Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4489

Appeal MA21-00203

City of Greater Sudbury

February 12, 2024

Summary: The requester made a request under the *Act* to the City of Greater Sudbury (the city) for correspondence regarding her operation of a pet kennel. The city issued a series of decisions, denying access to portions of the responsive records on the basis that they are exempt under the discretionary exemptions in sections 7(1) (advice or recommendations) and 12 (solicitor-client privilege), as well as the mandatory personal privacy exemption in section 14(1). The appellant appealed the city's decisions and also the fees it charged to provide access to the records.

In this order, the adjudicator upholds the city's decisions that the information at issue in the records is exempt under sections 7(1), 12, and 14(1). She also upholds the fees charged by the city as reasonable. She dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 2(1) (definition of personal information), 7(1), 12(1), 14(1), and 45(1).

OVERVIEW:

[1] This order concerns records related to a pet kennel business set up by the appellant on her property in the City of Sudbury (the city) without the appropriate building permit. The appellant then received a business license in error because the kennel did not comply with the bylaw at the time.

[2] Afterwards, the appellant submitted a minor variance application to permit the

construction of a new kennel building and also to recognize the location of the previously converted shed being used as a kennel.

[3] The appellant's minor variance application was denied by the Committee of Adjustment (the COA). The appellant appealed this decision to the Ontario Municipal Board (the OMB), now called the Local Planning Appeal Tribunal (the LPAT). This appeal was adjourned at the request of the appellant on the basis that she would proceed with an application for rezoning. The appellant subsequently withdrew her appeal.

[4] The appellant submitted a rezoning application to the city to permit her kennel as well as a proposed new building. The rezoning application was approved subject to certain conditions. The appellant did not fulfill any of the required conditions and the property was sold. The appellant then sued the city in order to obtain the necessary permissions to operate her business and also submitted an access request to the city.

[5] The appellant made a request to the city under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to:

> Internal and external emails since March 2013, mentioning [requester's business name] or any other spellings of my business name, or my personal name [name] by the following individuals who are employed or have been employed by the City of Greater Sudbury (correspondence, even of those no longer employed by the city, must legally be kept for a specific time period and therefore, destroying it would be illegal), since the application of my business licence in 2013.
>
> [27 named individuals]

[6] On September 18, 2020, the city issued a fee estimate decision of $2,665. The appellant paid a 50% deposit of $1,332.50 for the city to continue processing the request. Because of the voluminous nature of the request and records, the city advised the appellant that it would issue a several access decisions, disclosing records on an ongoing basis.

[7] The city issued its first decision on February 26, 2021, denying access to the responsive records in part pursuant to the exemptions in sections 14(1) (personal privacy), 12 (solicitor-client privilege) and 15 (information soon to be published) of the *Act*. The city indicated that was charging an actual fee of $107.50 for processing the records covered by this decision.

[8] The appellant appealed the city's February 26, 2021 decision to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was assigned to attempt a resolution of the appeal.

[9] After issuing the initial access decision, the city released staggered decisions

during mediation that were included in the scope of this appeal.

[10] The city provided seven subsequent decision letters, each setting out the fee charged and the exemptions claimed for records disclosed.

[11] The total fee for processing the request was $1,149.50 which was less than estimate fee of $2,665 and the deposit of $1,332.50 that the appellant paid to city. The appellant was refunded the remaining $183 of her deposit.

[12] After the city had provided its final decision letter to the appellant, the city confirmed that it maintains its position on the exemption claims and fees set out in their decisions.

[13] The appellant advised the mediator that she was no longer pursuing access to records withheld pursuant to section 15, however she continues to pursue access to all other withheld information in the responsive records. The appellant also advised she disputes the fees charged by the city and would like the reasonableness of the fees charged added to the issues on appeal.

[14] Further mediation was not possible. The appeal was moved to adjudication where an adjudicator may conduct an inquiry. I decided to conduct an inquiry and I sought the representations of the city initially. The non-confidential portions of the city's representations were shared with the appellant.[1] The appellant provided representations in response.[2]

[15] In this order, I uphold the city's decisions that the information at issue in the records is exempt by reason of sections 7(1), 12, and 14(1). I also uphold the fees charged by the city as reasonable. I dismiss the appeal.

RECORDS:

[16] At issue are withheld portions of emails (some with attachments), as set out in the following chart from the city:[3]

Record	Description	Pages	Exemption Applied	Comments

[1] The city provided both confidential and non-confidential representations. They were shared with the appellant in accordance with the IPC's *Practice Direction 7.* Although I will only refer to the city's non-confidential representations in this order, I have considered the city's representations in their entirety in rendering my decision.

[2] The appellant's representations primarily focused on the city's search for responsive records, which is not an issue in this appeal.

[3] Record 8 was misnumbered as Record 9 and there is no Record 10 as it was inadvertently skipped. The city granted full access to records 15 and 16 being emails of the Bylaw Coordinator - Security and the Licensing Enforcement Officer respectively.

1.	Emails of City Solicitor and Clerk	9		Full Access
			12	Access Denied Solicitor-Client/ Litigation Privilege
2.	Emails of Clerk's Services Assistant	5	14(1)	Partial Access Personal Privacy
3.	Emails of CAO	3		Full Access
			12	Access Denied Solicitor-Client/ Litigation Privilege
4.	Emails of Executive Assistant to Councilors	5		Full Access
			12	Access Denied Solicitor-Client/ Litigation Privilege
5.	Emails of Manager of Development Approvals	89	14(1)	Partial Access Personal Privacy Non-responsive content
		13	7(1)	Access Denied Advice or Recommendations
			12	Access Denied Solicitor-Client/ Litigation Privilege
6.	Emails of Consent Official/Secretary – Treasurer Committee of Adjustment	36	14(1)	Partial Access Personal Privacy
			12	Access Denied Solicitor-Client/ Litigation Privilege
7.	Emails of Councilor [name]	47		Full Access
			12	Access Denied Solicitor-Client/ Litigation Privilege
9.	Emails of Manager of Security and Bylaw Services	47	7(1) 14(1)	Partial Access Advice or Recommendations Personal Privacy
			12	Access Denied Solicitor-Client/ Litigation Privilege
11.	Emails of General Manager of	3		Full Access
			12	Access Denied

	Corporate Services			Solicitor-Client/ Litigation Privilege
12.	Emails of Manager of Building Inspection Services	6	14(1)	Partial Access Personal Privacy
13.	Emails Part 1 of Senior Planner	64	14(1)	Partial Access Personal Privacy
		13	7(1)	Access Denied Advice or Recommendations
			12	Access Denied Solicitor-Client/ Litigation Privilege
			6(1)(b)	Access Denied Closed Meeting
14.	Emails Part 2 of Senior Planner	165	14(1)	Partial Access Personal Privacy
		13	7(1)	Access Denied Advice or Recommendations
			12	Access Denied Solicitor-Client/ Litigation Privilege
17.	Emails of Director of Building Services/Chief Building Official	26	14(1) 7(1)	Partial Access Personal Privacy Advice or Recommendations
			12 6(1)(b)	Access Denied Solicitor-Client/ Litigation Privilege Closed meeting
18.	Emails of Bylaw Coordinator – Animal Care and Control	27	14(1) 7(1)	Partial Access Personal Privacy Advice or Recommendations

ISSUES:

A. Does the discretionary solicitor-client privilege exemption at section 12 of the *Act* apply to the information at issue in records 1, 3-7, 9, 11, 13, 14, and 17?

B. Does the discretionary exemption at section 7(1) for advice or recommendations apply to the information at issue in records 5, 9, 13, 14, 17, and 18?

C. Do records 2, 5, 6, 9, 12-14, 17, and 18 contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

D. Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue in records 2, 5, 6, 9, 12-14, 17, and 18?

E. Should the IPC uphold the city's fee or fee estimate?

DISCUSSION:

Issue A: Does the discretionary solicitor-client privilege exemption at section 12 of the *Act* apply to the information at issue in records 1, 3-7, 9, 11, 13, 14, and 17?

[17] Section 12 exempts certain records from disclosure, either because they are subject to solicitor-client privilege or because they were prepared by or for legal counsel for an institution. It states:

> 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.

[18] Section 12 contains two different exemptions, referred to in previous IPC decisions as "branches." The first branch ("subject to solicitor-client privilege") is based on common law. The second branch ("prepared by or for counsel employed or retained by an institution…") is a statutory privilege created by the *Act*. The institution must establish that at least one branch applies.

[19] In this appeal, the city claims that both branches apply.

Branch 1 – solicitor client privilege at common-law

[20] At common law, branch 1 solicitor-client privilege encompasses two types of privilege:

- solicitor-client communication privilege, and

- litigation privilege.

[21] The city claims that common law solicitor-client communication privilege applies to records at issue in this appeal.

[22] The rationale for the common law solicitor-client communication privilege is to ensure that a client may freely confide in their lawyer on a legal matter.[4] This privilege protects direct communications of a confidential nature between lawyer and client, or their agents or employees, made for the purpose of obtaining or giving legal advice.[5] The privilege covers not only the legal advice itself and the request for advice, but also communications between the lawyer and client aimed at keeping both informed so that advice can be sought and given.[6]

[23] The privilege may also apply to the lawyer's working papers directly related to seeking, formulating, or giving legal advice.[7]

[24] Confidentiality is an essential component of solicitor-client communication privilege. The institution must demonstrate that the communication was made in confidence, either expressly or by implication.[8] The privilege does not cover communications between a lawyer and a party on the other side of a transaction.[9]

Branch 2 – statutory solicitor-client privilege

[25] This exemption is a statutory privilege that applies where the records were "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." The statutory and common law privileges, although not identical, exist for similar reasons.

[26] The city submits that statutory solicitor-client communication privilege and statutory litigation privilege apply to records at issue in this appeal.

[27] Like the common law solicitor-client communication privilege, the statutory solicitor-client communication privilege covers records prepared for use in giving legal advice.

[28] The statutory litigation privilege applies to records prepared by or for counsel employed or retained by an institution "in contemplation of or for use in litigation." It does not apply to records created outside of the "zone of privacy" intended to be protected by the litigation privilege, such as communications between opposing

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[4] Orders PO-2441, MO-2166 and MO-1925.
[5] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).
[6] *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.); *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.
[7] *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.
[8] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.
[9] *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.)

counsel.[10]

[29] The statutory litigation privilege in section 12 protects records prepared for use in the mediation or settlement of litigation.[11]

[30] In contrast to the common law privilege, termination of litigation does not end the statutory litigation privilege in section 12.[12]

The city's representations

[31] The city states when the appellant discovered that the setbacks for her business did not comply with the bylaw requirements, she availed herself various avenues to bring her business into compliance. The city states that during these interaction with the city staff, the appellant voiced her intention to sue the city.

[32] The city submits that generally when the staff are informed that someone has the intent of initiating a lawsuit against the city, the city's Legal Services Department will be contacted and informed of the situation and the city states that in this case, city solicitors were highly involved, and a number of privileged records were produced. It submits:

> The broad scope of the appellant's request and the fact that two city solicitors were named in her request, the scope captured a significant amount [of] privileged records, access to which was denied.

[33] The city submits that the records fall within solicitor-client communication privilege under branch 1 and 2, and/or litigation privilege records under branch 2.

Solicitor-Client Communications - Branch 1 or 2

[34] The city submits that the common law and statutory solicitor-client privilege extends to communications between a solicitor and their client that aim to keep each party informed of matters for which legal advice may be sought or provided. It further submits that communications between agents or employees of a client discussing the legal advice provided, such as a manager communicating the advice provided by their solicitor to department staff, is also subject to privilege.

[35] The city states that in addition to the OMB appeal, the appellant voiced her intent to sue the city to different staff members.

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[10] See *Ontario (Attorney General) v. Big Canoe*, [2006] O.J. No. 1812 (Div. Ct.); *Ontario (Ministry of Correctional Service) v. Goodis*, cited above.
[11] *Liquor Control Board of Ontario v. Magnotta Winery Corporation*, 2010 ONCA 681.
[12] *Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer)* (2002), 62 O.R. (3d) 167 (C.A.).

Litigation Privilege – Branch 2

[36] The city states that the appellant instituted an appeal of the COA's decision and has also threatened, and subsequently submitted, a civil claim against the city.

[37] It states that a portion of the denied records include communications regarding the OMB appeal and fall within the zone of privacy intended to be protected by litigation privilege. Some of these records may include consultation with city solicitors to which communication privilege may also be applied.

[38] The city further submits that the emails that fall under this category have as a dominant purpose addressing the OMB appeal.

The city's affidavit

[39] The city provided an affidavit from the city solicitor and clerk who is also the designated Head of privacy and access for the city and the Director of the city's Legal Services Department. In his affidavit, he states that he reviewed all the records to which access was denied under the section 12 exemption and that he is satisfied that they reflect privileged communications between city employees and staff from the city's Legal Services Department or were created in contemplation of, or for use in, litigation.[13]

[40] In his affidavit, the city solicitor states that he has personal knowledge of the legal issues contained in the records as a number of them are communications between him and his client (city staff) or between his assistant, the assistant city solicitor, and his client. He states that the solicitor-client communications in the records are:

- confidential communications between a city solicitor and city employees for the purpose of obtaining legal advice;
- summaries of legal advice in which a solicitor has provided advice;
- information to the solicitor as part of a continuum of communication between the city solicitor and client to ensure the solicitor is apprised of all information when legal advice is sought; or
- communications created in contemplation of litigation.

[41] The city solicitor states that the city has consistently treated these solicitor-client privileged documents as confidential and there is no reason to believe that there has been any waiver of the solicitor-client or litigation privilege.

[13] Attached to this affidavit was a detailed chart prepared by the city, listing all the parties to each email in each record, and why the city submits it is privileged.

The appellant's representations

[42] The appellant states that it appears to her that city employees decided that all correspondence should be copied to the lawyer on staff, even if no litigation was forthcoming. It is her opinion that they do this so that they can rely on the "lawyer/client privilege" excuse, to deny access to these records. She also submits that it seems to be a conflict of interest that the lawyer is an employee of the city.

Findings

[43] As set out above, after the city discovered that the appellant's pet kennel business did not comply with its bylaw requirements, the appellant availed herself of various avenues to bring her business into compliance, including a COA minor variance and a rezoning application. Additionally, she filed a number of Freedom of Information Requests and had dealings with Building Services and the Bylaw Departments regarding permitting.

[44] The records are emails (some with attachments) that were created in response to the appellant's appeal of the Committee of Adjustment's decision and in response to her threatened, and subsequently submitted, civil claim against the city.

[45] I will first consider whether the records are subject to solicitor-client communication privilege at common law (branch 1) and under the statute (branch 2). Then I will consider whether the statutory litigation privilege at branch 2 applies.

[46] I agree with the city that the records contain information either resulting from city staff consulting with the city solicitor with respect to the OMB appeal or communications between city staff and the city solicitors with respect to the appellant's future civil action against the city.

[47] All of the records, except four emails, are identified by the city as being solicitor-client privileged communications (some in conjunction with litigation privilege), as they involve direct communications between city staff and a city solicitor or involve staff sharing advice received from a city solicitor with other staff or Council. I accept that these records were prepared by or for counsel employed or retained by an institution for use in giving legal advice and therefore, are exempt by reason of branch 2 statutory solicitor-client communication privilege. For the same reasons, I find that the branch 1 solicitor-client communication privilege at common law (branch 1) also applies to these records.

[48] The city has claimed that four records are subject to branch 2 litigation privilege only as they concern litigation resulting from the appellant's OMB appeal and her civil suit against the city. From my review of these records, I accept that they are exempt by reason of branch 2 statutory litigation privilege having been prepared by or for counsel employed or retained by an institution in contemplation of or for use in litigation.

[49] I agree with the city that even though the OMB appeal has concluded, the statutory litigation privilege still applies as it has "no temporal limit."[14]

[50] Based on my review of the city's detailed representations, I do not agree with the appellant that city employees were just copied on emails to the lawyer on staff, even if no litigation was forthcoming. It is clear from the parties' representations and the subject of the emails themselves that they are privileged communications between city employees and Legal Services Department staff or were created in contemplation of, or for use in, litigation. Furthermore, I find that it is not a conflict of interest for a city employee to seek legal advice from a city lawyer. The lawyer in that case is providing legal advice to its client, the city, through its staff.

[51] Accordingly, I agree with the city and I find that the information at issue for which section 12 has been claimed in records 1, 3-7, 9, 11, 13, 14, and 17 is exempt by reason of common law solicitor-client communication privilege at branch 1, statutory solicitor-client communication privilege at branch 2 or statutory litigation privilege at branch 2, as claimed by the city. I also find that this privilege has not been lost through waiver.

[52] In making this finding, I have considered the city's exercise of discretion. The city advised that its general practice is to not disclose legal communications because of the sensitive nature of the information. It also considered the rights sought to be protected by the section 12 exemption which seeks to protect solicitor-client privilege and litigation privilege and the need to act in good faith.

[53] I find that the city did not exercise its discretion to withhold this information for any improper purpose or in bad faith, and that there is no evidence that it failed to take into account relevant factors or that it considered irrelevant factors. The appellant has no sympathetic or compelling need to receive this information and this information is confidential solicitor-client privileged information.

[54] In conclusion, I find that the information at issue for which section 12 has been claimed is exempt under that section.

[55] I have found that section 12 applies to all of the information for which it was claimed, including the portions of records 13 and 17 for which section 6(1)(b) was also claimed. Therefore, it is unnecessary for me to also consider whether section 6(1)(b) applies to records 13 and 17.

[56] As well, as I have found that section 12 applies to the draft planning report attached to the email in record 17 for which the city has also claimed section 7(1), therefore, it is unnecessary for me to also consider whether the draft planning report is exempt under section 7(1).

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[14] See Order MO-3747.

Issue B: Does the discretionary exemption at section 7(1) for advice or recommendations apply to the information at issue in records 5, 9, 13, 14, 17, and 18?

[57] Section 7(1) of the *Act* exempts certain records containing advice or recommendations given to an institution. This exemption aims to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policymaking.[15] Section 7(1) states:

> A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

[58] "Advice" and "recommendations" have distinct meanings. "Recommendations" refers to a suggested course of action that will ultimately be accepted or rejected by the person being advised. Recommendations can be express or inferred.

[59] "Advice" has a broader meaning than "recommendations." It includes "policy options," which are the public servant or consultant's identification of alternative possible courses of action. "Advice" includes the views or opinions of a public servant or consultant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.[16]

[60] "Advice" involves an evaluative analysis of information. Neither "advice" nor "recommendations" include "objective information" or factual material.

[61] Section 7(1) applies if disclosure would "reveal" advice or recommendations, either because the information itself consists of advice or recommendations or the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.[17] [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario* (*Information and Privacy Commissioner*), [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563.

[62] The relevant time for assessing the application of section 7(1) is the point when the public servant or consultant prepared the advice or recommendations. The institution does not have to prove that the public servant or consultant actually

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[15] *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.
[16] See above at paras. 26 and 47.
[17] Orders PO-2084, PO-2028, upheld on judicial review in *Ontario* (*Ministry of Northern Development and Mines*) *v. Ontario* (*Assistant Information and Privacy Commissioner*), [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also Order PO-1993, upheld on judicial review in Ontario (*Ministry of Transportation*) *v. Ontario* (*Information and Privacy Commissioner*), [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563.

communicated the advice or recommendations. Section 7(1) can also apply if there is no evidence of an intention to communicate, since that intention is inherent to the job of policy development, whether by a public servant or consultant.[18]

[63] Examples of the types of information that have been found not to qualify as advice or recommendations include:

- factual or background information,[19]
- a supervisor's direction to staff on how to conduct an investigation,[20] and
- information prepared for public dissemination.[21]

Representations

[64] The city claims section 7(1) applies to exempt two sets of records from disclosure. It describes these records as follows:

> A set of draft Request for Quotation (the "draft RFQ") in records 5, 13, and 14
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> The draft RFQ [was] created by the Senior Planner as a starting point and [he] provided the same to his superior, the Manager of Development Approvals, as an attachment to an email. In this email, the Senior Planner expresses his need for guidance and the attached draft includes blank sections and highlighted portions. A subsequent email with a more complete version of the draft RFQ states that the Senior Planner is seeking approval from his superior to proceed with issuing the RFQ.
>
> The city submits that the state of the attached draft documents in combination with the emails demonstrates that the RFQs were being presented for approval or rejection.[22]
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> A sentence in a briefing note in records 9, 17, and 18
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> The Manager of Security and Bylaw prepared a briefing note to members of Council. The city denied access to one sentence of the report under the section 7(1) exemption.

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[18] *John Doe v. Ontario* (*Finance*), cited above, at para. 51.
[19] Order PO-3315.
[20] Order P-363, upheld on judicial review in *Ontario* (*Human Rights Commission*) *v. Ontario* (*Information and Privacy Commissioner*) (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.).
[21] Order PO-2677
[22] The final version of the RFQs were provided to the appellant.

> The city suggests that the sentence clearly provides a recommended course of action with respect the subject matter of the briefing note.

[65] The appellant did not address this issue in her representations.

Findings

[66] As noted above, the city has applied section 7(1) to a limited amount of information in records 5, 9, 13, 14, 17, and 18. This information is contained in two draft RFQs and one sentence in a briefing note.

[67] Based on my review of the information at issue in the records for which the city has claimed the application of section 7(1), along with the city's detailed representations on this information, I find that the city has properly applied the section 7(1) exemption to the information for which this exemption has been claimed.

[68] Regarding the draft RFQs (records 5, 13, and 14), I accept that the information contained in them form a part of the deliberative process leading to the final decision as to the contents of these records. As a result, I find that it amounts to advice or recommendations that is exempt from disclosure under section 7(1).

[69] Regarding the briefing note (records 9, 17, and 18), the city has redacted a one sentence recommendation made by a city staff member. From my review of this sentence together with the city's representations, I accept that it contains information that, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations made by a city staff member. I find that disclosure of this information would reveal advice or recommendation exempt from disclosure under section 7(1).

[70] I have considered and find that none of the exceptions to section 7(1) in sections 7(2) and (3) apply.[23]

[71] Therefore, I find that the information that the city has claimed section 7(1) for is exempt from disclosure. In making this finding, I have considered the city's exercise of discretion in applying this exemption.

[72] The city submits that in deciding to withhold information under section 7(1) it took into account that information should be available to the public and the significance of the information at issue to the city. It submits that it considered that:

> [t]he final versions of the RFQ were released to the appellant, Planning Committee reports are already publicly available, and access to all but one brief sentence was redacted from the briefing memo. A significant amount

[23] Sections 7(2) and (3) create a list of mandatory exceptions to the section 7(1) exemption. If the information falls into one of these categories, it cannot be withheld under section 7(1).

> of information is already available to the appellant through public resources, previous access requests and routine disclosure requests.

[73] Based on the city's representations, I accept that in exercising its discretion not to disclose the information it withheld under section 7(1), the city did not act in bad faith or for an improper purpose and did not take into account irrelevant considerations. Accordingly, I find the city properly exercised its discretion in withholding the information in records 5, 9, 13, 14, 17, and 18.

Issue C: Do records 2, 5, 6, 9, 12-14, 17, and 18 contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

[74] The city claims that records 2, 5, 6, 9, 12-14, 17, and 18 contain personal information, the disclosure of which would be an unjustified invasion of personal privacy.

[75] In order to decide whether an unjustified invasion of personal privacy may result from disclosure, the IPC must first decide whether the record contains "personal information," and if so, to whom the personal information relates.

[76] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.

[77] Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official, or business capacity is not considered to be "about" the individual.[24]

[78] In some situations, even if information relates to an individual in a professional, official, or business capacity, it may still be "personal information" if it reveals something of a personal nature about the individual.

[79] Information is about an "identifiable individual" if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.

[80] Section 2(1) of the *Act* gives a list of examples of personal information:

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[24] See also sections 2(2.1) and (2.2), which 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.

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

[81] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."

[82] It is important to know whose personal information is in the record. If the record contains the requester's own personal information, their access rights are greater than if it does not. Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.

Representations

[83] The city states that the personal information at issue relates primarily to complaints made to the city in regard to bylaw violations about the appellant's business. The city states that its redactions were limited and served the purpose of withholding

the identity of the complainants.

[84] The appellant did not address whether the records contain personal information in her representations.

Findings

[85] The city has redacted information from records 2, 5, 6, 9, 12-14, 17, and 18 as personal information that is exempt under section 14(1). I agree with the city that these redactions contain information that would identify the complainants in their personal capacity. This information consists of the complainants' names, personal emails and addresses, and other information that identifies them in accordance with paragraphs (c) and (h) of the definition of personal information in section 2(1).

[86] The records do not contain the personal information of the appellant. Instead, they contain the business information of the appellant related to her operation of a pet kennel.

[87] Therefore, I find that records for which section 14(1) has been claimed contain the personal information of identifiable individuals within the meaning of the definition of that term at section 2(1) of the *Act.*

[88] As I have found that records contain the personal information of individuals other than the appellant, I will go on to consider whether this information is exempt from disclosure under the mandatory personal privacy exemption in section 14(1).

Issue D: Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue in records 2, 5, 6, 9, 12-14, 17, and 18?

[89] One of the purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions.

[90] Section 14(1) of the *Act* creates a general rule that an institution cannot disclose personal information about another individual to a requester. This general rule is subject to a number of exceptions.

[91] The section 14(1)(a) to (e) exceptions are relatively straightforward. If any of the five exceptions covered in sections 14(1)(a) to (e) exist, the institution must disclose the information. In this case, none of these exceptions apply.

[92] The section 14(1)(f) exception is more complicated. It requires the institution to disclose another individual's personal information to a requester only if this would not be an "unjustified invasion of personal privacy." Other parts of section 14 must be looked at to decide whether disclosure of the other individual's personal information would be an unjustified invasion of personal privacy.

[93] Under section 14(1)(f), if disclosure of the personal information would not be an unjustified invasion of personal privacy, the personal information is not exempt from disclosure.

Representations

[94] The city reiterates that the information at issue relates primarily to complaints made to it regarding bylaw violations and the existence of the appellant's business. It states that the redactions it made under section 14(1) are limited and serve the purpose of removing the identity of the complainants while still providing access to the substance of the complaints.

[95] The city refers to the factor in section 14(2)(a) of the *Act* and submits that disclosure of the redacted information is not desirable for public scrutiny as there are other avenues that already address the need for public scrutiny which are relevant to the subject matter of this appeal, particularly the minor variance and rezoning processes.

[96] The appellant did not address whether the disclosure of the information withheld under this section would be an unjustified invasion of another individual's personal privacy.

Findings

[97] In this case, I must determine whether disclosure of the personal information of other identifiable individuals would be an unjustified invasion of privacy under section 14(1)(f) of the *Act*.

[98] Sections 14(2), (3), and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy.

[99] Sections 14(3)(a) to (h) should generally be considered first. These sections outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy. In this appeal, I find that none of the presumptions apply.

[100] If the personal information being requested does not fit within any presumptions under section 14(3), one must next consider the factors set out in section 14(2) to determine whether or not disclosure would be an unjustified invasion of personal privacy. However, if any of the situations in section 14(4) is present, then section 14(2) need not be considered. In this case, none of the situations in section 14(4) apply.

[101] Section 14(2) lists several factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal privacy. Some of the factors weigh in favour of disclosure, while others weigh against disclosure. If no factors favouring disclosure are present, the section 14(1) exemption - the general

rule that personal information should not be disclosed - applies because the exception in section 14(1)(f) has not been proven.

[102] The appellant has not raised the application of any factors that favour disclosure.

[103] The city has referred to the application of a factor that favours disclosure in section 14(2)(a) and submits that it does not apply. I agree with the city that this factor does not apply as disclosure of the identity of the complainants, whose complaints have been disclosed in this appeal, would not address the need for public scrutiny.

[104] As no factors favouring disclosure are present, the section 14(1) exemption applies and the personal information at issue is exempt because the exception in section 14(1)(f) has not been proven. I uphold the city's decision to withhold this information.

Issue E: Should the IPC uphold the city's fees?

[105] Institutions are required to charge fees for requests for information under the *Act*. Section 45 governs fees charged by institutions to process requests.

[106] Under section 45(3), an institution must provide a fee estimate where the fee is more than $25. The purpose of the fee estimate is to give the requester enough information to make an informed decision on whether or not to pay the fee and pursue access. The fee estimate also helps requesters decide whether to narrow the scope of a request to reduce the fee.

[107] The institution can require the requester to pay the fee before giving them access to the record. If the estimate is $100 or more, the institution may require the person to pay a deposit of 50 per cent of the estimate before it takes steps to process the request.

[108] Where the fee is $100 or more, the fee estimate can be based on either:

- the actual work done by the institution to respond to the request; or
- a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records.
- In all cases, the institution must include:
- a detailed breakdown of the fee; and
- a detailed statement as to how the fee was calculated.

[109] The IPC can review an institution's fee and can decide whether it complies with the *Act* and regulations.

[110] Section 45(1) sets out the items for which an institution is required to charge a fee:

> 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 responding to a request for access to a record.

[111] More specific fee provisions are found in sections 6 and 6.1 of Regulation 823. Section 6 applies to general access requests, while section 6.1 applies to requests for one's own personal information. Section 6 reads:

> 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.
>
> 5. For developing a computer program or other method of producing a record from machine readable record, $15 for each 15 minutes spent by any person.
>
> 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

Representations

[112] The city submits that the actual fees charged reflect the significant amount of

staff time required to complete the search and process the records for disclosure. The city provided extremely detailed representations as to how it arrived at the fees for each of the various access decisions referred to above. It notes that the request was made by a business for the email records of 27 individuals acting in their professional capacity.[25]

[113] The city states in part that:

> … Once the appropriate staff were identified, they were asked to conduct a sample search and provide:
>
> • search terms used to conduct [their]search,
>
> • total number of emails,
>
> • approximate percentage of emails containing attachments,
>
> • total number of emails in [their] representative sample group (we recommend selecting 10 emails that are representative of the total number of emails - for example: if approximately half the emails found have attachments, then 5 of the 10 emails in the sample group should have attachments),
>
> • total search time, and
>
> • any concerns regarding the release of the records (ex: solicitor-client privilege, contractor records, etc.) …

[114] The city also states the following about the searches that were conducted:

> The scope of the request provided by the appellant included two (2) specified search terms along with "any other spellings of my business name, or my personal name". As a result, each staff member searched the two terms provided along with any other various or abbreviations such as [name of appellant's business]. The search parameters also overlapped with a number of emails containing both the appellant's name, the business name and iterations of the same. As a result, many of the same emails appeared in the search results for multiple terms …
>
> The actual cost charged to the appellant includes the time it took each employee to input the search parameters, search multiple key words and skim each record to ensure responsiveness is all time rightfully charged to the appellant …

[25] Twenty-six of the 27 individuals were employees or former employees of the city.

> The actual time to print each record was not charged to the appellant. Since the city uses a secure print function, any time staff selected the print function the record would be sent to their print queue. Once the search was completed, staff would then use their ID [identity] to access their print queue and print the records ...
>
> With respect to time needed to prepare the records for redaction, only the time spent in Adobe PDF deleting pages, reorienting pages, applying redactions, and securing the document was charged. Often, preparation time is rounded down to the nearest multiple of five (5) as it advantages the requester and simplifies the calculation of fees. Recognizing that technology has advanced much faster than the applicable legislation, the city offers records on a USB key in place of a CD-ROM but still only charges $10.00.

[115] The appellant did not provide representations in response to the city's position on its fees.

Findings

[116] In its initial access decision, the city provided the appellant with a fee estimate of $2,665.00. However, after the city processed the request, the actual fees charged to the appellant were significantly less: $1,149.50.

[117] The city the charged the appellant the following fees in the access decisions:

- February 26, 2021 - Fee: $107.50
- April 1, 2021 - Fee: $237.00
- May 31, 2021 - Fee: $114.00
- June 30, 2021 - Fee: $81.00
- July 30, 2021 - Fee: $50.00
- August 30, 2021 - Fee: $202.50
- October 6, 2021 - Fee: $47.50
- January 31, 2022 - Fee: $310.00

[118] These amounts represent the actual fees charged to the appellant. Other than a $10 CD-ROM fee for providing the records on CD-ROM, which is the allowable amount under section 6.2 of the Regulations, each fee is comprised of a search fee and in all

other cases (except one)[26] a small preparation fee for all but one access decision.

[119] The request in this appeal is a general request, not a request for the appellant's own personal information. Under section 45(1)(a) and the regulation, search time for manually searching a record can be charged for general requests.

[120] Under section 45(1)(b) and the regulation, time spent preparing a record for disclosure can be charged for general requests.

[121] An institution can charge for time spent:

- severing (redacting) a record, including records in audio or visual format, and
- running reports from a computer system.

[122] The IPC has generally accepted that it takes two minutes to sever a page that requires multiple severances.

[123] Regarding its preparation fee, the city has charged the amount of $5 in one access decision, $7.50 in three access decisions, and $11, $29, and $32 in the three remaining access decisions. This was for the time spent in Adobe PDF deleting pages, reorienting pages, applying redactions, and securing the document was charged.

[124] The appellant's request was quite broad, listing a number of search parameters for 27 individuals. The city charged the actual search time in each access decision at the allowable search fee of $7.50 per 15 minutes spent searching for records. The preparation fee for each access decision was limited to a minimal amount of time necessary to prepare the records for disclosure taking into account the number of records disclosed in each access decision.

[125] Based on my review of the city's very detailed representations, the access decisions, and the many hundreds of pages of records, I find that the city's search and preparation fees charged as outlined above are reasonable and reflect the actual time spent to search for and prepare the records for disclosure.

[126] I find that both its search fees and its preparation fees were calculated in a proper manner and that the city did not charge the appellant unallowable items.

[127] Accordingly, I am upholding the city's fees as reasonable.

ORDER:

1. I uphold the city's decision that the information at issue in the records is exempt.

[26] The city did not charge a preparation fee in the January 31, 2022 access decision.

2. I uphold the city's fees as reasonable.

Original Signed by: February 12, 2024

Diane Smith
Adjudicator