

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-4559

Appeal MA22-00239

Municipality of Temagami

August 27, 2024

**Summary:** The municipality denied an individual's request for access to records that it says contain advice or recommendations used in decision-making. The adjudicator finds that the records contain advice and recommendations on how to respond to a complaint. She finds that the records containing the individual's personal information are exempt under section 38(a) (right to refuse requester's own information) read with section 7(1) (advice or recommendations), and that those that do not contain the individual's personal information are exempt under section 7(1). The adjudicator also finds that the public interest override in section 16 does not apply to the records. She dismisses the appeal.

**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"), 7(1), 7(2)(a), 7(2)(j), 16 and 38(a).

**Cases Considered:** *John Doe v Ontario (Finance)*, 2014 SCC 36.

### OVERVIEW:

[1] This appeal follows two prior orders (Orders MO-4104-I and MO-4232-F<sup>1</sup>) that dealt with the appellant's earlier appeal of a decision of the Municipality of Temagami (the municipality).<sup>2</sup>

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<sup>1</sup> Issued September 24, 2021 and July 27, 2022, respectively.

<sup>2</sup> Appeal MA19-00447.

[2] In the earlier appeal, the appellant sought access to records relating to the installation of a punch lock mechanism on a municipal office door, which had led to complaints regarding the reasons for its installation. In response to her access request, the municipality issued a decision (the initial decision) indicating that it had located a responsive record and granted the appellant full access to it.

[3] Because of overlap with the earlier appeal, I have set out some background to help illuminate the context of this appeal.

[4] The appellant appealed the municipality's initial decision to the Information and Privacy Commissioner of Ontario (IPC). She challenged the adequacy of the municipality's search for responsive records, claiming that more records existed that the municipality had not disclosed.

[5] In Order MO-4104-I, I found that the municipality had not conducted a reasonable search for responsive records. I ordered it to conduct a further search. I also ordered the municipality to issue a decision to the appellant regarding access to any additional records that it might locate as a result of the ordered search. The municipality complied and issued a decision granting partial access to the newly-located records.

[6] In that decision, the municipality denied access to responsive emails on the basis of the discretionary exemptions in section 6(1)(b) (closed meeting) and 7(1) (advice or recommendations). This appeal is of that decision.

[7] The parties participated in mediation, during which the municipality withdrew its section 6(1)(b) claim. The appellant maintained that she seeks access to the withheld information and claimed that there is a compelling public interest in disclosure that clearly outweighs the purpose of the claimed section 7(1) exemption. The public interest override in section 16 of the *Act* was added as an issue to this appeal.

[8] When it was not resolved in mediation, this appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry. I conducted an inquiry during which I received representations from both parties that were shared between them in accordance with IPC *Practice Direction Number 7* on the sharing of representations.

[9] Because it appeared from my review of the records that they contained personal information belonging to the appellant and other identifiable individuals, I asked the parties to also submit representations on the possible application of the mandatory personal privacy exemption in section 14(1),<sup>3</sup> the discretionary personal privacy exemption in section 38(b),<sup>4</sup> and section 38(a), which permits an institution to deny

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<sup>3</sup> Section 14(1) applies to records that do not contain a requester's own personal information but contain personal information belonging to other identifiable individuals.

<sup>4</sup> Section 38(b) applies to records that contain personal information belonging to both a requester and others.

access to records that contain a requester's personal information if another listed exemption applies.<sup>5</sup>

[10] In this order, I find that the records contain advice and recommendations. I find that records 2, 3, 4, 7 and 8 contain the appellant's personal information and are consequently exempt under section 38(a) read with section 7(1). I find that records 5 and 6 do not contain the appellant's personal information and are exempt under section 7(1). I find that the public interest override in section 16 does not apply to the records, and I dismiss the appeal.

## **RECORDS:**

[11] The records at issue consist of seven sets of email chains. They are identified as records 2 through 8, inclusive, in an index of records prepared by the municipality.

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1) of the *Act*, and if so, whose?
- B. Do the discretionary exemptions in sections 38(a) and/or 7(1) (advice or recommendations) apply to the records?
- C. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 7(1) exemption?

## **DISCUSSION:**

### **Issue A: Do the records contain "personal information" and if so, whose?**

[12] Before I can consider whether any, or which, personal privacy exemptions apply to the records, I must determine whether the records contain "personal information." If they do, I must determine whether the personal information belongs to the appellant, to other identifiable individuals, or both.

[13] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Information is about an identifiable individual when it refers to the individual in a personal capacity, meaning that it reveals something of a personal nature about them, and it is reasonable to expect that the individual can be

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<sup>5</sup> Section 38(a) allows the institution to refuse to disclose to the individual to whom the information relates personal information if section 6, 7, 8, 8.1, 9, 9.1, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information. Of those sections, section 7(1) is relevant to this appeal.

identified from the information alone or combined with other information.<sup>6</sup> Section 2(1) contains a list of examples of personal information. The list of examples is not an exhaustive list, meaning that other kinds of information may also be “personal information,” even if not listed in section 2(1).<sup>7</sup> Generally, information about an individual in their professional, official, or business capacity is not considered to be “about” them.<sup>8</sup>

### ***Representations***

[14] The appellant submits that the records contain her personal information and information relating to another individual. She says that, because the records consist of email chains, disclosure would reveal the identities of the senders and recipients. She also says that some of the emails were likely authored or received by municipal staff and officials acting in their professional capacities, so that, while disclosure would identify those individuals, this information is not their personal information because it pertains to their professional roles.

[15] The municipality submits that the records contain personal information belonging to an identifiable individual who is not the appellant.

### ***Analysis and findings***

[16] I find that all of the records contain personal information, but that not all of the records contain personal information belonging to the appellant.

[17] Referencing the records by their respective numbers as indexed by the municipality, I find that records 2, 3, 4, 7 and 8 contain the appellant’s personal information as that term is defined in paragraph (h) of section 2(1) of the *Act*. Paragraph (h) defines personal information as an individual’s name if it appears with other personal information relating to them, or where the disclosure of the name would reveal other personal information about them. Records 2, 3, 4, 7 and 8 identify the appellant by her name in relation to a complaint made to the municipality. I find that this is the appellant’s personal information under paragraph (h) because disclosure of her name in these records would reveal something of a personal nature about her, namely the fact and nature of her involvement in a complaint to the municipality.

[18] I find that records 5 and 6 do not contain the appellant’s personal information.

[19] All of the records contain similar information about identifiable individuals other than the appellant that I also find is these individuals’ personal information as defined in section 2(1)(h) because disclosure of their names would also reveal the nature of their

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<sup>6</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002 O.J. No. 4300 (C.A.)].

<sup>7</sup> Order 11.

<sup>8</sup> See orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

involvement in a complaint.

[20] Additionally, the records identify various municipal officers and staff members in the context of emails about the underlying complaint. However, I find that this is not these individuals' personal information because it pertains solely to their actions in a professional or official capacity.

[21] Because I have found that records 2, 3, 4, 7 and 8 contain the appellant's personal information, I must consider whether they are exempt under section 7(1) through the lens of section 38(a). Section 38(a) gives the municipality the discretion to refuse a requester's own personal information if another exemption applies, such as 7(1) in this case, which protects records containing advice or recommendations for use in decision-making.

[22] For the records that do not contain the appellant's personal information (namely records 5 and 6), section 38 does not apply. For those records, I will consider whether they are exempt under section 7(1) alone.<sup>9</sup> Additionally, I need not consider whether the personal privacy exemptions in either sections 14(1) or 38(b) apply to records 5 and 6 (that contain others' personal information but not the appellant's) because I have found that the exemption in section 7(1) applies to all of the records.

**Issue B: Do the discretionary exemptions in sections 38(a) and/or 7(1) apply to the records?**

[23] The municipality claims that the records are exempt under section 7(1), which protects advice or recommendations involved in decision-making.

[24] In my discussion about "personal information" above, I found that records 5 and 6 do not contain the appellant's personal information, but that records 2, 3, 4, 7 and 8 do. Because of my finding that records 2, 3, 4, 7 and 8 contain the appellant's personal information, I must consider the application of section 7(1) to these records through the lens of section 38(a). I will then consider records 5 and 6 under section 7(1) alone.

[25] Section 36(1) of the *Act* gives the appellant a general right of access to her own personal information held by the municipality. Section 38, however, sets out certain exemptions from this right.

[26] One of these exemptions is found in section 38(a), which states, in part, that:

A head may refuse to disclose to the individual to whom the information relates personal information,

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<sup>9</sup> Only if I were to find that the records that contain others' personal information but not the appellant's are not exempt under section 7(1) would I need to consider whether a personal privacy exemption applies to them.

(a) if section...7...would apply to the disclosure of that personal information.

[27] In other words, section 38(a) allows the municipality to deny access to records if they would be exempt under section 7(1) of the *Act*, even where they contain a requester's personal information.

[28] Section 7(1), which is also discretionary, allows the municipality to refuse to disclose a record if "the disclosure would reveal advice or recommendations of an officer or employee of an institution."

[29] The purpose of section 7 is 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 policy-making.<sup>10</sup>

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

[31] "Advice" has a broader meaning than "recommendations". It includes "policy options", which are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made, and the public servant's identification and consideration of alternative decisions that could be made. "Advice" includes the views or opinions of a public servant 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.<sup>11</sup> "Advice" involves an evaluative analysis of information. Neither of the terms "advice" or "recommendations" extends to "objective information" or factual material.

[32] Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations
- the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.<sup>12</sup>

[33] The application of section 7(1) is assessed as of the time the public servant prepared the advice or recommendations. Information such as factual or background information has been found not to qualify as advice or recommendations.<sup>13</sup>

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<sup>10</sup> *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.

<sup>11</sup> See above at paras. 26 and 47.

<sup>12</sup> Order P-1054.

<sup>13</sup> Order PO-2677.

## ***Representations***

### *The appellant's representations*

[34] The appellant argues that section 7(1) does not apply because the records contain factual or background material, and/or a supervisor's direction to staff on how to conduct an investigation, which are excepted by sections 7(2)(a) and (j), respectively.<sup>14</sup>

[35] The appellant submits that neither "advice" nor "recommendations" encompass objective or factual information. She argues that the records at issue pertain to an investigation and report conducted by an investigator the municipality hired, through its integrity commissioner, to investigate a harassment complaint the appellant made against certain individuals. According to the appellant, the investigator would not have been in a position to give advice, propose policy options, or recommend a course of action to council regarding that investigation. She says the investigator would instead have prepared a report of his conclusions, and that the "purpose of the emails [i.e. the records] would lie in the fact of a report being made..." The appellant provided copies of emails discussing this investigation in her representations. However, as noted above, this appeal concerns records located in response to the appellant's initial request for information about the installation of a punch lock on a municipal office door, and not the appellant's harassment complaint and subsequent investigation. Consequently, I have not summarized the appellant's representations concerning the latter, as they do not pertain to the subject matter of the records at issue, even if they may have ultimately arisen from events contiguous to the punch lock's installation.

[36] The appellant also relies on the exception in section 7(3), which prohibits an institution from refusing to disclose a record under section 7(1) if the record is more than 20 years old. The appellant has provided no basis for me to consider this exception, especially given that the records relate to a complaint made in or around 2018. I have therefore disregarded the appellant's argument regarding the relevance of section 7(3).

### *The municipality's representations*

[37] The municipality submits that the records do not relate to the investigation described in the appellant's representations and do not fall into the exceptions for factual information or for a supervisor's direction to staff on how to conduct an investigation.

[38] The municipality says that the records contain guidance and recommendations from municipal staff for consideration by council. While the municipality summarized in its representations the types of advice and recommendations in the records, I have not included that summary here, as doing so would reveal the substance of the advice or

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<sup>14</sup> Sections 7(2)(a) and (j) state that, despite subsection (1), an institution shall not refuse under subsection (1) to disclose a record that contains (a) factual material; [or] (j) a report of a body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution.

recommendations and, consequently, the contents of the records.

[39] The municipality argues that disclosing the records could undermine staff freedom of expression, inhibit the open exchange of ideas, and deter the candid provision of advice crucial for effective governance. It says that not safeguarding the confidentiality of the deliberations contained in the records risks inhibiting council's ability to make informed, independent decisions, potentially hampering the municipality's efficiency and effectiveness. It says that protecting the records is essential to fostering an environment conducive to robust and uninhibited discussions within its administrative framework.

### ***Analysis and findings***

[40] Based on my review of the records, I find that all of them contain advice or recommendations and therefore qualify for exemption under section 7(1). Because records 2, 3, 4, 7 and 8 contain the appellant's personal information, I find that they are exempt under section 38(a) read with section 7(1). For records 5 and 6, which do not contain the appellant's personal information, I find that they are exempt under section 7(1).

[41] I am guided in my findings by the Supreme Court of Canada's 2014 decision in *John Doe v Ontario (Finance)*,<sup>15</sup> in which the court determined how the advice or recommendations exemption should be interpreted and applied. The Supreme Court confirmed that the purpose of the exemption was identified in the Williams Commission Report<sup>16</sup> as being to "preserve an effective and neutral public service so as to permit public servants to provide full, free and frank advice." The Williams Commission Report canvassed the rationale for the advice or recommendations exemption, and stated that:

First, it is accepted that some exemption must be made for documents or portions of documents containing advice or recommendations prepared for the purpose of participation in decision-making processes. Second, there is a general agreement that documents or parts of documents containing essentially factual material should be made available to the public. If a freedom of information law is to have the effect of increasing the accountability of public institutions to the electorate, it is essential that the information underlying decisions taken as well as the information about the operation of government programs must be accessible to the public.

[42] The Supreme Court accepted that material relating to a suggested course of action that will ultimately be accepted or rejected by the person being advised falls into the category of "recommendations," while "advice" would include a public servant's view of the policy options to be considered by a decision-maker. The court also found that the exemption applies to a public servant's identification of various options to be considered

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<sup>15</sup> 2014 SCC 36.

<sup>16</sup> *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy*, 1980, vol 2 (Toronto: Queen's Printer, 1980).



by a decision-maker as well as a list of considerations of advantages and disadvantages of alternative courses of action.

[43] The records include requests for advice and outline alternative courses of action to be considered in response to both a complaint by an individual other than the appellant (the underlying complaint) and similar future complaints should they happen. They contain emails from staff expressing their views on suggested actions and alternative responses to council on how to address both the underlying complaint and possible future complaints in general.

[44] As the records are composed of email chains, they inherently include duplicate copies of the same emails, including the initial emails seeking advice on how to deal with a complaint made to the municipality.

[45] It is immaterial whether the advice or which, if any, recommendations were ultimately accepted. What is relevant is that the records contain a clearly articulated request for assistance and propose courses of action for municipal staff or councillors to consider in responding to the underlying complaint, as well as future complaints. In addition to these discussions in the records, record 3 includes reference to a policy, legislation, and existing municipal procedures. Records 5 and 6, which do not contain the appellant's personal information, encompass broader discussions on how to address the underlying complaint at an upcoming meeting, include broader considerations beyond the complaint itself, and explore options and recommendations regarding both the current and future complaints.

[46] Consequently, I find that section 7(1) applies to all of the records. This includes those records that contain excerpts or references to communications from the appellant, as the primary purpose of the emails is to obtain or provide advice on responding to either the appellant or others. In the circumstances, I accept the municipality's submission that disclosing these records would impair staff and councillors' ability to freely discuss complaints and engage openly in considering possible responses, both to individual complaints and complaints more broadly, as is the case here.

[47] I also find that the exceptions in section 7(2)(a) and 7(2)(j) do not apply to the records. Section 7(2)(a) provides an exception to section 7(1) for records containing factual material. "Factual material" refers to a coherent body of facts separate and distinct from the advice or recommendations contained in the record.<sup>17</sup> I find that this exception does not apply here, as the records do not discuss an investigation or its findings as the appellant submits. Rather, they arise from a complaint by another individual and are primarily concerned with seeking advice or recommendations on how to handle that complaint and potential similar future situations. I find that any factual material in the records relates to that complaint and is inextricably linked with the advice and recommendations requested and provided, so that the exception in section 7(2)(a) does

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<sup>17</sup> Order P-24.

not apply to it.<sup>18</sup>

[48] Section 7(2)(j) applies to records that contain “a report of a body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution.” For this exception to apply, three requirements must be met, the first being that the record must be a “report” of a committee, council or other body. The IPC has defined “report” as a formal statement or account of the results of the collation and consideration of information. Generally speaking, this would not include mere observations or recordings of fact.<sup>19</sup> In this case, the records do not qualify as a report under section 7(2)(j), nor do they refer to one. Consequently, since the first requirement is not met, I find that the exception in 7(2)(j) cannot apply to the records.<sup>20</sup>

[49] As noted above, section 38(a) allows the municipality to deny access to a requester’s own personal information if section 7(1) would apply to that information. Since I have found that section 7(1) applies to all of the records at issue, and that no exceptions in section 7(2) or (3) apply to it, I find that records 2, 3, 4, 7 and 8 are exempt under section 38(a) read with section 7(1), even though they contain the appellant’s personal information. Since records 5 and 6 do not contain the appellant’s personal information, I find that they are exempt under section 7(1) alone.

[50] Although I have found that records 5 and 6 contain personal information belonging to individuals other than the appellant, it is not necessary for me to consider whether any personal privacy exemptions apply to these records because I have found that they are already exempt under section 7(1).

[51] I will therefore next consider the municipality’s exercise of discretion, followed by the appellant’s claim that the records, even if exempt, are subject to the public interest override in section 16.

***The municipality exercised its discretion under sections 38(a) and 7(1) appropriately***

[52] The municipality submits that it considered the circumstances of the request, the purposes of the *Act*, the nature of the claimed exemptions, the importance of transparency and the preservation of confidentiality of communications while seeking advice or recommendations.

[53] In this case, I am satisfied that the municipality considered relevant factors in

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<sup>18</sup> Order PO-2097.

<sup>19</sup> Order PO-2682; Order PO-1709, upheld on judicial review in *Ontario (Minister of Health and Long-Term Care) v Goodis*, [2000] O.J. No. 4944 (Div. Ct.).

<sup>20</sup> The remaining two requirements are that the committee, council or other body must be “attached to” an institution and must have been established for the purpose of undertaking inquiries and making reports or recommendations to the institution.

exercising its discretion to deny access to the records. I have reviewed the records and am satisfied that, although the municipality did not initially consider that the entire records contained the appellant's personal information, the municipality did consider that any exemption from the right of access should be limited and specific. I am also satisfied that, in disclosing the records that it did, the municipality considered the appellant's right of access to information about herself.

[54] I also find no basis to conclude that the municipality exercised its discretion in bad faith or that it took into account irrelevant considerations. I uphold the municipality's exercise of discretion to deny access to the records as reasonable.

**Issue C: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 7(1) exemption for advice or recommendations?**

[55] The "public interest override" in section 16 of the *Act* provides for the disclosure of records that are otherwise exempt under section 7 if two requirements are met: first, there must be a compelling public interest in disclosure of the records; second, this interest must clearly outweigh the purpose of the exemption.

[56] In considering whether there is a "public interest" in disclosure of a record, the first question to ask is whether there is a relationship between the record and the *Act's* central purpose of shedding light on the operations of government.<sup>21</sup> In previous orders, the IPC has stated that, to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the population about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.<sup>22</sup> The IPC has defined "compelling" as "rousing strong interest or attention."<sup>23</sup>

[57] A "public interest" does not exist where the interests advanced are essentially private in nature.<sup>24</sup>

***Representations***

*The appellant's representations*

[58] The appellant submits that disclosure is necessary to inform local residents and rebuild taxpayer trust, especially after what she says was the recent abrupt departure of a municipal employee under suspicious circumstances. She says there is a compelling public interest in revealing how the municipality's administration and council handled the

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<sup>21</sup> Orders P-984 and PO-2607.

<sup>22</sup> Orders P-984 and PO-2556.

<sup>23</sup> Order P-984.

<sup>24</sup> Orders P-12, P-347 and P-1439.

punch lock situation that clearly outweighs the purpose of any exemptions. The appellant contends that public awareness of these events is essential to prevent secrecy and misinformation, particularly for those who may face similar situations in the future.

[59] The appellant also asserts that her reputation has been damaged and her civil liberties infringed by the municipality's actions, both independently and through its legal counsel. She states that her request is intended to restore her standing in the community, which she submits has been tarnished by "lies and innuendo."

[60] In her representations, the appellant discusses the underlying disputes related to the installation of the punch lock, central to her earlier appeal discussed in Orders MO-4104-I and MO-4232-F. She describes what she says are injustices stemming from this situation and their impact on her life in the community. The appellant argues that the municipality should not be allowed to hide behind discretionary exemptions or a lack of transparency. She says she has invoked the public interest override to ensure that the truth is revealed, aiming to prevent others from experiencing the hardships she attributes to her experiences.

#### *The municipality's representations*

[61] The municipality submits that the appellant's reliance on the public interest override is based on inaccurate assumptions and speculative interpretations about the records' contents. The municipality says that the appellant's claims that the records are connected to an investigation or an employee's departure are unfounded. It further asserts that the appellant's attempt to justify disclosure on the grounds of public interest is made under false pretenses, and that its application in these circumstances would compromise the integrity of the public interest override exception in section 16.

#### ***Analysis and findings***

[62] The appellant's representations reveal that her request is primarily motivated by personal concerns that include restoring her reputation and standing in the community. I find that these concerns, while significant to the appellant, are inherently personal and relate to the appellant's individual circumstances and injustices she describes as having experienced.

[63] The records arise from complaints involving the appellant and, as I have found above, contain discussion about possible courses of action in response. The underlying complaint discussed in the records, although it relates to a lock installed on municipal property, involves private individuals and arose because of allegations about actions by one or another of them. Based on the parties' representations and the records themselves, I find no basis to conclude that there is a relationship between the records and the *Act's* central purpose of shedding light on the operations of government, that disclosure of the records would serve the purpose of informing the public about the activities of municipal government, or that disclosure would add in any way to the

information the public has with which to make effective use of expressing public opinion or making political choices. I find that there is no interest in the records that would rouse strong interest or attention outside of the appellant's desire to know how responses to a complaint in which she was involved were discussed.

[64] As there is no compelling public interest in disclosure of them, I find that the public interest override in section 16 does not apply to the records.

**ORDER:**

I uphold the municipality's decision and dismiss this appeal.

Original signed by: \_\_\_\_\_  
Jessica Kowalski  
Adjudicator

\_\_\_\_\_ August 27, 2024