioner or his/her delegate during the course of an inquiry to review the representations of the parties to an appeal and to consider whether the appellant should be given access to all or part of the representations, whether there is a need for clarification of representations or whether a party should be given the opportunity to respond to the representations.

The records at issue in this appeal are the representations made by the institution in the course of an inquiry conducted by the Commissioner in Appeal Number 880007, which resulted in Order 68 dated June 28, 1989. Order 68 is silent as to the issue of access by the appellant to the representations of the institution. It is to be noted that the appellant in the present appeal was also the appellant in Appeal Number 880007.

It is my view that the question of access to the institution's representations has already been dealt with by Commissioner Linden in the course of Appeal Number 880007. The fact that the institution's representations were not provided to the appellant in Appeal Number 880007 confirms to me that the Commissioner already considered the question which is at issue in this appeal.

For all of the foregoing reasons, I conclude that the appellant has no right of access to the representations made in the course of Appeal Number 880007.

[38] In Order P-537, Adjudicator Anita Fineberg was addressing the issue of whether an institution properly denied access to records generated during the mediation stage of an earlier appeal. After quoting from former Commissioner Wright's decision in Order P-207 she wrote:

> Orders 164, 207, and P-345 all addressed the issue of the exchange of representations. In my view, however, the analysis may be equally applicable to the records … in this appeal (correspondence between the Ministry and the Commissioner's office) in the sense that there exist

> similar concerns about disclosure of the information contained in these records. It is not necessarily just the representations of the Ministry that may contain references to, or quotes from, the records at issue; such information may also be found in correspondence to and from the Ministry, or other parties to the appeal, and the Commissioner's office.
>
> In addition, to order this correspondence disclosed when the records for which the original access request was made were not released on appeal, would represent a collateral and indirect means of obtaining access to information that was the subject of another proceeding.
>
> I believe that the process envisaged under the [provincial Act] was not intended to be used in such a manner or for this purpose. Nor should the process result in the same information having to be considered in potentially two separate appeals, which is a possibility if the requester submits an original access request and a subsequent request for the institution's Freedom of Information file.
>
> To summarize, it is my view that the records … should not be disclosed to the appellant for the following reasons:
>
> > (1) The Commissioner's office has a right to control its own process.
> >
> > (2) It is possible that these records may contain the same information that was the subject of the original appeal that was not disclosed.
> >
> > (3) To grant access to these records would encourage duplicate appeal proceedings and militate against finality in the appeals process.
>
> In my opinion, this view is consistent with the general scheme of the legislation as set out in sections 52(9), 52(13), and 55(1) of the [provincial Act]. It is also consistent with the legal authorities and academic sources cited with respect to questions of procedure which arise before administrative tribunals. Accordingly, I uphold the Ministry's decision to deny access to [certain identified records].

[39] As set out above, rather than bringing a reconsideration request in relation to Adjudicator Cropley's decision on access to the affidavits during the inquiry stage of Appeal MA10-412-2, or commencing an application for judicial review, the appellant has filed a request for access to the same affidavits. This is inappropriate as it offends the principles that underlie the decisions I have referred to above. I find that the appellant is not entitled to do so.

[40] In my view, allowing the appellant to now request access to the affidavits would represent a collateral and indirect means of obtaining access to information that was the subject of another proceeding. As was found in P-537, the process envisaged under the *Act* was not intended to be used in such a manner or for this purpose. Nor should the process result in the same information having to be considered in potentially two separate appeals, which is a possibility if the requester submits an original access request and then a request for the representations filed by the institution in that appeal.

[41] In closing, the public interest in finality of litigation must be balanced against ensuring that justice is done in a particular case. I also recognize that the doctrine of *stare decisis* does not apply to administrative tribunals.[7] In my view, however, the circumstances of this appeal, as outlined above, support an exercise of discretion to not allow the appellant to proceed with an access request for the two affidavits.

[42] In light of this conclusion, it is not necessary for me to address the possible application of sections 4(1)(b), 12 or 14 of the *Act* as raised by the city.

ORDER:

I uphold the city's decision and dismiss the appeal.

Original Signed by: July 31, 2018
Steven Faughnan
Adjudicator

[7] See *Weber v. Ontario Hydro*, [1995] 2 SCR 929 at paragraph 14.