

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-4550

Appeal MA22-00665

City of Burlington

July 19, 2024

**Summary:** An individual sought access under the *Act* to a water drainage map for his neighbourhood in the City of Burlington (the city). The city denied access to the drainage map saying that if it was to disclose the map it could endanger a system (section 8(1)(i)) or threaten the health or safety of individuals (section 13). In this order, the adjudicator finds that the city has not established that disclosure could endanger a system or threaten the health or safety of any individuals. She orders the city to disclose the drainage map to the individual.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 8(1)(i) and 13.

**Orders Considered:** Orders MO-3089, and MO-3192-I.

### OVERVIEW:

[1] This order considers whether disclosure of a city drainage map could endanger a system or threaten the health or safety of individuals.

[2] The City of Burlington (the city) received a request, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to water drainage information relating to the requester's neighbourhood. Specifically, he sought access to:

- Copies of all information provided to the city's insurer to enable them to make their determination to deny the requester's claim [against the city regarding drainage issues with his property].
- Copies of any investigation report completed by the city with regard to the requester's claim.
- Copies of any site inspection reports completed by the city or [the city's named insurer] in response to the requester's claim.
- Copies of the engineering drawings for the culvert and catch basin work performed on the requester's property and adjacent properties.
- Copies of any engineering calculations and/or drawings that show calculations on water flow and storm water management and whether it was calculated on a 5, 10, or 25 year event.
- Copy of Site Inspection report completed by Engineering Department [a named individual] around May/June...
- The adjacent properties are all the properties where the culvert and catch basin work was performed in conjunction with the work performed on my property – [requester's street address].
- With regard to "all the information" I would like all correspondence between the city and your insurance adjusters, [a named insurance company], concerning my claim against the city including any investigation reports and site visit reports compiled by the city or [a named insurance company].

[3] The city contacted the requester to clarify the request and located responsive records, denying access in full under sections 8(1)(i) (security of a system) and section 12 (solicitor-client privilege) of the *Act*.

[4] The requester (now appellant) appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was assigned to attempt a resolution of this appeal.

[5] During mediation, the appellant narrowed the scope of the records at issue in the appeal to one record, a drainage map for his neighbourhood.<sup>1</sup>

[6] The city maintained its position that section 8(1)(i) applies to the water drainage map and advised that it was also claiming section 13 (danger to safety or health) applies to the record.

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<sup>1</sup> The appellant only seeks access to record 1. Records 2 to 14 as set out in the city's index of records are no longer at issue in this appeal.

[7] As no further mediation of the appeal was possible, the appeal moved to the adjudication stage, where an adjudicator may conduct an inquiry. I decided to conduct an inquiry and I sought and received the parties' representations.

[8] In this order, I find the water drainage map is not exempt under sections 8(1)(i) and 13 and I order the city to disclose it.

## **RECORD:**

[9] At issue is record 1, which the city describes as a drainage area drawing for a specific neighbourhood. In this order, I will refer to it as the drainage map.

## **ISSUES:**

- A. Does the discretionary exemption at section 8(1)(i) related to the security of a system apply to the drainage map?
- B. Does the discretionary exemption at section 13 regarding a threat to safety or health apply to the drainage map?

## **DISCUSSION:**

### **Issue A: Does the discretionary exemption at section 8(1)(i) related to security of a system apply to the drainage map?**

[10] The city claims that section 8(1)(i) applies to the drainage map. This section states:

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

- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required.

[11] Many of the exemptions listed in section 8, including section 8(1)(i), apply where a certain event or harm "could reasonably be expected to" result from disclosure of the record.

[12] Parties resisting disclosure of a record under section 8(1)(i) cannot simply assert that the harms under section 8 are obvious based on the record.<sup>2</sup> They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can

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<sup>2</sup> Order PO-2040 and *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 8 are self-evident and can be proven simply by repeating the description of harms in the *Act*.<sup>3</sup>

[13] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.<sup>4</sup> However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.<sup>5</sup>

[14] For section 8(1)(i) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required.

[15] Although this exemption is found in a section of the *Act* that deals primarily with law enforcement matters, it is not restricted to law enforcement situations. It can cover any building, vehicle, system or procedure that requires protection, even if those things are not connected to law enforcement.<sup>6</sup>

### ***Representations***

[16] The city submits that disclosure of the drainage map is expected to endanger the security of the drainage system of the neighborhood to which it relates. It states that the record contains the following items for which protection is reasonably required under section 8(1)(i) of the *Act*:

- Drainage calculations for the neighborhood;
- Property owner information;
- Sewer locations and depth; and,
- Gas main/watermain locations.

[17] The city states that although parts of the drainage map concern the appellant's property, the map also provides a complete picture of this important system for the whole neighborhood. It states that the drainage system helps to protect water quality and lowers the risk of flooding that can damage property and the environment. The city considers that protection of the information in the drainage map is reasonably required

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<sup>3</sup> Orders MO-2363 and PO-2435.

<sup>4</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

<sup>5</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

<sup>6</sup> Orders P-900 and PO-2461.

to prevent risk of damage to its system and any undue costs and time that the city may have to assume to fix such damages. It states:

...Making this record public will provide substantial information [to individuals to allow them] to tamper or damage the [drainage] system... As such, it is ... logically connected to a threat or compromise to the security of the system. The city cannot rule out the possibility that the specifics can be used for harm on the water, gas, and wastewater systems in the neighborhood.

[18] The city identified specific by-laws it states it enacted to protect the drainage system, such as:

- By-law 64-2014: A by-law to prohibit and regulate the placing, dumping, cutting or removal of fill or the altering of grades or drainage on any lands.
- By-law 39-2023: A by-law to amend By-law 52-2018, as amended, being a by-law for regulating the altering of grades or drainage on Residential Lands.
- By-law 59-2022: To Regulate the discharge of any matter into the Municipal Storm Sewers.

[19] The appellant states that some of the information in the drainage map such as, property owner information, sewer locations and depth, and gas main and water main locations, can be obtained through other means. He submits that these means include the voter register that contains property owner information, and Ontario One Call<sup>7</sup> information that sets out the locations of gas mains, water mains, and any other buried infrastructure.

[20] The appellant also believes that the remaining information in the record, drainage calculations and other drainage requirements, is provided to any homeowner or contractor hired by a homeowner who wishes to perform any work that may affect the drainage. He states:

Since three of the four houses within the area that I requested have either been demolished and rebuilt or had extensive work done that would require any contractors to know the design requirements of the drainage to avoid compromising the overall design I feel that the city's argument about keeping this information from the public domain is not applicable given that numerous entities already have this information.

[21] In reply, the city confirms that the drainage map contains drainage calculations,

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<sup>7</sup> Ontario One Call is a public safety administrative authority that acts as a communications link between buried infrastructure owners and individuals who are planning to dig in the province of Ontario. See <https://ontarioonecall.ca/>

gas main and watermain locations, and sewer locations for a combination of interconnected systems over multiple properties. It states that the “location of its sewer system could result in various dangers, including danger to the public through individuals attempting to introduce contaminants into the system.”

### ***Findings***

[22] The city has described the record at issue as containing:

- Drainage calculations for the neighborhood;
- Property owner information;
- Sewer locations and depth; and,
- Gas main and watermain locations.

[23] From my review of the drainage map, it appears to contain two land surveys showing different views of a city neighborhood containing about two dozen homes. They show the location and measurement of each property and the underground services provided to that property. Below each survey map is a graph that is untitled and does not indicate what it relates to or how it is relevant to the survey maps. Based on the dates on the drainage map, it is clear that it is many decades old.

[24] The city did not directly address the appellant’s argument that given the age of the record and the possible development that could have occurred during this time, that copies of the map would have already been made publicly available. I find this argument persuasive and I give it some weight in my consideration.

[25] Previous orders have considered the application of section 8(1)(i) to similar types of records. In Order MO-3089 the adjudicator considered access to portions of a three-page report from the City of Toronto’s Toronto Water, Environmental Monitoring & Protection. The adjudicator accepted the city’s position that its sewer system is a system which reasonably requires protection and that some of the concerns identified by the city, including the possibility of acts of terrorism, contamination of potable water, or illegal access to the system for various purposes, are the sorts of harms that section 8(1)(i) is designed to protect against.

[26] However, in Order MO-3089, the adjudicator found that section 8(1)(i) did not apply as the city did not provide sufficient evidence to establish a logical connection between the disclosure of the information in the record and the possible harms identified by the city. He found that the information contained in the record relating to the sewer system was simply too general, and not sufficiently detailed, to reasonably expect that its disclosure could result in the harms identified in section 8(1)(i).

[27] In Order MO-3192-I, the City of Toronto applied section 8(1)(i) to records that

revealed the location of its sanitary trunk sewer and its Toronto Water infrastructure. The City of Toronto submitted that disclosure could result in various dangers, including:

- danger to the public through terrorism, or through individuals attempting to introduce contaminants to it, or
- provide individuals with sufficient information to access and endanger the city's waste and wastewater system and, potentially, the general public.

[28] In Order MO-3192-I,<sup>8</sup> the adjudicator adopted the reasoning set out in Order MO-3089. She recognized that the city's sewer system reasonably requires protection and that some of the concerns the city identified (i.e. possible terrorism, the harms resulting in illegal access) are the types of harms contemplated by section 8(1)(i). However, she was not satisfied that disclosure of the records before her could reasonably be expected to reveal any information that would assist in undertaking such activities, including possible terrorism. She found that the city's representations did not refer to the specific information in the specific records withheld under this exemption and how the disclosure of this information would result in the harms identified in section 8(1)(i).

[29] In Order MO-3192-I, the adjudicator also found that the records did not provide any details about the city's sewer system or contain any information that could be used by parties interested in accessing the sewer system illegally. In finding that section 8(1)(i) did not apply, the adjudicator noted that the information before her did not relate to a nuclear power plant or similarly sensitive or highly secure structure.<sup>9</sup>

[30] I agree with the reasoning applied in Orders MO-3089 and MO-3192-I. Adopting it in the circumstances of this appeal, I find that section 8(1)(i) does not apply to the drainage map before me.

[31] As indicated above, the drainage map is many decades old and contains two land surveys showing different views of a neighborhood in the city containing about two dozen homes as well as untitled graphs. The city has not explained how the graphs are related to the survey maps.

[32] The city has not explained to my satisfaction what information could be used from the drainage map to cause the harms contemplated by section 8(1)(i). The city seems to be concerned about drainage calculations but has not identified where this information is located in the record or how this information could be used to cause the

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<sup>8</sup> No final order was issued in that appeal.

<sup>9</sup> See also Order MO-2181, where Commissioner Brian Beamish considered the city's arguments regarding the application of section 8(1)(i) to the building plans for a specified address found that some buildings, such as nuclear power plants or sensitive military installations, may by their very nature, give rise to a reasonable basis for believing that endangerment could result from disclosure. However, he found that in the absence of other evidence, this same approach cannot be applied to residential buildings.

harms contemplated by section 8(1)(i).

[33] The appellant has provided evidence that certain information that would be in the record is already publicly available, such as the voter register that contains property owner information and Ontario One Call that provides the locations of gas mains, water mains, and any other buried infrastructure.

[34] With so much readily available information about property owner and buried infrastructure, based on my review of the record, I cannot ascertain any publicly unknown information in the record that could be used to enable individuals to tamper with or damage the drainage system.

[35] Therefore, for the reasons set out above, I find that I do not have sufficient evidence that there is a logical connection between the disclosure of the information in the record and the possible harms identified by the city. Accordingly, I find that section 8(1)(i) does not apply as disclosure of this record could not reasonably be expected to endanger the security of the drainage system of the neighborhood.

**Issue B: Does the discretionary exemption at section 13 regarding a threat to safety or health apply to the record?**

[36] Section 13 is meant to protect individuals from serious threats to their health or safety resulting from disclosure of a record. It states:

A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

[37] As with section 8(1)(i), parties resisting disclosure of a record under section 13 cannot simply assert that the harms are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 13 are self-evident and can be proven simply by repeating the description of harms in the *Act*.<sup>10</sup>

[38] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.<sup>11</sup> However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.<sup>12</sup>

[39] For section 13 to apply, there must be a reasonable basis for concluding that

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<sup>10</sup> Orders MO-2363 and PO-2435.

<sup>11</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

<sup>12</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.



disclosure of the information at issue could be expected to seriously threaten someone's safety or health. A person's subjective fear, or their sincere belief that they could be harmed, is important, but is not enough on its own to establish this exemption.<sup>13</sup>

[40] The term "individual" is not necessarily confined to a particular identified individual and may include any member of an identifiable group or organization.<sup>14</sup>

### ***Representations***

[41] The city submits that providing public access to the drainage information on the drainage map has the potential to expose individuals to a potential risk of harm. It submits that disclosure of this information would increase the risks of tampering of the drainage system, interference and damage to watercourses, drainage systems and water supplies, unauthorized grading and drainage alterations, improper fill, and negative environmental impacts, all of which will directly impact neighbouring and surrounding properties.

[42] The city states that disclosure of the record result in an increased risk to the health and safety of the members of the public who rely on the smooth functioning of the neighborhoods water, wastewater, drainage and gas main systems.

[43] The city further states that individuals that enter the drainage system without authorization risk injury and even death. The city notes that injury and death has occurred even where the public did not have access to information set out in the drainage map. It states that to provide the appellant with the requested information would effectively make public a "roadmap" that specifically identifies where this sensitive information is located.

[44] The appellant submits that his representations on the application of section 8(1)(i) are equally applicable to the section 13. He also states that unless the city can confirm that none of the information in the drainage calculations has been provided to any city workers, or engineers, contractors or sub-contractors working for the city or for homeowners its arguments regarding any risk to health and safety cannot be proved.

[45] In reply, the city submits:

If this material was supplied [to city workers, engineers, contractors working for the city], it was for a different purpose than to publicly disclose outside the scope of professional use. If disclosed to a professional, it was contained for their use specific for the application of their professional expertise. Sharing with these professionals does maintain public health, safety and security of the system, whereas sharing publicly cannot be afforded the same and protection is required.

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<sup>13</sup> Order PO-2003.

<sup>14</sup> Order PO-1817-R.

[46] The city also submits that disclosure of the drainage map would provide individuals with enough information to access the city's underground sewer system for the purposes of exploring (urban spelunking or urban exploration), posing significant risks to these individuals. It notes that some of the dangers faced by individuals who enter the wastewater system include confined spaces, dangerous air hazards and drowning.

### ***Findings***

[47] Despite being asked to do so in the Notice of Inquiry, the city did not specifically identify which portion or portions of the drainage map are of concern. In my view, the city did not provide sufficient evidence to explain the connection between the actual information in the drainage map and the threat to the safety or health of any individual. Instead, it focuses on the risk of harm that can occur to individuals entering the sewer system, which can be done without the information in the record.<sup>15</sup> The city has not demonstrated how the specific information in the drainage map could assist individuals who want to enter the sewer system in doing so.

[48] In its representations, the city suggests that it has made the drainage map available to "professionals" for their use. It has not explained whether, if any, restrictions were imposed on these individuals as to the record's use or dissemination. It has also not indicated that these individuals were required to enter into any type of confidentiality agreement. In my view, this dissemination of the drainage map by the city to "professionals" is contrary to the city's position that disclosure to the appellant could reasonably be expected to seriously threaten the safety or health of an individual.

[49] The adjudicators in Orders MO-3089 and MO-3192-I, that I referred to above in my discussion on the application of section 8(1)(i), also found that section 13 does not apply to similar records as that in this appeal. I find that the reasoning applied in those orders relevant to my consideration of access to the drainage map in this appeal.

[50] In Order MO-3089, as set out above, the City of Toronto submitted that disclosure of the records would facilitate access to its wastewater system exposing individuals who rely on the security of the wastewater to a potential risk of harm. The adjudicator disagreed with the city that disclosure of the information would expose individuals who rely on the security of the wastewater to a potential risk of harm due to an increased ease of unauthorized access to its wastewater treatment facilities. He found that the information contained in the withheld portions of the record relating to the sewer system is simply too general, and not sufficiently detailed, to reasonably expect that its disclosure could not reasonably be expected to seriously threaten the safety or health of an individual. As a result, the adjudicator found that the records did

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<sup>15</sup> See Orders MO-3089 and MO-3192-I.

not qualify for exemption under section 13.<sup>16</sup>

[51] Similarly, in Order MO-3192-I, also discussed above, the records at issue were about the City of Toronto's wastewater system and included blueprints of the Toronto Water infrastructure. The City of Toronto submitted that disclosure would facilitate access to its wastewater system, thereby resulting in the harms set out in section 13. The adjudicator found the information at issue was too general in nature and insufficiently detailed to reasonably expect that its disclosure could be expected to seriously threaten the safety or health of an individual. As a result, the adjudicator found that the records did not qualify for exemption under section 13.

[52] In this appeal, the city is concerned that disclosure of the record could allow individuals to access the city's underground sewer system and its drainage system. Based on my review of the record and the city's representations in this appeal, and in keeping with the reasoning set out in Orders MO-3089 and MO-3192-I, I find that the information in the drainage map is too general in nature to result in that harms the city submits would result from its disclosure. The city has not directed me to, nor can I locate, any specific information in the record, which is many decades old, that could reasonably be expected to seriously threaten the safety or health of an individual. As well, the record has been made available to other individuals by the city without restriction, which does not support the city's claim that disclosure of the record to the appellant would result in the section 13 harm.

[53] Accordingly, I find that section 13 does not apply to the drainage map as the city has not established that disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

### ***Conclusion***

[54] As I have found that the drainage map is not exempt under either section 8(1)(i) or section 13, I will order the city to disclose it to the appellant.

### **ORDER:**

1. I order the city to disclose the drainage map to the appellant by **August 20, 2024**.
2. To verify compliance with order provision 1, I reserve the right to require the city to provide me with a copy of the record disclosed to the appellant upon request.

Original signed by: \_\_\_\_\_  
Diane Smith

July 19, 2024  
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<sup>16</sup> The adjudicator also found that the information was too general to qualify for exemption under section 8(1)(i).

Adjudicator