

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3737

Appeal MA16-366

City of Vaughan

February 28, 2019

**Summary:** The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the City of Vaughan (the city) for information relating to the mayor's expenses. The city located responsive records and granted the appellant access to them, in part. The city withheld portions of the records under the mandatory personal privacy exemption in section 14(1) and the discretionary exemption in section 11(a) (economic interests of the institution). The appellant appealed the city's access decision and fee. The appellant also claimed that additional responsive records ought to exist, thereby raising reasonable search as an issue. In this order, the adjudicator upholds the city's decision, in part. The adjudicator finds that the majority of the information withheld under section 14(1) is not personal information within the meaning of section 2(1) of the *Act*. As such, the adjudicator orders the city to disclose it to the appellant. The adjudicator finds that section 14(1) does apply to the small amount of personal information contained in the records. In addition, the adjudicator finds that section 11(a) does not apply to the remaining information at issue and orders the city to disclose it to the appellant. Finally, the adjudicator upholds the city's fee and search as reasonable.

**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*), 11(a), 14(1), 17 and 45(1); Regulation 823, section 6.

**Orders and Investigation Reports Considered:** Orders MO-3272, MO-3437 and PO-2054-I.

### OVERVIEW:

[1] The appellant filed an access request under the *Municipal Freedom of*

*Information and Protection of Privacy Act* (the *Act*) with the City of Vaughan (the city) for information relating to the mayor's expenses. Specifically, the appellant sought access to

Receipts, cheques (or deposit confirmation) of all Mayor's expenses from 2011 until current. In particular phone (cells), car expenses an entertainment, tickets, donations, etc.

Note – from Mayor's expense account, not fund raising accts.

The city located over 2000 pages of records and issued an access decision granting the appellant partial access to them. The city applied the mandatory personal privacy exemption in section 14(1) and the discretionary exemption in section 11(a) (economic and other interests) of the *Act* to withhold portions of the records.

[2] The appellant appealed the city's decision.

[3] During mediation, the appellant advised that she took issue with the city's calculation of the fee, even though she paid the fee in full. The appellant states that the city committed to publish all of the mayor's expenses including receipts and invoices in its website at no cost. Consequently, the appellant claims she should not have to pay for information that should be published. In the alternative, the appellant claims the fee charged for the city's search is excessive because she believes all of the records should be in one place and the search time should be minimal. The appellant also submits that the preparation time is excessive because there were minor severances.

[4] The appellant also takes issue with the city's exemption claims. She claims that none of the information should be withheld, with the exception of personal information such as city employees' home telephone numbers and addresses. The appellant also submits that since the city provided the mayor's cellular phone number, that number and all the phone numbers he called should be public information. Finally, the appellant submits that the mayor's automobile licence plate number and all account numbers (i.e. Bell Mobility, 407 invoice, COSTCO invoice) should be disclosed in full.

[5] Finally, the appellant submits that additional records ought to exist, thereby raising the city's search as an issue in this appeal. The appellant claims that the total amount of the mayor's expenses is published on the city's website, but the invoices/receipts she received do not correspond to those amounts.

[6] The city confirmed its position that the fee was appropriately calculated in accordance with the regulations of the *Act*, that the claimed exemptions applied to the withheld portions of the records and its search for responsive records was reasonable.

[7] No further mediation was possible and the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry into the issues under appeal. The adjudicator originally assigned to the appeal began

the inquiry by inviting the city to respond to a Notice of Inquiry, which set out the facts and issues under appeal. The city submitted representations. The adjudicator then invited the appellant to submit representations in response to the city's representations, which were shared in accordance with Practice Direction Number 7 of the IPC's *Code of Procedure*. The appellant submitted representations.

[8] The appeal was then transferred to me to complete the inquiry. In the discussion that follows, I find that the majority of the information withheld under section 14(1) is not *personal information* within the meaning of section 2(1) of the *Act*. As such, section 14(1) cannot apply to it and I order the city to disclose it to the appellant. However, I find that the records contain some personal information and uphold the city's application of section 14(1) to withhold it from disclosure. I find that section 11(a) does not apply to the remaining information at issue and order the city to disclose it to the appellant. In addition, I uphold the city's fee and find its search for records in response to the appellant's request to be reasonable.

## **RECORDS:**

[9] The city located over 2200 pages of records responsive to the appellant's request. The city disclosed the majority of these records to the appellant, but withheld portions of 628 pages of records. These records include various expense records, such as cheque requisitions, copies of receipts, accounts payable documents and various invoices, relating to the mayor from 2011 to 2016.

## **ISSUES:**

- A. Do the records contain personal information as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption in section 14(1) apply to the personal information at issue?
- C. Does the discretionary exemption at section 11(a) apply to the records?
- D. Should the city's fee be upheld?
- E. Did the city conduct a reasonable search for records?

## **DISCUSSION:**

### **Issue A: Do the records contain personal information as defined in section 2(1) and, if so, to whom does it relate?**

[10] In order to determine which sections of the *Act* may apply, it is necessary to

decide whether the record contains *personal information* and, if so, to whom it relates. The term *personal information* is defined in section 2(1) of the *Act*. The relevant portions of section 2(1) read as follows,

“personal information” means recorded information about an identifiable individual, including,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) of section 2(1) may still qualify as personal information.<sup>1</sup>

[11] 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 (2.1) 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.

[12] 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.<sup>2</sup>

[13] Even if the 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.<sup>3</sup>

[14] To qualify as personal information, it must be reasonable to expect that an

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<sup>1</sup> Order 11.

<sup>2</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>3</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

individual may be identified if the information disclosed.<sup>4</sup>

[15] The city submits that the records contain phone numbers belonging to the mayor and other individuals that appear on cellular phone invoices. In addition, the records contain the mayor's licence plate number for a vehicle leased through the city, but that the mayor used in a personal capacity. The city submits that this information qualifies as personal information pursuant to paragraph (c) of the definition in section 2(1).

[16] The appellant takes the position that the mayor's licence plate number should not be redacted from the gas receipts, repair receipts and tire purchases. The appellant submits that licence plate numbers are not private.

[17] In addition, the appellant refers to the city's *Council Member Expense Policy*<sup>5</sup> (the Expense Policy). The appellant submits that the Expense Policy makes it clear that only business expenses may be reimbursed. Therefore, if the mayor is only reimbursed for business expenses, there are no "personal records" at issue. The appellant submits all of the records, which are business records, must be disclosed to her.

[18] Based on my review of the records, I find that the majority of the redacted information does not constitute *personal information* within the meaning of the *Act*. First, I find that the cellular phone numbers relating to the mayor and other city employees does not constitute their *personal information* under section 2(1) of the *Act*. I note that in Order PO-2054-I, the adjudicator found that the cellular numbers assigned to government officials and representatives for use in their professional capacities contained information about these individuals in their professional or official capacity and fall outside the scope of the definition of *personal information*.<sup>6</sup>

[19] Moreover, in the more recent Order MO-3272, the adjudicator considered whether a telephone number relating to a trustee of the Toronto District School Board contained their *personal information* and found,

I find that where the affected party's cellular phone appears in the record, it does not qualify as the affected party's, or anyone else's, personal information. The board paid for the trustee's cellular telephone so that the trustee would use it for business purposes. In the absence of evidence to the contrary, I find that this telephone number does not qualify as personal information and is instead associated with the affected party in a

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<sup>4</sup> Order PO-1880, upheld on judicial review in Ontario (Attorney General) v. Pascoe, [2002] OJ No. 4300 (C.A.).

<sup>5</sup> Policy Number 01.37, dated March 9, 2010.

<sup>6</sup> Order PO-2054-I at page 8.

professional capacity. Moreover, I find that disclosure of the telephone number would not reveal anything of a personal nature about them.<sup>7</sup>

I adopt this analysis for the purpose of this appeal. From a review of the various cellular phone bills, I am satisfied that the city paid for the mayor's and related staff's cellular phone charges. Presumably, the city paid for the mayor's and related staff member's cellular phones so that they would use them for business purposes. Furthermore, the city acknowledges that these phone numbers were issued in a business or professional capacity to the individual city employees. As such, I find these cellular phone numbers relate to these individuals in their professional capacity. While these individuals may have used these cellular phone numbers for personal purposes, the city pays for the charges. In any case, the city did not provide me with any evidence to show that these cellular phone numbers were used for personal reasons. Therefore, I find that these cellular phone numbers are assigned to city employees for use in their official or professional capacity. Accordingly, I find the cellular phone numbers relating to city employees do not constitute *personal information* within the meaning of section 2(1) of the *Act*. Having made this finding, the cellular phone numbers relating to city employees cannot be exempt from disclosure under the personal privacy exemption in section 14(1) of the *Act*.

[20] In addition, I find that the licence plate numbers relating to vehicles leased for the mayor's use are not *personal information* under section 2(1) of the *Act*. As with the cellular phone numbers, the city pays for the mayor's car lease. I also note that the city has disclosed a number of licence plates relating to various employees to the appellant on page 1116. The city severed only the licence plate number for the mayor's vehicle, but disclosed three other licence plate numbers which appear to have been assigned to other city employees. It is unclear why the city only severed the licence plate number of the vehicle used by the mayor. In any case, given the fact that the city leases the vehicle for the mayor's use, I find it is reasonable to assume that there is an expectation that the mayor use it for business, official or professional purposes. While the mayor may use the vehicle for personal reasons, the city pays for the lease. Therefore, I find that the licence plate number relates to the mayor in his official or professional capacity and is not his *personal information* within the meaning of section 2(1) of the *Act*. Having made this finding, the license plate numbers relating to the mayor cannot be exempt from disclosure under the personal privacy exemption in section 14(1) of the *Act*.

[21] I have reviewed the records that contain itemized call lists for specific phone numbers, such as pages 34, 46 to 50, 69 to 78 and 93 to 98. These call lists contain certain numbers assigned to the mayor and/or other staff of the city, such as the cellular phone numbers referred to above. I have already found that these numbers are

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<sup>7</sup> Order MO-3272 at para 17.

not *personal information* within the meaning of section 2(1) because they relate to an individual in their professional, business or official capacity. Based on my review, I find it would not be difficult for the city to identify these numbers and disclose them to the appellant. In addition, I note that the city's general phone line is one of the numbers on the call logs. I remind the city that section 4(2) of the *Act* obliges an institution to disclose as much of a responsive record as can reasonably be severed without disclosing exempt material. While I do not expect the city to confirm every number on the call logs, the business numbers that are easily identifiable as the city's general phone line or employees' numbers should be disclosed to the appellant.

[22] The city applied section 11(a) to withhold the last four and five digits of credit card numbers. However, in its representations on the issue, the city stated that some of these credit card numbers may be personal credit card numbers. The city did not identify which numbers may relate to an individual in their personal capacity other than the credit card information contained on pages 2228 and 2229 of the records. I have reviewed the records and cannot determine whether certain credit card numbers relate to an identifiable individual in their personal capacity, other than those on pages 2228 and 2229. For example, a number of records are copies of receipts in which only the credit card information is included. There is no name associated with the credit card number. In addition, there are other records, such as credit card account statements, that clearly relate to the individuals in their professional or business capacity because the city is the account holder. Based on my review of the records at issue, I find the last four or five digits of the credit card numbers, even where they might relate to an individual in their personal capacity, with the exception of the numbers on pages 2228 and 2229, do not relate to an *identifiable individual*. Therefore, they are not personal information and cannot be exempt under section 14(1). I will consider whether these credit card numbers are exempt under section 11(a), below.

[23] With regard to the remaining telephone numbers in the call logs, I note that there appear to be residential numbers listed on Canada 411 and otherwise unlisted numbers. I find that disclosure of this information would allow one to ascertain the identity of the individual to whom the number belongs by either referring to Canada 411 or calling the numbers.<sup>8</sup> Therefore, I find that these telephone numbers qualify as the personal information of identifiable individuals, falling within paragraph (d) of the definition of *personal information* in section 2(1) of the *Act*. I will consider whether the exemption in section 14(1) applies to these telephone numbers.

[24] Similarly, I am satisfied that the residential phone numbers in pages 437 and 981, and the residential addresses in pages 1259, 2169 and 2229 fall within paragraph (d) of the definition of *personal information* in section 2(1) of the *Act*. I am also satisfied that the home email address on page 2229 of the records falls within

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<sup>8</sup> See Orders MO-3272 and MO-2771.

paragraph (c) of the definition of *personal information* in section 2(1) of the *Act*. Finally, I am satisfied that the personal banking information in a copy of the personal cheque in page 1259 and the personal credit card information on pages 2228 and 2229 of the records constitutes these individuals' *personal information* within the meaning of section 2(1) of the *Act*. I will consider whether the exemption in section 14(1) applies to this personal information.

**Issue B: Does the mandatory exemption in section 14(1) apply to the personal information at issue?**

[25] Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) in section 14(1) applies. In the circumstances, it appears that the only exception that could apply is section 14(1)(f), which allows disclosure if it would not be an unjustified invasion of personal privacy. Based on my review, I find that none of the exceptions in section 14(4) apply to the records at issue.

[26] The factors and presumptions in sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 14(1)(f).

[27] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14(1).

[28] The city submits that none of the paragraphs at section 14(3) apply to the personal information that remains at issue. Based on my review of the records, I find that none of paragraphs (a) to (h) of section 14(3) apply to them.

[29] If no section 14(3) presumption applies and the exceptions in section 14(4) do not apply, which is the case at hand, section 14(2) lists various factors that may be relevant in determining whether disclosure of the personal information at issue would constitute an unjustified invasion of personal privacy.<sup>9</sup> In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 14(2) must be present. In the absence of such a finding, the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies.<sup>10</sup>

[30] The city submits that the factors in sections 14(2)(e) and (h), which weigh in favour of non-disclosure, apply to the personal information that remains at issue. These sections state,

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<sup>9</sup> Order P-239.

<sup>10</sup> Orders PO-2267 and PO-2733.



14(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

(h) the disclosure may unfairly damage the reputation of any person referred to in the record.

The city submits that releasing the lists of itemized calls may expose individuals to harm, as some of the numbers could include residential or personal phone numbers of other councillors' or private individuals. The city submits there is likely an overlap between personal and business contexts with regard to the phone numbers on the call lists and it is not possible to distinguish these contexts.

[31] With regard to section 14(2)(h), the city submits that the individuals whose numbers appear in the itemized call lists supplied their contact information to the city in confidence. The city submits that any exposure to unwanted use of their information due to exposure through their contact with the mayor would be unfair to those individuals.

[32] The appellant did not address the application of section 14(1) to the personal information at issue in her representations.

[33] The personal information that remains at issue consists of the following: residential or unlisted telephone numbers, home email addresses, personal banking information, home addresses and personal credit card information. Based on my review of section 14(2), I find that none of the factors that favour disclosure are applicable in the circumstances. Further, I am not satisfied that any of the factors in favour of non-disclosure apply to the personal information that remains at issue. In any case, as stated above, in order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 14(2) must be present and I find that none apply. Having concluded that none of the factors favouring disclosure in section 14(2) apply, I find that the exception in section 14(1)(f) is not established. Consequently, in view of the fact that section 14(1) is a mandatory exemption, I find that the personal information that remains at issue is exempt from disclosure under section 14(1) of the *Act*.

**Issue C: Does the discretionary exemption at section 11(a) apply to the records?**

[34] The city claims the application of the discretionary exemption at section 11(a) to withhold the last four and five digits of credit card numbers on various invoices and receipts. In addition, the city applied the exemption in section 11(a) to withhold various account or membership numbers,<sup>11</sup> such as those for cellular phone providers, fuel charges, credit card companies and the 407 ETR. Section 11(a) states,

A head may refuse to disclose a record that contains,

trade secrets or financial, commercial, scientific or technical information that belongs to an institution and has monetary value or potential monetary value;

[35] The city submits that most of the credit card numbers appear to be city issued, specifically those where an invoice indicates the credit card relates to a corporate account. However, the city states there is no way to confirm if a corporate or personal credit card was used for many of the purchases that appear on individual receipts based on the last four (or five, in certain instances) alone.

[36] With regard to the account numbers, the city submits that they relate solely to the buying, selling or exchange of merchandise or services, such as the provision of cellular phone services.

[37] The city asserts that the credit card and account numbers are not generally known by the wider public and can be categorized as confidential business information.

[38] The appellant did not address the application of section 11(a) in her representations.

[39] For me to find that section 11(a) applies to the credit card and account numbers, the city was required to demonstrate that the information:

1. is a trade secret, or financial, commercial, scientific or technical information;
2. belongs to an institution; and
3. has monetary value or potential monetary value.

[40] The city's representations on the application of section 11(a) are brief and do not

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<sup>11</sup> I note the city only addresses the account numbers for cell phone usage. However, from a review of the records, it appears the city is claiming section 11(a) to all of the account numbers withheld from disclosure.

offer any detail or specificity on the type of information at issue. In addition, the city does not provide any details regarding the monetary value or potential monetary value the information may have. In any case, I will address each part of the test in relation to (1) the credit card information and (2) the account numbers.

[41] The credit card information at issue consists of the last four or five digits of various credit cards. I assume the city claims that the credit card information is financial information, although it did not address part 1 of the test in its representations. The term *financial information* has been defined as "information relating to money and its use or distribution and must contain or refer to specific data."<sup>12</sup> While the last four or five digits of a credit card may not constitute financial information on their own, given my findings regarding their monetary value, I do not need to confirm whether a portion of the credit card number constitutes *financial information*.

[42] The account numbers relate to the city's various accounts with programs such as the 407 ETR, fuel charges with a specific company, cellular phone providers and credit card companies. I note the account number for the credit card company appears to be a corporate membership account number, rather than an individual's account. However, the city did not provide me with any explanation with regard to this information. I have reviewed these account numbers and, in the absence of any evidence, it is not clear which type of information contemplated by section 11(a) they fall under. In any case, given my findings regarding part 3, I do not need to confirm which type of information the account numbers would be.

[43] With regard to the second part of the test, the term *belongs to* refers to *ownership* by the institution.<sup>13</sup> In its representations, the city acknowledges that some of the credit card numbers may relate to a personal credit card. However, the city did not confirm which credit card numbers are corporate and which are personal. Again, I remind the city of its obligation under section 4(2) of the *Act* to disclose as much of a responsive record as can reasonably be severed without disclosing exempt material. In light of a large municipality's obligations to maintain accurate accounting records, it would not be difficult for the city to confirm which credit card numbers in the records are corporate (or city-owned) credit card numbers. In any case, I am not required to consider this issue further, given my findings regarding the monetary value of the credit card information below.

[44] In Order MO-3437, the adjudicator considered the city's section 11(a) claim to

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<sup>12</sup> Order PO-2010.

<sup>13</sup> It is more than the right to simply possess, use or dispose of information, or control access to the physical record in which the information is contained. For information to *belong* to an institution, the institution must have some proprietary interest in it either in a traditional intellectual property sense – such as copyright, trade mark, patent or industrial design – or in the sense that the law would recognize a substantial interest in protecting the information from misappropriation by another party.

withhold its account number with its telephone provider. The adjudicator found that “the city has (or had) no more than a right to use [the account numbers]; they did not ‘own’ them. I do not accept that this information can be said to ‘belong to’ the city within the meaning of part 2 of the section 11(a) test.” I adopt this analysis for the purpose of this appeal. Upon review of the records, I find that the city does not *own* the account numbers at issue. Rather, the city has a right to use these account numbers with the particular businesses that assigned them. Therefore, I find that the account numbers do not *belong to* the city within the meaning of section 11(a) of the *Act*.

[45] The city did not make any representations regarding the third part of the test, that is, whether the last four or five digits of credit card numbers or the account numbers have monetary value or potential monetary value. Based on my review of the records, I find the city has not demonstrated that the last four or five digits of credit card numbers, on their own, have monetary value or potential monetary value. To have *monetary value*, the information itself must have an intrinsic value. The city has not provided any information to persuade me how the last four or five digits of credit card numbers have intrinsic monetary value and I find they do not. Similarly, I find that the account numbers do not have intrinsic monetary value and the city has not provided me with any information that would lead me to a different conclusion. As all three parts of the test must be established for the exemption to apply, I find that the discretionary exemption at section 11(a) does not apply to the credit card and account numbers withheld from the records. As no other exemptions were claimed in relation to these records and no mandatory exemptions apply, I will order the city to disclose the credit card and account information at issue.

#### **Issue D: Should the city’s fee be upheld?**

[46] Under section 45(1) of the *Act*, the city is required to charge fees for processing access requests according to the following framework:

A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
- (d) shipping costs; and
- (e) any other costs incurred in response to a request for access to a record.

Other specific and relevant provisions regarding fees for records that do not contain the personal information of the appellant (as is the case here) are found in section 6 of Regulation 823:

6. The following are the fees that shall be charged for the purposes of subsection 45(1) of the *Act* for access to a record:

1. For photocopies and computer printouts, 20 cents per page.
2. For records provided on CD-ROMs, \$10 for each CD-ROM.
3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.

[47] The IPC may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 823.

[48] The city's final fee was set out in its final access decision as follows:

Search – per year @ \$7.50/15 minutes	
2001 – 5 hours	\$150.00
2012 – 5 hours	\$150.00
2013 – 3 hours	\$90.00
2014 – 2 hours	\$60.00
2015 – 3 hours	\$90.00
Preparation - \$7.50/15 minutes and 1 min/page	
2011 – 147 pages @ \$7.50/15 min.	\$73.50
2012 – 141 pages @ \$7.50/15 min.	\$70.50
2013 – 127 pages @ \$7.50/15 min.	\$63.50
2014 – 102 pages @ \$7.50/15 min.	\$51.00
2015 – 82 pages @ \$7.50/15 min.	\$41.00
2106 – 24 pages @ \$7.50/15 min.	\$12.00
1 CD @ \$10.00 each	\$10.00
<i>Previous Estimated Total (April 21; Search and CD cost only)</i>	<i>\$550.00</i>
<i>Deposit Paid (April 27)</i>	<i>\$275.00</i>
<i>Remaining Balance (as of April 27)</i>	<i>\$275.00</i>
Preparation Total (as of May 20)	\$311.50
<b>Balance Remaining (\$275.00 + \$311.50)</b>	<b>\$586.50</b>

### ***Representations***

[49] The city states that it based its fee on actual work done to respond to the

request. The city states that the Finance Department notified the Access and Privacy section early in the search process about the amount of potentially responsive records. The Finance Department then provided the Access and Privacy section an estimate of the search time based on the records available in hard copy format and the manual search and retrieval that would be required. The city states that individual receipts and invoices are not routinely kept as electronic records.

[50] The city stated the Finance Department provided a search estimate of 22 hours with one staff person assigned to search for each year between 2011 and 2015. The city states the Finance Department did not provide an estimate for 2016 because there were only three months' worth of records when the request was made in March 2016. The city states its files are organized by year as well as type (such as invoices) and exist in hard copy only.

[51] The Access and Privacy section reviewed the Finance Department's estimates and found some to be excessive because they included transit time from an offsite storage area (which cannot be charged). Therefore, the city adjusted the search time to 18 hours.

[52] The city then issued a fee estimate in accordance with section 45(3) of the *Act*.

[53] Upon receipt of the appellant's payment, the city processed the request. The city advised the appellant of the exact number of pages that would contain exempt information and provided her with the final preparation amounts indicated in its final access decision.

[54] The city states the appellant claims the fee is excessive because she believes the records should be located in one place and so, the search should be minimal. In addition, the city states the appellant claims that the information should be publicly available and, therefore, should not be charged. Finally, the city states the appellant believes that charging one minute per page for preparing and severing the record is excessive.

[55] The city affirms that the information requested is not published routinely. The city acknowledges that it publishes expenditure amounts for the mayor on its website, but the appellant requested all "back up" material such as detailed receipts and invoices, which are not published. The city states it was required to conduct additional searches and prepare these records in response to the appellant's request and charged the appellant accordingly.

[56] The city also states that the appellant's beliefs about where and how the records should be kept do not reflect the city's actual practice. The city affirms it based its fee

on the schedules set out in the *Act* as well as its own records management practices.

[57] The city notes that previous orders of this office have accepted 2 minutes per page for preparing a record for disclosure.<sup>14</sup> The city states it reduced its fee to 1 minute per page and does not believe this amount is excessive.

[58] Finally, the city submits the appellant should pay the fees because they are based on the actual work done by the city to process her request. The city states it provided appropriate notice of the fees and detailed calculations of the estimate and final fee. The city notes the appellant paid the fee after she was advised at both the estimate and final decision stage and did not seek a fee waiver.

[59] The appellant submits that the search was not as onerous as the city claims because the city is required to file all receipts with authorizations for reimbursement every month. As such, the appellant submits that there should only be one file of records for each month requested and they should be in one location in the record files. In addition, the appellant submits there are excessive redactions and the preparation time should be fully refunded as no personal expenses should be permitted. Therefore, there should not be any personal records at issue in the appeal.

[60] The appellant submits that the city's fees are exorbitant. She submits that the city's expenses are filed once a month and should contain all general invoices, receipts and related documents. As such, there should be twelve file records for each year. Given this manner of filing, the appellant alleges the search should take no more than five minutes for each month of records.

### ***Analysis and Finding***

[61] Based on my review of the city's representations and the final fee charged to the appellant to process the request, I am prepared to uphold the city's fee.

[62] The appellant does not appear to take issue with the city's \$10.00 fee for the CD-ROM. I uphold the city's \$10.00 charge for the CD-ROM because it was charged in accordance with section 6 of Regulation 823.

[63] Section 6 of Regulation 823 provides for certain required fees for access to records. Under that part of the Regulation, the city is required under section 45(1)(a) to charge the appellant a fee for "the costs of every hour of manual search required to locate a record" at a rate of \$7.50 for each 15 minutes spent and without regard for whether or not access is to be granted. Based on my review of the city's representations, which state that the search fee was charged based on the actual amount of work done, I am prepared to uphold the city's \$540.00 fee for 18 hours of

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<sup>14</sup> The city refers to Orders MO-1169, PO-1721, PO-1834 and PO-1990.

search time.

[64] The appellant states that the city's search should not have been as onerous as it claimed and the records ought to have been filed in monthly folders in a single location. The appellant did not provide any evidence to support this claim and the city confirmed it does not organize its financial records in this manner. Therefore, the appellant's claims do not reflect the city's actual practice, which resulted in the fee charged. Based on my review of the city's representations, I uphold the city's search fee of \$540.00 for 18 hours of search time, given the manner in which it stored its records and the volume of records that it located.

[65] With regard to the preparation time the city is permitted to charge under section 45(1)(b) of the *Act*, I note the city claims one minute per page for severing. I accept the city's approach of charging one minute per page given that the records did not require a large number of severances and were straightforward. The city based its preparation fees on 623<sup>15</sup> pages at one minute per page. Using the city's formula, I find that the city's \$311.50 charge would cover the preparation of 623 pages of records. Accordingly, I uphold this part of the fee estimate.

[66] In conclusion, I uphold the city's fee, which consists of a \$10 charge for a CD-ROM, \$540.00 for 18 hours of search time and \$311.50 for the preparation of records.

**Issue E: Did the city conduct a reasonable search for records?**

[67] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution conducted a reasonable search for records as required by section 17 of the *Act*.<sup>16</sup> If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the city's search. If I am not satisfied, I may order further searches.

[68] The *Act* does not require the institution prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it made a reasonable effort to identify and locate responsive records.<sup>17</sup> To be responsive, a record must be *reasonably related* to the request.<sup>18</sup>

[69] 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

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<sup>15</sup> I note that there are 628 pages of records in the city's "Redacted Pages" folder on the CD-ROM it provided to the IPC.

<sup>16</sup> Orders P-85, P-221 and PO-1954-I.

<sup>17</sup> Orders P-624 and PO-2559.

<sup>18</sup> Order PO-2554.



are reasonably related to the request.<sup>19</sup>

[70] 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.<sup>20</sup>

### ***Representations***

[71] The city states it did not seek additional clarification from the appellant when it received her request and chose to respond literally to it because it seemed straightforward in its scope. The city interpreted the appellant's request to mean that she sought access to all of the mayor's financial records, with the exception of his fundraising accounts.

[72] The city states the Access and Privacy section determined the city's Finance Department would hold the responsive records. As such, the Access and Privacy section contacted the Finance Department with the request. The Finance Department directed its staff to recall records from the archives because the request included detailed receipts and invoices relating to the mayor's expenses going back several years. The city states its files are organized by year as well as by type (such as invoices) and exist in hard copy only. The city states each page was retrieved and photocopied, then provided to the Access and Privacy staff for processing.

[73] The city submits several Finance Department employees, including a Senior Manager of Corporate Financial Planning and Analysis, two Accounts Payable Coordinators, two Capital Coordinators and one Budget Coordinator, conducted the search. The city submits that these individuals all had knowledge of the types of records responsive to the request and were able to identify responsive records due to their experience and job responsibilities.

[74] The city submits it conducted a reasonable search for records and all responsive records were located. The city states it provided the appellant with over 2200 pages of detailed records, including cheque requisitions, copies of receipts, accounts payable documents (including cheques), corporate credit card invoices, cell phone invoices/account summaries, automotive expenses and mailroom/printing invoices.

[75] The city concludes it located and produced all the records responsive to this request. The city notes that its Records Retention By-Law mandates that finance records are to be maintained for seven years. In this case, the city states the responsive records fall within the retention period and none have been destroyed.

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<sup>19</sup> Orders M-909, PO-2469 and PO-2592.

<sup>20</sup> Order MO-2246.

[76] The appellant submits that the city did not conduct a reasonable search for responsive records. The appellant refers to the city's Expense Policy. The appellant submits the mayor failed to provide receipts and invoices for all credit card purchases. The appellant submits that the Expense Policy can be used to determine that the city did not conduct a reasonable search for records and "hundreds" of records are missing.

[77] Referring to section 7 of the Expense Policy<sup>21</sup>, the appellant submits that council members are required to submit purchasing documents with complete signed/approved supporting documents when submitting expenses for payment. The appellant submits that the city did not provide any supporting documents.

[78] Referring to section 9<sup>22</sup> of the Expense Policy, the appellant submits that the city did not provide any detailed receipts in response to her request. For example, the appellant claims the mayor claimed thousands of dollars in photography expenses, under both the current budget and the mayor's gala and golf tournament fundraisers. The appellant submits that no details were provided, which are required by section 9.20 ("Photographic Supplies & Services").

[79] In addition, the appellant submits that the mayor failed to provide any invoices in relation to his credit card purchases, in contravention of section 5.0 ("Use of Corporate Credit Card") of the Expense Policy.

[80] The appellant states that section 9.31<sup>23</sup> of the Expense Policy concerns Travel Expenses. The appellant submits that the mayor made several overseas trips, which he claimed as 100% business expenses and attended many out of town conferences during the period identified in her request. However, the appellant states that she did not receive any travel receipts or invoices in response to her request.

[81] I note the appellant makes a number of submissions regarding her and the public's right to the disclosure of the mayor's cellular phone invoices, call logs, gas receipts and other documents in her representations on the city's search. I have already addressed the city's redactions of these records above. These arguments regarding disclosure do not relate to whether the city conducted a reasonable search for records.

### ***Findings***

[82] Based on my review of the parties' representations, I am satisfied that the city conducted a reasonable search for responsive records. As set out above, the *Act* does not require the city to provide with absolute certainty that additional responsive records do not exist, but only to provide sufficient evidence to establish that it made a

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<sup>21</sup> This section requires council members to authorize and sign-off for all expenditures.

<sup>22</sup> "Business Related Expenses".

<sup>23</sup> The appellant identifies section 9.31 in error as section 9.3 in her representations.

reasonable effort to locate responsive records. In my view, the city demonstrated that experienced individuals knowledgeable in the subject matter of the request expended a reasonable effort to identify and locate records responsive to the appellant's request.

[83] In addition, I find the appellant has not provided sufficient evidence to demonstrate that there is a reasonable basis for her belief that additional responsive records should exist. In her representations, the appellant identified a number of types of records, such as travel expenses or credit card expenses, that she alleges are missing from the disclosure. However, I have reviewed the records the city disclosed to her and find that the city has, in fact, located and disclosed these records to her. I find that the records contain a large number of supporting documents, such as invoices, forms or receipts, in contrary to the appellant's claim in relation to section 7 of the Expense Policy.

[84] In addition, it appears that many of the mayor's credit card expenses are documented in the records, contrary to the appellant's claims. For example, pages 11, 16, 17, 690, 698, 1183, 1192 and 1195 contain receipts or invoices relating to credit card expenses. Moreover, pages 668-671, 948-951, 1166-1170, 1177-1178, 1893-1894 and 1902 relate to various conferences. Based on my review, it appears that the city has disclosed a number of the records the appellant alleges the city did not locate. In any case, I find the appellant's representations do not establish there is a reasonable basis for her belief that additional responsive records exist.

[85] Finally, I note the appellant refers to photography expenses "under both this budget and the Mayor's gala and golf tournament fundraisers." As stated above, the appellant's request states as follows:

Receipts, cheques (or deposit confirmation) of all Mayor's expenses from 2011 until current. In particular phone (cells), car expenses an entertainment, tickets, donations, etc.

Note – from Mayor's expense account, not fund raising accts.

Based on my review of the appellant's request, I find that these "photography expenses" in relation to the mayor's fundraising are not within the scope of her request. The appellant clearly states that the mayor's fundraising accounts are not within the scope of her request. As such, the city was not required to conduct a search for these records. In any case, I note that the city located some records relating to photography expenses. For example, pages 945-947 and 2033-2035 relate to photography or camera expenses.

[86] In conclusion, I am satisfied that the city conducted a reasonable search for records responsive to the appellant's request.

**ORDER:**

1. I find that the information relating to city employees, such as the mayor, his assistants and other city staff, does not constitute personal information within the meaning of the *Act*. I order the city to disclose this information to the appellant by **April 4, 2019** but not before **April 1, 2019**.
2. I find section 11(a) has no application to the credit card and account numbers in the records. I order the city to disclose this information to the appellant by **April 4, 2019** but not before **April 1, 2019**.
3. I uphold the city's fee of \$861.50.
4. I uphold the city's search for records as reasonable.
5. In order to verify compliance with Order Provisions 1 and 2, I reserve the right to require the city to provide me with copies of the information disclosed to the appellant in accordance with this order.

Original signed by: \_\_\_\_\_

Justine Wai  
Adjudicator

February 28, 2019 \_\_\_\_\_