

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4629

Appeal MA18-00884

City of Mississauga

February 21, 2025

Summary: The City of Mississauga (the city) received a request under the *Act* for access to three spreadsheets of voter information from the October 22, 2018 municipal election. The city issued a decision denying access to the responsive spreadsheets under the mandatory personal privacy exemption in section 14(1) of the *Act*.

In this order, the adjudicator finds that the *Municipal Elections Act* expressly authorizes disclosure of the eligible voters spreadsheet and, therefore, the section 14(1)(d) exception to the personal privacy exemption applies. She orders the city to disclose that spreadsheet to the appellant. However, the adjudicator finds that section 14(1) applies to exempt the actual voters spreadsheet and the ballot spreadsheet from disclosure, and she upholds the city's decision to withhold them.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 14(1), 14(1)(d), 14(1)(e), 14(2)(f), 14(3)(e) and 38(b); *Municipal Elections Act, 1996*, S.O. 1996, c. 32, sections 17(2), 43(5), 55(1), 88(5), 88(6), 88(6.1), 88(10), 88(11), Ontario Regulation 101/97.

Orders Considered: Orders MO-4176, PO-3213, and M-1154.

Cases Considered: *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773, [2002] O.J. No. 1776 (Div. Ct.), *The Corporation of the City of Mississauga v. Information and Privacy Commissioner of Ontario*, 2022 ONSC 6227.

OVERVIEW:

[1] This order determines the issue of access to three spreadsheets of voter information from the October 22, 2018 Mississauga municipal election. The City of Mississauga (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following records related to voting in Ward 6 in the municipal election on October 22, 2018:

1. the complete list of eligible voters in Ward 6 for the election (**eligible voters spreadsheet**);
2. a "list of residents who voted for Mayor in Ward 6" (**actual voters spreadsheet**); and
3. a "list of residents who had 'Rejected' or 'Declined' ballots in Ward 6" as "noted in the 'Rejected and Declined Ballots from the Election' report issued by the City Clerk on October 31, 2018" (**ballot spreadsheet**).

[2] The appellant is a resident of Ward 6 and was a city councillor candidate in the October 22, 2018 Mississauga municipal election.

[3] The city issued a decision denying access to the three spreadsheets pursuant to the mandatory personal privacy exemption in section 14(1) of the *Act*.

[4] The appellant appealed the city's decision to the Information and Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore resolution.

[5] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. As the adjudicator assigned to the appeal, I decided to conduct an inquiry. I sought and received representations from the city and the appellant.

[6] As the spreadsheets contain the information of over 48,000 residents of Mississauga's Ward 6, I decided that these individuals should be notified and their views on disclosure of the spreadsheets sought. To notify these affected individuals about this appeal, the IPC posted a print ad in the August 12, 2021 edition of the Mississauga News.¹ Additionally, all news pages on the Mississauga News website on August 13, 2021 contained digital ads notifying visitors about this appeal. These ads provided an email address for affected individuals to contact the IPC to obtain a copy of the Notice of Inquiry

¹ According to the Statistics Canada Census Profile, 2016 Census for Mississauga, Ontario Canada, it has approximately 240,910 households. Based on my correspondence with the Mississauga News, I understand that it has a readership of 440,000 people and it prints 227,000 copies of the newspaper weekly. I have been told by staff at the Mississauga News that the newspaper is distributed to all households in Ward 6, including houses, townhomes, condos, and apartment buildings, unless a household specifically asks not to receive the newspaper. The Mississauga News also told me that there are freestanding boxes available in Mississauga in Ward 6, where residents can obtain a copy of the newspaper.

(NOI), which sets out the facts and issues in this appeal. The NOI invited representations from these affected individuals, referred to as the affected parties in this order. One affected party submitted representations for my consideration.

[7] This appeal was placed on hold pending the resolution of the judicial review application of Order MO-4176, an appeal dealing with a spreadsheet that is the same as one that is at issue in this appeal except that it relates to Ward 7 instead of Ward 6. After the judicial review application of Order MO-4176 was dismissed, I invited and received representations from the parties about the Ontario Divisional Court's decision in *The Corporation of the City of Mississauga v. Information and Privacy Commissioner of Ontario*² (*Mississauga*).

[8] While the city claims that the mandatory section 14(1) personal privacy exemption applies to all three spreadsheets at issue in this appeal, for reasons that I will explain below, I have considered the application of the discretionary section 38(b) personal privacy exemption to two of the spreadsheets.³

[9] In this order, I find that the eligible voters spreadsheet is not exempt from disclosure under the discretionary section 38(b) personal privacy exemption because the section 14(1)(d) exception to the exemption applies. I order the city to disclose the eligible voters spreadsheet in its entirety to the appellant. I go on to find that the section 38(b) discretionary personal privacy exemption applies to the actual voters spreadsheet and the section 14(1) mandatory personal privacy exemption applies to the ballot spreadsheet to exempt them from disclosure. I uphold the city's decision to deny access to them.

RECORDS:

[10] The records at issue are three Microsoft Excel spreadsheets:

1. A list of all eligible Ward 6 voters (**eligible voters spreadsheet**);
 - This list contains the following information about each voter: the voter's full name, address, ward, voter ID number, residency, type of occupancy, and school designation. This list contains the same information as the voters' list compiled from a list of qualified electors and revised in accordance with the "Voters' List" provisions of 17 to 28 of the *Municipal Elections Act, 1996*⁴ (the *MEA*) for use by deputy returning officers at polling stations.⁵

² 2022 ONSC 6227 (CanLII).

³ Section 38(b) applies if the record contains the requester's own personal information.

⁴ 1996, S.O. 1996, c. 32.

⁵ Because the voter spreadsheet contains much of the same information appearing on the voters' list prepared under sections 17 to 28 of the *MEA*, in my view, it would remain subject to the restrictions on publication set out at section 88(11) of the *MEA*, as discussed below.

2. A list of Ward 6 voters who actually voted in the election (**actual voters spreadsheet**); and
 - This list contains the same information as the eligible voters spreadsheet, as well as the date the voter attended a polling station and received a ballot, and which polling station the voter attended.
3. A list of Ward 6 voters with notes indicating Reject, Refuse, Decline or Cancel (**ballot spreadsheet**).
 - This list identifies only those voters who attended at a polling station to receive a ballot, but then rejected, refused, declined, or cancelled their ballot. The list contains the following information about each of the identified voters on the list: the voter's full name, address, ward, voter ID number, residency, type of occupancy, school designation, citizenship, French language designation, and vote time (time and date the voter voted).

[11] I will refer to all three records collectively as the "spreadsheets," unless otherwise specified.

[12] Importantly, the spreadsheets do not contain information about which candidate(s) a voter voted for.

[13] While the actual voters spreadsheet and the ballot spreadsheet are not expressly described by the *MEA*, they appear to have been prepared by the deputy returning officer or the clerk from other records prepared pursuant to the clerk's duties under section 55 of the *MEA* in determining the results of the election, declaring the winning candidate, and publishing the number of votes for each candidate and the number of declined or rejected ballots on a website or other electronic format.⁶

ISSUES:

- A. Do the spreadsheets contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the mandatory personal privacy exemption at section 14(1) or the discretionary personal privacy exemption at section 38(b) apply to the spreadsheets?

⁶ Section 55 of the *MEA*. For obvious reasons, the spreadsheets at issue omit any information about which candidates electors voted for.

DISCUSSION:

Issue A: Do the spreadsheets contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?

[14] Personal information is defined in section 2(1), in part, as follows:

“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,

(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;

[15] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.⁷

[16] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁸

Representations, analysis and findings

[17] The parties submit, and based on my review of the spreadsheets, I find that the eligible voters spreadsheet contains the personal information of the appellant and all eligible Ward 6 voters for the October 2018 Mississauga municipal election. I find that this personal information consists of each individual’s full name, address, ward, voter ID number, residency, type of occupancy, and school designation. I find that this personal

⁷ Order 11.

⁸ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

information fits within paragraphs (a) to (d), and (h) of the definition in section 2(1) of the *Act*.

[18] I find that the actual voters spreadsheet contains the same personal information of the appellant and all voters who voted in the October 2018 Mississauga municipal election, with the addition of the date the voters attended a polling station and received a ballot, and which polling station they attended.

[19] I find that the ballot spreadsheet contains the same categories of personal information as the actual voters spreadsheet with the addition of the "Vote Time" and "French" columns. Furthermore, the ballot spreadsheet also indicates whether the voter's ballot had any special indications.⁹ However, I find that the ballot spreadsheet does not contain the appellant's personal information.

[20] As the city submits, the "Voted On" column (the date the resident attended a polling station and received a ballot) reveals one of several pieces of information about an identifiable individual: (1) whether the individual proactively attended an advance polling station prior to the October 22nd election date, (2) whether the individual attended a polling station on October 22nd, or (3) whether the individual abstained from voting (because individuals who did not attend a polling station did not register a vote).

[21] In Order PO-3213 the adjudicator dealt with similar information, stating:

In my view, the information contained in the list of individuals who voted constitutes the personal information of these individuals. I find that the fact that they participated in the election, when taken with their names, constitutes their personal information within the meaning of paragraph (h) of the definition as it represents the individual's name, along with other personal information relating to him or her, specifically the fact that they voted in the election.

[22] I agree with the adjudicator's reasoning in Order PO-3213 and adopt it in this appeal. I find that the information contained in the "Voted On" and "Vote Time" columns in conjunction with the individuals' names fits within paragraph (h) of the definition in section 2(1) of the *Act*. I find that disclosure of this information would reveal something of a personal nature about the individuals, because it indicates whether the individual obtained a ballot and voted in the election. Therefore, I find that this information qualifies as personal information under the *Act*.

⁹ Reject, Refuse, Decline, or Cancel.

Issue B: Does the mandatory personal privacy exemption at section 14(1) or the discretionary personal privacy exemption at section 38(b) apply to the spreadsheets?

Personal privacy exemptions under the Act

[23] There are two different personal privacy exemptions under the *Act* that can apply to exempt from disclosure a record containing personal information. If a record contains the personal information of other identifiable individuals but does not contain the personal information of the person requesting the record (the requester), then the correct exemption to consider is the mandatory personal privacy exemption in section 14(1). If, however, the record contains both the requester's personal information and the personal information of other identifiable individuals, then the correct exemption to consider is the discretionary personal privacy exemption in section 38(b).

[24] As noted above, the city claims that the mandatory section 14(1) personal privacy exemption applies to all three spreadsheets at issue. Since I have found that the ballot spreadsheet does not contain the personal information of the appellant, I agree that the correct exemption to consider for that spreadsheet is the section 14(1) personal privacy exemption. However, since I have found that the eligible voters spreadsheet and the actual voters spreadsheet contain the personal information of the appellant as well as that of other identifiable individuals, I will consider the application of the section 38(b) personal privacy exemption to these two spreadsheets.

[25] Under section 14(1), where a record contains personal information of another individual but *not* the requester, the institution is prohibited from disclosing the personal information to the requester. Sections 14(1)(a) to (e) set out specific exceptions to this mandatory exemption. If any of these exceptions apply, then disclosure of the personal information is permitted and would not constitute an unjustified invasion of the personal privacy of the individual to whom the personal information belongs. Section 14(1)(f) is a more general exception that permits disclosure of personal information where disclosure would not be an "unjustified invasion" of the other individual's personal privacy.

[26] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[27] Under the section 38(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.¹⁰

¹⁰ However, the requester's own personal information, standing alone, cannot be exempt under section 38(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy; Order PO-2560.

[28] The section 38(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of the other individual's personal privacy.¹¹

[29] If, however, any of exceptions set out in sections 14(1)(a) to (e) apply, then disclosure would not constitute an unjustified invasion of personal privacy, and the section 38(b) exemption would not apply.¹²

The section 14(1)(d) exception under the Act and relevant sections of the MEA

[30] In this appeal, the appellant argues that the *MEA* authorizes the disclosure of the spreadsheets, which means that the exception at section 14(1)(d) would apply, while the city argues that it does not.

[31] Section 14(1)(d) of the *Act* states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(d) under an Act of Ontario or Canada that expressly authorizes the disclosure;

[32] The sections of the *MEA* that are relevant to the determination of whether it expressly authorizes disclosure of the spreadsheets are as follows:

88(5) Despite anything in the *Municipal Freedom of Information and Protection of Privacy Act*, documents and materials filed with or prepared by the clerk or any other election official under this Act are public records and, until their destruction, may be inspected by any person at the clerk's office at a time when the office is open.

88(6) Subsection (5) does not apply to documents and materials filed with or prepared by the clerk or any other election official under this Act once the 120-day period has elapsed.

¹¹ See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's exercise of discretion under section 38(b).

¹² Sections 14(2) and (3) also help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy. If any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). Because I find here that the exception at section 14(1)(d) applies, I do not need to address section 14(2), (3) or (4).

88(6.1) Subsection (5) does not entitle a person to inspect the contents of a ballot box or any applications made under section 24 or 25 unless authorized to do so by a court order.

88(7) A person inspecting documents under this section is entitled to make extracts from them and, on payment of the fee established by the clerk, to make copies of them.

88(10) No person shall use information obtained from public records described in subsection (5), except for election purposes.

88(11) A voters' list prepared under this Act shall not be,

(a) posted in a public place; or

(b) made available to the public in another manner that is prescribed.

[33] Section 9 of Ontario Regulation 101/97, made under the *MEA*, identifies the prohibited means of making a voters' list available to the public, as follows:

9. For the purpose of clause 88 (11) (b) of the [*MEA*], the following methods of making a voters' list prepared under the Act available to the public are prescribed:

1. Posting on an Internet website.

2. Any other print or electronic medium of mass communication.

[34] These sections of the *MEA* and their relevance to this appeal are discussed below.

Representations of the city

[35] The city argues that the section 14(1)(d) exception does not apply to the spreadsheets at issue, because the *MEA* does not expressly authorize their disclosure. The city acknowledges that section 88(5) of the *MEA* expressly authorizes the disclosure of information prepared under that act, and that section 88(5) confers a limited right to inspect "documents and materials" for 120 days after the clerk declares the results of an election.¹³ The city notes that the request in this appeal was submitted within 120 days of the election.

[36] The city submits that section 88(11) of the *MEA* limits how a voters' list can be displayed, such that the exception in section 14(1)(d) of the *Act* does not apply to the

¹³ Section 88(1) of the *MEA* states: "The clerk shall retain the ballots and all other documents and materials related to an election for 120 days after declaring the results of the election under section 55." Section 88(2)(b) states: "When the 120-day period has elapsed, the clerk may destroy any other documents and materials related to the election."

spreadsheets at issue. The city submits specifically that section 88(11) of the *MEA* prescribes a limitation on the right under section 88(5) to inspect the voters' list, and by extension the spreadsheets, that conflicts with section 14(1)(d). The city submits that section 88(11) expressly prohibits posting a voters' list in any public place and, as set out in section 9 of Ontario Regulation (O Reg) 101/97 under the *MEA*, a voters' list may also not be made available to the public. The city further submits that section 88(10) of the *MEA* also prohibits the use of any information obtained under section 88(5) for a non-election related purpose. The city submits, therefore, that the right to the spreadsheets under section 88(5) is substantially and expressly limited.

[37] The city submits that another limitation on the right provided for by section 88(5) is section 88(7), which entitles a person inspecting documents under section 88(5) to make extracts of them but does not confer an entitlement to disclosure of the records as a whole. The city argues that section 88(7) expressly limits the scope of section 88(5) and must be given the plain and ordinary meaning of the words. The city submits, without explanation or supporting arguments, the determination of which extracts can be disclosed under the *MEA* is left to the discretion of the municipality.

[38] The city argues that sections 88(7), 88(10), and 88(11), independently and in tandem, protect the privacy interests of the individuals whose personal information is contained in the spreadsheets. The city submits that it is particularly telling that the legislature carved out additional protections with respect to a voters' list, which contains the personal information of a large number of individuals.

[39] The city submits that the analysis as to whether the exception to the personal privacy exemption in section 14(1)(d) of the *Act* applies requires a consideration of the nature of access rights conveyed under the *Act*. The city submits that disclosure under the access procedures of the *Act* constitutes a disclosure to the public at large, which equates to publication. The city further submits that information disclosed under the *Act* is not subject to limitations with respect to use or subsequent disclosure or publication.

[40] The city argues that the limited and conditional nature of the right under section 88(5) of the *MEA* conflicts with the requirement that the section 14(1)(d) exception in the *Act* applies where a statute "expressly authorizes" the disclosure. The city submits that it would be improper to apply section 14(1)(d) where the information requested under the *Act* is only partially authorized to be disclosed under section 88(5) of the *MEA* subject to express conditions.

[41] The city submits that the purposes of the *Act* favour nondisclosure of the spreadsheets. The city submits that the *Act's* twin purposes are to provide a right of access and to protect the personal information of individuals whose information is held by public institutions. The city argues that the IPC is bound to interpret the provisions in accordance with both of these purposes. The city further argues that if the IPC determines that section 14(1)(d) applies to permit disclosure of the spreadsheets in the circumstances of this appeal, then voters lose the full protections set out in both the *MEA*

provisions safeguarding the privacy of voters and the *Act's* section 14 provisions safeguarding the privacy of affected parties.

[42] The city submits that the information contained in the ballot spreadsheet was derived from the ballots themselves, and therefore, is not subject to the section 88(5) right of access because of section 88(6.1). The city submits that section 88(6.1) limits the right of access under section 88(5) to exclude the contents of the ballot box. The city submits that not only does the *MEA* not "expressly authorize" the disclosure of this information, but it also expressly excludes this information from authorized disclosures under the *MEA*.

[43] The city submits that, pursuant to section 43(3)¹⁴ of the *Act*, the order resolving an appeal may contain any conditions the IPC considers appropriate. The city requests that if the IPC orders disclosure of the spreadsheets, the IPC should exercise its discretion under section 43(3) to order that the disclosed information only be used for election-related purposes and that it not be publicly shared in any manner.

[44] The city submits that the presumption against disclosure at section 14(3)(e) applies to the spreadsheets, because the information was originally "obtained on a tax return or gathered for the purpose of collecting a tax." The city submits that the Municipal Property Assessment Corporation (MPAC) is responsible for preparing the preliminary list of electors for each municipality and school board in Ontario, and it is MPAC's Municipal Property Assessment database of property owners and tenants that is used to prepare this preliminary list, which aids in the preparation of the final voters' list. The city argues, therefore, that disclosure of the information at issue is presumptively an unjustified invasion of personal privacy because it was originally gathered for tax related purposes.

[45] The city submits that sections 14(2)(f) (highly sensitive), 14(2)(g) (inaccurate or unreliable information), and 14(2)(i) (unfair damage to reputation) apply to weigh against disclosure of the spreadsheets at issue. The city submits that the withheld personal information is highly sensitive because it contains the school designation of the voters, which also discloses their religious preferences. The city submits that section 14(2)(g) applies to the withheld personal information because the school designation discloses personal information related to their tax information under the *Assessment Act* that is unlikely to be accurate or reliable given that "English Public (EP)" is the default designation.

[46] The city submits that the spreadsheets contain voting information of all Ward 6 residents who are eligible and who have voted in the election. The city submits that information in the eligible and actual voters spreadsheets can be used to identify residents who did not receive a ballot, which would reveal which residents did not vote. The city submits that this information is highly sensitive, and the disclosure of this information

¹⁴ Section 43(3) of the *Act* states: "Subject to this Act, the Commissioner's order may contain any conditions the Commissioner considers appropriate."

could unfairly damage the reputation of these residents. The city submits that all residents have the right to vote, and they all also have the right to abstain.

[47] The city submits that the spreadsheets at issue contain the personal information of tens of thousands of Ward 6 voters, so the volume of affected parties is a compelling unlisted factor that weighs against disclosure, and it compounds the effect of the section 14(2) factors.

Representations of the affected party

[48] Having been notified of the appeal and its issues, an affected party provided brief representations. They submit generally that disclosure of the spreadsheets would constitute an unjustified invasion of their and their family's personal privacy, and that the spreadsheets at issue should not be disclosed.¹⁵

Representations of the appellant

[49] The appellant's representations include arguments with respect to the *Ontario Elections Act*, which is not relevant in this appeal. I have reviewed and considered all his representations, but I will only summarize those portions most relevant to my determination of the issues in this appeal.

[50] The appellant submits that section 88(5) of the *MEA* requires the city to disclose the spreadsheets at issue. The appellant submits that neither the *Act* nor the *MEA* bars disclosure of the requested spreadsheets. The appellant submits that the language in section 88(5) of the *MEA* is clear on the public's right to inspect anything produced by the clerk's office for the election and that section 88(5) explicitly states that the *Act* does not apply. The appellant submits that the *MEA* does not state that electoral lists and who decided to vote are not public information; and that section 16 of the *MEA* allows for candidates to appoint scrutineers in polling locations to witness who voted and make records. The appellant submits that section 88(5) mentions no qualifications beyond when the records are destroyed, and the phrase "despite anything in the [*Act*]" is definitive language. The appellant submits that the *MEA* does not list specific items allowed or not allowed to be shared with the public, and instead, uses broad language to capture all materials and documents relevant to the election.

[51] The appellant submits that the city disclosed versions of these lists through an electronic portal, which was accessible by all candidates registered in the election. The appellant submits that this included 8 mayoral candidates, 71 city council candidates, and 76 school board candidates, which totals 155 people plus their campaign staff and volunteers. The appellant submits that each of the candidates had access to the voting attendance information of tens of thousands of voters for both advance polling dates and election day before noon. The appellant further submits that there is no screening or control of the volunteers and campaign staff that have access to this information, and

¹⁵ The affected party's personal information does not appear in the ballot spreadsheet.

there is no requirement that they sign non-disclosure agreements. The appellant submits that there is no barrier, beyond a nominal \$100 refundable fee and being a resident of the municipality, to become a candidate who is provided access to this information.

[52] The appellant submits that he is requesting the spreadsheets at issue for election purposes, because he was a candidate in the election. The appellant submits that he does not agree with the city's assertion that the *Act* is relevant as section 88(5) of the *MEA* explicitly rejects that. The appellant submits, however, that if the *Act* applies, the exception at section 14(1)(e)(ii) of the *Act* applies in this appeal, because he is seeking the records at issue for research purposes. The appellant submits that he wants to research the effectiveness of his interactions with voters during the election campaign and look for patterns of voter turnout. He also submits that he wants to measure the effectiveness of his interaction with voters through various mediums to see how voting patterns in neighbourhoods were affected by his efforts.

[53] The appellant specified the questions his research would answer, which I will not reiterate, but the appellant submits that researching these questions would fulfill the requirements under section 14(1)(e)(ii) of the *Act*. The appellant submits that section 14(1)(e)(ii) of the *Act* does not stipulate who the research must be conducted by, but he notes that he holds a master's degree and has spent over 12 years in the financial industry working with large datasets of financial transactions and other private data. The appellant further submits that he also has a bachelor's degree with a double major in political science and history, which provides him with the expertise necessary to "look at this data and conduct proper research."

[54] The appellant submits that his purpose for requesting the spreadsheets at issue also fulfills the stipulation under section 88(10) that it is for "election purposes", because in addition to looking at the past election, he also wants to prepare for possible future elections to improve his outreach efforts. The appellant submits that the *MEA* does not define what qualifies as "election purposes" or put a limitation that it cannot be for a future election. The appellant submits that he is willing to sign a non-disclosure agreement and confirm that he will not publicly distribute or post the information in a public forum or use it for any commercial purpose or purposes other than elections.

[55] The appellant argues that the city's position that the section 14(3)(e) presumption applies simply because some of the information contained in the spreadsheets was obtained for tax purposes is problematic. The appellant submits that the city states that the MPAC information "aids in the preparation of the final voters' list," which means it was not the only source of information, and the spreadsheets were created for electoral purposes. The appellant submits that the spreadsheets are not complete and do not include residential households that the city has removed and some residents who later register to vote. The appellant submits that the city would have had to compile a list for election purposes even if it could not use MPAC as a source of information.

[56] The appellant further submits that the *MEA* does not have any exclusions against

MPAC information, and the city did not appear to be concerned when it shared this information during the election to candidates and volunteers. Finally, the appellant submits that there is no explicit tax information contained in the spreadsheets at issue, such as tax ID numbers or account numbers, assessment rates or categorization, dollar figures, personal financial details, or payment history. The appellant concedes that the spreadsheets contain the school district, address, and identity of the residents.

Reply representations of the city

[57] The city submits that the appellant conflates the city's disclosure of voting information to candidates under the *MEA*, with disclosure in response to a freedom of information (FOI) request under the *Act*. With respect to the appellant's submission that the city previously disclosed similar information during the election, the city submits that the disclosure of voting records under the *MEA* fundamentally differs from the disclosure of information, including personal information, under the *Act*. The city submits that the clerk has the discretion to disclose voters' lists in accordance with sections 12(1)(a) and 88(5) of the *MEA*, and that under this statutory authority, the clerk provided the eligible and partial actual voters spreadsheets to the candidates.¹⁶

[58] The city argues that, in contrast, it is obligated to consider the personal privacy exemption under section 14(1) of the *Act* when responding to a FOI requests. The city submits that this is why the city maintains that disclosure of the spreadsheets under the *Act* is an unjustified invasion of personal privacy, in light of the conditional right provided for by section 88(5), given the privacy protections at section 88(10) and 88(11) of the *MEA*, and sections 9.1 and 9.2 under O Reg 101/97.

[59] The city submits that the appellant's representations on the section 14(1)(e) research exception are silent on the second and third criteria for the exception. The city further submits that the first criteria, that "the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained," is not met because the protections at sections 88(10) and 88(11) of the *MEA*, as well as sections 9.1 and 9.2 of O Reg 101/97, are not present. The city submits that these protections must be present for the disclosure to be consistent with the reasonable expectation of residents for the treatment of their personal information in municipal voting and election records. The city argues that the appellant has not satisfied the third criteria which is met by an agreement "to comply with the conditions relating to security and confidentiality" as prescribed in section 10(1) of Reg. 823 under the *Act*.

Representations of the city about the Divisional Court's decision in Mississauga

[60] As noted above, after the Divisional Court dismissed the judicial review application

¹⁶ Section 12(1)(a) of the *MEA* states: "A clerk who is responsible for conducting an election may provide for any matter or procedure that ... is not otherwise provided for in an Act or regulation[.]"

of Order MO-4176, in *Mississauga*, I invited and received supplemental representations from the parties.

[61] The city states that it advanced two primary arguments in its judicial review application in *Mississauga*:

1. The adjudicator failed to properly analyze section 88(5) of the *MEA* in conjunction with sections 88(6) and 88(6.1); and
2. The adjudicator failed to distinguish the *Gombu v. Ontario (Assistant Information and Privacy Commissioner)*¹⁷ (*Gombu*) decision from the request underlying Order MO-4176.

[62] The city notes that the application was dismissed by the majority of the Divisional Court on the basis that the city was making these arguments for the first time before the Divisional Court and that the IPC's reliance on the *Gombu* decision was reasonable. The city submits that since the Divisional Court declined to hear the city's "new" arguments, rather than substantively rejecting those "new" arguments, it is open to the IPC to consider those arguments in this appeal and come to a different result.

[63] The city submits that in *Mississauga*, Justice Aston dissented from the majority on the basis that the IPC did not adequately explain its reasons for rejecting the city's submissions in Order MO-4176, particularly its attempt to distinguish *Gombu*, and that the IPC failed to acknowledge that the disclosure of the voter spreadsheet was not actually "expressly authorized" by the *MEA*.

[64] The city reiterates that section 88(5) of the *MEA* does not expressly authorize the disclosure of the personal information contained in the spreadsheets. The city argues that section 88(5) only authorizes the inspection of the "materials filed with or prepared by the clerk or any other election official" under the *MEA* at the city clerk's office. The city argues that section 88(5) of the *MEA* should not be interpreted to allow for disclosure of the spreadsheets under section 14(1)(d) of the *Act* and override the privacy interests protected by the *Act*. The city submits that for the purposes of determining whether the spreadsheets at issue fall within the exception at 14(1)(d) of the *Act*, the issues are whether the spreadsheets are within the scope of the election records that are permitted to be inspected; whether that right of inspection still applies; and whether the right to inspect the spreadsheets equates with a right of access/disclosure under the *Act*.

[65] The city submits that the right to inspect election records in section 88(5) of the *MEA* is subject to two important restrictions: a) the right to inspect election records is time-limited to 120 days following the election per section 88(6); and b) that right does not include the right to examine the "contents of the ballot box" per section 88(6.1).

[66] The city argues that even if the spreadsheets fall within the scope of section 88(5)

¹⁷ 59 O.R. (3d) 773, [2002] O.J. No. 1776 (Div. Ct.).

(which the city disputes), the right to inspect election records "does not apply...once the 120-day period has elapsed." The city argues that the right of inspection under section 88(5) of the *MEA* has expired pursuant to section 88(6) of the *MEA*, because the 120-day period since the election has passed; and that right cannot, now, form the basis for finding that the *MEA* "expressly authorizes" the disclosure of the spreadsheets at issue. The city submits that in Order MO-4176, the IPC simply states, without explanation, that section 88(6) is "not applicable." The city submits that this determination is unreasonable, and section 88(6) applies to resolve the appeal with respect to all the spreadsheets.

[67] The city argues that the actual voters spreadsheet and the ballot spreadsheet are not the type of "materials" that can be inspected under section 88(5) of the *MEA* as they are the "contents of the ballot box," which under section 88(6.1) are not subject to the application of section 88(5). The city concedes that the spreadsheets, being a database that was exported to Excel spreadsheets, were not literally contained in the ballot box, and the city acknowledges that the appellant is not seeking access to the ballots themselves. However, the city submits that the spreadsheets that represent the post-election state of the database (the actual voters and the ballot spreadsheets) ought to be considered as part of the "contents of a ballot box" for the purposes of section 88(6.1).

[68] The city argues that it is necessary to consider section 55(1) of the *MEA*, which requires the deputy returning officer to place the ballots and "all other materials and documents related to the election" into the ballot box and seal it, which is in contrast to the instructions with respect to advanced voting days under section 43(5) of the *MEA*, because the voters' list is still required on later dates. The city submits that the voters' list is one of the "materials or documents related to the election" that is present at each voting place when votes are counted on voting day, and if the voters' lists provided for each voting place had been hard paper copies that were manually struck off by election officials on election day, those "final struck-off lists" should have been sealed into the ballot box after the close of voting by the deputy returning officers in accordance with section 55(1), and could be destroyed 120 days after the election in accordance with section 88(2).

[69] The city submits that in determining whether the spreadsheets are part of the sealed contents of a ballot box or whether they are public records that may be inspected under section 88(5), should not turn on their format. The city argues that the actual voters spreadsheet and the ballot spreadsheet both fall under section 88(6.1) of the *MEA* and are not public records that are ever subject to inspection, even within the 120-day period.

[70] The city notes that in *Gombu*, the Divisional Court found that there was no meaningful difference, for the purposes of the privacy interests at stake, between inspecting the subject campaign finance records in the clerk's office compared with receiving an electronic copy of the records. The city argues that in Order MO-4176, the IPC simply took *Gombu* to mean that section 88(5) overrides the privacy interests protected by the *Act*. The city submits that in *Mississauga*, Justice Aston held that the

IPC failed to provide reasoned analysis for simply "following" *Gombu* without addressing the city's arguments for distinguishing it from the disclosure of the voter spreadsheet, noting that there may have been a more restrictive interpretation of section 88(5) had the city's arguments and the interested third parties' concerns been properly considered.

[71] The city submits that in *Gombu*, the City of Toronto did not dispute that the requester was entitled to inspect the campaign contribution documents under section 88(5) of the *MEA* and the only dispute was over the format of the information (hard copy vs electronic). The city further submits that the City of Toronto initially denied the access request based on section 15(a) of the *Act*. The city submits that it takes the position that the appellant is no longer entitled to inspect the eligible voters spreadsheet, because 120-days have passed, and he was never entitled to inspect the other two spreadsheets because they are part of the "contents of the ballot box."

[72] The city submits that *Gombu* only stands for the proposition that a record need not be expressly "required" to be prepared by the clerk under the *MEA* to meet the definition of a "public record" under section 88(5). The city submits that *Gombu* is distinguishable from this appeal because the *MEA* provisions applicable to campaign finance records are meaningfully different from the provisions applicable to voters' lists in three ways:

- a. Making a donation to a campaign (along with the required personal information collected) is voluntary, whereas the personal information contained in a voters' list is collected by MPAC without consent of the individuals;
- b. campaign finance records are required to be published, whereas voters' lists cannot be published (this argument was made in the city's previous representations); and,
- c. campaign finance records must be kept for the term of council (section 88(4)), whereas all other election materials and documents may be destroyed after 120 days (including voters' lists).

[73] The city argues that the fact that campaign finance documents must be published and retained for the entire council term indicates that there is a public accountability interest in the campaign finance statements, namely in monitoring elected officials' conduct throughout the term of office considering the identity and significance of their campaign contributors. The city argues, conversely, the prohibition on publication of voters' lists and the permission to destroy them after 120 days indicates there is a much less significant or possibly no meaningful public accountability interest in the inspection of voters' lists at all, or at least after 120 days.

[74] The city submits that in *Mississauga*, Justice Aston emphasized the potential importance to the interpretation of section 88(5) and *Gombu*, the voluntary collection of personal information versus the conscripted collection of personal information. The city

submits that there is a significant difference between the voters' lists that are "expressly authorized" to be disclosed to a limited number of candidates and scrutineers under sections 23(4), 27(1), and 43(6)¹⁸ of the *MEA*, compared to the right of "any person" to inspect election records or to request electronic copies of a database of personal information through an FOI request. The city further submits that disclosure of the voters' lists to candidates and scrutineers is understandable as a necessary override to the privacy interests of residents to enable canvassing of eligible voters by candidates in the interest of democratic discourse.

Representations of the appellant about the Divisional Court's decision in Mississauga

[75] The appellant states that as a city councillor in Mississauga, he feels that the city's stance in this appeal is incorrect and harmful. The appellant reiterates that he seeks access to the spreadsheets at issue for research, which is an election-related purpose under section 88(10) of the *MEA*.

[76] The appellant argues that the *MEA* does not state that the voters' list should be destroyed in the 120-day period. The appellant further argues that he requested the spreadsheets within the 120-day period, but they were not disclosed to him, and he was not offered the chance to inspect them in the clerk's office.

[77] The appellant states that it is difficult to understand the city's position with respect to the electronic copy of the voters' list forming part of the ballot box on election day but not on advance polling dates. The appellant further states that if the city is adopting the "voluntary vs conscripted argument," then the city should not be sharing advanced polling data.

Analysis and findings

[78] Based on my review of the eligible voters spreadsheet and the representations of the parties, I find that the exception to the personal privacy exemption at section 14(1)(d) applies to it, because its disclosure is expressly authorized by section 88(5) of the *MEA*. Therefore, I find that the eligible voters spreadsheet is not exempt from disclosure under the discretionary personal privacy exemption at section 38(b) of the *Act*. However, I find that disclosure of both the actual voters spreadsheet and the ballot spreadsheet are not expressly authorized by section 88(5) of the *MEA* by virtue of the exception in section

¹⁸ Section 23(4) states: "(4) On the written request of a certified candidate for an office, the clerk shall provide him or her with the part of the voters' list that contains the names of the electors who are entitled to vote for that office."

Section 27(1) states: "(1) During the period beginning on September 15 and ending on September 25 in the year of a regular election, the clerk shall, (a) prepare an interim list of the changes to the voters' list approved under sections 24 and 25 on or before September 15; and (b) give a copy of the interim list to each person who received a copy of the voters' list under section 23 and to each certified candidate."

Section 43(6) states: "The clerk shall, on the request of a scrutineer or certified candidate, give him or her a copy of any list referred to in subclause (5)(b)(i)."

88(6.1) of the *MEA*, and therefore, the exception at section 14(1)(d) does not apply. I also find that the section 14(1)(e) exception also does not apply. I go on to find that the section 38(b) discretionary personal privacy exemption applies to the actual voters spreadsheet and the section 14(1) mandatory personal privacy exemption applies the ballot spreadsheet to exempt them from disclosure. My reasons are set out below.

Section 14(1)(d) exception: An Act of Ontario or Canada expressly authorizes disclosure

[79] The appellant argues that section 88(5) of the *MEA* authorizes the disclosure of the spreadsheets at issue, while the city argues that it does not.

[80] In this section, my findings only relate to the eligible and actual voters spreadsheets specifically; I will consider whether the *MEA* authorizes the disclosure of the ballot spreadsheet below.

[81] If the exception at section 14(1)(d) applies to the eligible voters spreadsheet and actual voters spreadsheet, then there is no unjustified invasion of personal privacy. As a consequence, the personal privacy exemption at section 38(b) would not apply to exempt those spreadsheets from disclosure. Section 14(1)(d) states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except, under an Act of Ontario or Canada that expressly authorizes the disclosure;

[82] In order for section 14(1)(d) to apply, there must either be specific authorization in the statute for the disclosure of the type of personal information at issue, or there must be a general reference to the possibility of such disclosure in the statute together with a specific reference to the type of personal information to be disclosed in a regulation.¹⁹ Previous IPC orders have considered the application of this section in the context of provisions set out in the *MEA*. I will set out the relevant ones below.

[83] As noted above, I sought representations from the parties on the Divisional Court decision of *Mississauga*, in which the Divisional Court dismissed the city's judicial review application and upheld the IPC's decision in Order MO-4176. In *Mississauga*, the majority of the Divisional Court found that the IPC was reasonable in relying on IPC Order M-1154, and *Gombu*, a prior Divisional Court decision that found section 88(5) of the *MEA* expressly authorized disclosure of the records at issue because of the exception to the personal privacy exemption at section 14(1)(d) of the *Act*. In *Mississauga*, the Divisional Court held that the IPC was reasonable in distinguishing between restrictions on *disclosure* as compared to restrictions on *use* under the *MEA*, and noted that post-*Gombu*, the legislature did not amend the *MEA* to restrict access or disclosure of records under section 88(5) but only added further restrictions on the use of the information.

[84] In Order MO-4176, the city received a request under the *Act* for access to a Ward

¹⁹ Orders M-292, MO-2030, PO-2641 and MO-2344.

7 voter spreadsheet from the October 22, 2018 municipal election. The voter spreadsheet is the same type of record as the actual voters spreadsheet in this appeal but for a different ward. In Order MO-4176, the city issued a decision denying access to the voter spreadsheet under the mandatory personal privacy exemption in section 14(1) of the *Act*, and the appellant appealed the city's decision to the IPC. The IPC found that the *MEA* expressly authorizes the disclosure of the voter spreadsheet and, therefore, the section 14(1)(d) exception to the personal privacy exemption applies. As a result of the application of section 14(1)(d), the IPC found the voter spreadsheet was not exempt from disclosure under section 38(b) of the *Act* and ordered the city to disclose it to the appellant. As noted above, Order MO-4176 was upheld by the Divisional Court in *Mississauga*.

[85] In *Gombu*, the Divisional Court considered a judicial review application in respect of Order MO-1366. Order MO-1366 determined the issues related to a request submitted under the *Act* to the City of Toronto by a reporter for the Toronto Star for access to a list of donors to municipal election candidates in electronic format. In order to administer a donation rebate program, the City of Toronto had created an electronic database which contained information additional to that found in publicly available paper copies of the records relating to donors. The City of Toronto denied access to the electronic database stating that the information was published or available to the public in paper copy in accordance with the *MEA* and therefore did not have to be disclosed under the *Act*. The requester appealed the City of Toronto's decision to the IPC.

[86] In Order MO-1366, former Assistant Commissioner Tom Mitchinson found that disclosing the electronic database created by the City of Toronto to administer the donation rebate program was not authorized under section 88(5) of the *MEA* because the database "is not required to be prepared by the clerk" under the *MEA* or by any regulation or by-law under the *MEA*. Consequently, he found that the exception at section 14(1)(d) to the exemption at section 14(1) did not apply. Applying the factors set out at section 14(1)(f), the former Assistant Commissioner found that disclosure of the electronic database would be an unjustified invasion of personal privacy under the mandatory personal privacy exemption in section 14(1) of the *Act* and upheld the City of Toronto's decision to deny access to it. The requester sought judicial review at the Divisional Court.

[87] In *Gombu*, the Divisional Court allowed the application for judicial review and quashed Order MO-1366. The Divisional Court stated, "the issue is not whether the Clerk is 'required' to prepare the database, but whether, as section 88(5) provides, the material is, in fact, prepared 'under the Act.'" The Divisional Court held that the electronic database was prepared under the *MEA* and therefore was a public record. The Divisional Court held that section 88(5) of the *MEA* required disclosure of the database and that the exception in section 14(1)(d) of the *Act* applied. The Divisional Court further held that the distinction between electronic records and paper records was immaterial, and that disclosure of the entire database was necessary for public scrutiny of the election process.

[88] In *Gombu*, it was found that the *MEA* did not contain special restrictions specific

to the records at issue in Order MO-1366. The city argues that, in contrast, the *MEA* contains several provisions that expressly restrict what can be done with the voters' list, and by extension the eligible and actual voters spreadsheets, specifically. The essence of the city's argument appears to be that, because disclosure under the *Act* amounts to disclosure to the public at large, the restrictions on the subsequent use and publication of a voters' list set out at sections 88(10) and 88(11) of the *MEA* must mean that the eligible and actual voters spreadsheets at issue cannot be considered public records under section 88(5) of the *MEA*.

[89] The principle that disclosure under the *Act* is effectively disclosure to the public at large, such that a party receiving disclosure under the *Act* may do what they wish with the records, is qualified. The subsequent use or disclosure of information obtained under the access provisions of the *Act* is subject to any other restrictions imposed by law outside of the *Act*.²⁰ Such restrictions would include the limitation on subsequent use under section 85(10) of the *MEA* and the prohibitions against public posting under section 85(11) of the *MEA* and section 9 of O Reg 101/97. These provisions do not, as the city appears to argue, limit the scope or categories of records considered "public records" under section 88(5). They only limit what can be done with the records once disclosed.

[90] I sought representations from the city on the possible relevance of Order M-1154, another order addressing these provisions and referenced in *Mississauga*, to the determination in this appeal, but the city declined to provide any.²¹ In Order M-1154, the adjudicator considered whether section 88(5) of the *MEA* expressly authorized disclosure of the records at issue in that appeal for the purposes of the section 14(1)(d) exception under the *Act*. In Order M-1154, the records at issue were forms filed by mayoral candidates under the *MEA* containing (among other information) a list of contributors, including the name, address, and amount of contribution for each contributor. The Corporation of the County of Prince Edward (the county) argued that section 88(5) only permits inspection of those records at the clerk's office during office hours, and that section 88(10) of the *MEA* did not allow the use of the information filed under the *MEA* to be used for non-election purposes. The adjudicator did not accept the argument, and went on to distinguish between the disclosure of personal information pursuant to the *Act* and the subsequent use of the personal information (section 88(10) of the *MEA*), as follows:

With respect to the method of access, section 88(5) allows any member of the public to inspect the records at the clerk's office at a time when the office is open. While this provision does not specifically address other methods of access which may be permitted under the *Act*, such as the provision of copies of the records, there is nothing in section 88(5) or any other provision of the *MEA* which prevents municipalities from granting

²⁰ See Reconsideration Order MO-3730-R, *Oro-Medonte (Township) (Re)*, [2019] O.I.P.C. No. 17, at para. 19; Final Order PO-3268-F, *Ontario Power Authority (Re)*, [2013] O.I.P.C. No. 266, at para. 39.

²¹ Order M-1154 (1998) preceded Order MO-1366 (2000) and *Gombu*.

access to public records in a manner other than that set out in section 88(5). The fact that Forms 4 and 5 [filed by the mayoral candidates] are in effect "public records" under section 88(5) is sufficient authorization under section 14(1)(d) of the *Act*. Barring any other exemption applying, the methods of access set out in section 23 of the *Act*²² are available to the appellant.

In my view, section 88(10) of the *MEA* does not take the records outside the exception at section 14(1)(d) of the *Act* merely because it restricts the "use" to which the information is put. A distinction must be drawn between disclosure and use in this context. Both the *Act* and the *MEA* distinguish between the two concepts of "use" and "disclosure". Section 31 of the *Act* prohibits the use of personal information (with certain listed exceptions), while section 32 prohibits the disclosure of personal information (also with certain listed exceptions). Similarly, section 88(5) of the *MEA* addresses disclosure, while section 88(10) is concerned with how the information, once disclosed, is subsequently used. Section 88(10) does not, in my view, place a limitation on the extent to which the public may access information under section 88(5) of the *MEA* or under the *Act*.

In short, for the purpose of determining the issue of access under the *Act*, the use to which the appellant intends to put the information is not relevant. To be clear, my finding should not be construed as a determination of whether or not the appellant's intended use, or any other use, of the information in question is permitted or not permitted under section 88(10) of the *MEA*.

[91] I agree with the adjudicator's reasoning in Order M-1154 and adopt it in this appeal.

[92] While the city argues that sections of the *MEA*, in conjunction with Ontario Regulation 101/97, apply to restrict access to the eligible and actual voters spreadsheets, I find that they do not. I find that the sections of the *MEA* relied upon by the city restrict the *use* and further publication of the eligible and actual voters spreadsheets and *not access to or disclosure* of them. Therefore, I find that the appellant's intended use of the eligible and actual voters spreadsheets is not relevant to my determination of his right to access under the *Act*.

[93] With respect to the appellant's right of access to the eligible and actual voters spreadsheets under section 88(5) of the *MEA*, I will set out again, for clarity, section 88(5) of the *MEA*, which states:

88(5) Despite anything in the *Municipal Freedom of Information and Protection of Privacy Act*, documents and materials filed with or prepared

²² Section 23 of the *Act* relates to obtaining copies of records disclosed under the *Act* or examining the original records.

by the clerk or any other election official under this Act are public records and, until their destruction, may be inspected by any person at the clerk's office at a time when the office is open.

[94] I find that section 88(5) of the *MEA* explicitly overrides the privacy interests otherwise required to be considered under the *Act*. Section 88(6) of the *MEA* provides that section 88(5) no longer applies after the expiry of the 120-day retention period referred to at sections 88(1) and (2), which is not applicable here based on the date of the request from the appellant, which I address below. However, in relation to the actual voters spreadsheet and the ballot spreadsheet, section 88(6.1) of the *MEA* operates as an exception to section 88(5) to protect the contents of the ballot box within the 120-day retention period, which I also address below.

[95] While section 88(5) only provides for in-person inspection by members of the public while the clerk's office is open and does not expressly contemplate disclosure in the context of an access request, it indicates that documents and materials prepared under the *MEA*, such as the eligible voters spreadsheet, are intended to be available to the public. This public availability is sufficient to establish that disclosure of the eligible voters spreadsheet in the context of an access request is expressly authorized by section 88(5) of the *MEA*. Therefore, I find that section 14(1)(d) applies, and disclosure is not an unjustified invasion of personal privacy. Consequently, I find that the eligible voters spreadsheet is not exempt from disclosure under section 38(b) of the *Act*.

No restrictions on use

[96] In the alternative, the city argues that the IPC should exercise its discretion under section 43(3) of the *Act* to order that any spreadsheets disclosed only be used for election-related purposes and not be shared publicly. While I appreciate the city's concerns, based on the circumstances of this appeal, I find that it is not necessary for me to make such an order, because sections 88(10) and (11) of the *MEA* along with section 9 of Ontario Regulation 101/97 already impose these conditions. The subsequent use or disclosure of information obtained under the access provisions of the *Act* is subject to any other restrictions imposed by law outside of the *Act*.²³ As noted above, the appellant explicitly submits that he is requesting the spreadsheets for election purposes, and he is aware of the restrictions placed on their use by the *MEA* and O Reg 101/97.

[97] While the determination of compliance with and enforcement of the provisions of the *MEA* are outside of the IPC's jurisdiction,²⁴ I note that amendments to the *MEA*, which came into effect on January 1, 2023, specifically the addition of sections 23(7) and (8), impose restrictions on election officials and certified candidates who receive copies of the

²³ See Reconsideration Order MO-3730-R, *Oro-Medonte (Township) (Re)*, [2019] O.I.P.C. No. 17, at para. 19; Final Order PO-3268-F, *Ontario Power Authority (Re)*, [2013] O.I.P.C. No. 266, at para. 39.

²⁴ The *MEA* contains offence provisions for the enforcement of the *MEA*, including the general offence provision at section 94, which states: A person who contravenes any provision of this Act or a regulation under this Act or a by-law passed by a municipality under this Act is guilty of an offence.

voters' list, as well as on those persons they share the voters' list with. Section 23(7) requires a written acknowledgement from persons provided with a copy of the voters' list that they will follow the restrictions in section 23(7) and the rules in section 23(8). Another addition, section 88(7.1), prohibits the making of extracts or copies of the voters' list under section 88(7), unless authorized by a court order. I note, however, that these restrictions were not in force at the time of the appellant's request. It is not the role of the IPC to pre-empt the legislature by imposing similar restrictions which, in any event, are already addressed in general terms by the limitations at sections 88(10) and 88(11) of the *MEA*. Accordingly, I reject the city's submission that I should order restrictions on the use of any of the spreadsheets disclosed to the appellant.

The city's arguments post-Mississauga

[98] The city argues that for the purposes of determining whether the spreadsheets fall within the exception at 14(1)(d) of the *Act*, the issues are whether the spreadsheets are within the scope of the election records that are permitted to be inspected under section 88(5) of the *MEA*; whether that right of inspection still applies; and whether the right to inspect the spreadsheets equates with a right of access/disclosure under the *Act*.

[99] To reiterate, I find that the exception to the section 14(1) personal privacy exemption at section 14(1)(d) applies to the eligible voters spreadsheet because its disclosure is expressly authorized by section 88(5) of the *MEA* and none of the exceptions to section 88(5) applies to it. My finding on that spreadsheet remains unchanged after considering the city's arguments post-*Mississauga*.

[100] I also find below that the *MEA* does not expressly authorize the disclosure of the actual voters spreadsheet and the ballot spreadsheet because section 88(6.1) applies to exempt them from section 88(5) of the *MEA*.

120-day period

[101] It appears that the city is arguing that any right to "inspect" the spreadsheets has expired because the 120-day period under section 88(6) has passed, and therefore, the *MEA* does not expressly authorize their disclosure. The city further argues that in Order MO-4176, the IPC merely found "without explanation" that section 88(6) was not applicable.

[102] The city conceded that the appellant made his access request to the city within the 120-day period. The city denied the appellant's request despite him making the request within the 120-day period and did not give him the option of "inspecting" the spreadsheets at the clerk's office. While this argument was not adjudicated by the Divisional Court in *Mississauga*, the majority did note:

With respect to an unfair and prohibited advantage being gained by the recipient, this argument is also raised for the first time on this application and for the same reasons will not be considered. However, we do note that

the essence of this argument relies on the fact that the disclosure ordered by the IPC is being made well after the 120-day time period specified in the *MEA*. However, as the City acknowledged in its submissions before the IPC, the Requestor's request for disclosure was made within that time period. It was the IPC proceedings that stretched the matter out. To accept this aspect of the City's argument could allow municipalities to avoid their disclosure obligations simply by contesting requests for disclosure for records prepared under the *MEA* and then delaying any proceedings for at least 120-days – which would easily occur through the regular operation of relevant timelines.²⁵

[103] I agree with the Divisional Court, and I do not accept the city's argument that the appellant's right to "inspect" the spreadsheets under section 88(5) of the *MEA* has expired simply because the 120-day period has passed. If that were the case, the city could deny access to all records with a right of "inspection" under section 88(5) by delaying proceedings for at least 120-days and section 88(5) would be rendered pointless, which likely runs contrary to the legislative intent of that section.

[104] Therefore, I find that section 88(6) is not applicable because the appellant made his request within the 120-day period after the election and the city has conceded that the appellant has done so.

Section 88(5) only allows for "inspection," not disclosure

[105] The city appears to reiterate its argument that section 88(5) of the *MEA* only permits an "inspection" and should not be interpreted to permit disclosure under section 14(1)(d) of the *Act*. To the extent that the city is arguing that there is a distinction between literal "inspecting" of the records and "disclosing" of the records, as the city itself notes, in *Gombu*, the Divisional Court found that there was no material difference between attending at the city clerk's office to inspect the records at issue in that appeal and receiving electronic copies of the records.

[106] Furthermore, the majority of the Divisional Court found that the IPC was reasonable in relying on IPC Order M-1154, and *Gombu*, in finding that section 88(5) of the *MEA* expressly authorized disclosure of the voter spreadsheet at issue in that appeal because of the exception to the exemption for personal information found at section 14(1)(d) of the *Act*. I rely on the same analysis with respect to the disclosure of the eligible voters spreadsheet in this appeal.

[107] Therefore, I am not persuaded by the city's argument that section 88(5) only allows for the literal inspection of records under the *MEA* and not their disclosure.

²⁵ *Mississauga*, at para. 46.

Gombu is distinguishable

[108] The city argues that *Gombu* is distinguishable from this appeal because the *MEA* provisions applicable to campaign finance records are meaningfully different from the provisions applicable to voters' lists. The city argues that personal information of campaign contributors differs from the personal information of voters as the former is voluntary, required to be published, and must be retained for a longer time period.

[109] The city submits that in *Mississauga*, Justice Aston emphasized the potential importance to the interpretation of section 88(5) and *Gombu*, the voluntary collection of personal information versus the conscripted collection of personal information. The city submits that there is a significant difference between the voters' lists that are expressly authorized to be disclosed to a limited number of candidates and scrutineers under sections 23(4), 27(1), and 43(6) of the *MEA*, compared to the right of "any person" to inspect election records or to request electronic copies of a database of personal information through an access request.

[110] The city does not cite any authority for the fact that campaign finances are required to be published or evidence that donors are explicitly notified when they make a donation that their personal information will be published. In any event, if that personal information is required to be published, it does not, in my view, affect the interpretation of whether the spreadsheets are expressly authorized to be disclosed by the *MEA*. Similarly, whether the time period of retention is longer for the campaign donors' personal information than for the spreadsheets, does not impact whether the latter is similarly expressly authorized to be disclosed.

[111] The Divisional Court held that the IPC was reasonable in distinguishing between restrictions on *disclosure* as compared to restrictions on *use* under the *MEA*, and noted that post-*Gombu*, the legislature did not amend the *MEA* to restrict access or disclosure of records under section 88(5) but only added further restrictions on the use of the information.

[112] Furthermore, with respect to the city's arguments about the voluntary versus conscripted collection of personal information, I note that Justice Aston's dissent indicates a concern²⁶ with a submission made by the Jane Does (affected parties) who claimed that they had removed themselves from the voters list and suggested that as a result they cannot vote. I also note that the *MEA* provides that voters can remove themselves from voters' lists or seek redactions of their personal information from those lists.²⁷ However, the *MEA* does not specify that a voter must be on a public voters' list²⁸ to vote in municipal

²⁶ *Mississauga*, at para. 66.

²⁷ *MEA*, sections 24(1)(a) and 88(6.2).

²⁸ The *MEA* provides for different lists regarding eligible voters, including the permanent register of voters (s. 1(1)), the preliminary voters list (s. 19), and an amended voters list (s.29).

elections.²⁹

[113] For the reasons above, I am not persuaded by the city's arguments that *Gombu* is distinguishable from the current appeal.

Section 88(6.1) contents of a ballot box

[114] Unlike its earlier arguments in Order MO-4176, the city now submits that the actual voters spreadsheet³⁰ and the ballot spreadsheet are not the type of "materials" that can be inspected under section 88(5) of the *MEA* as they are the "contents of the ballot box," which under section 88(6.1) are not subject to the application of section 88(5). Based on my review of the records and the representations of the parties, I find that the actual voters spreadsheet and the ballot spreadsheet are exempt from section 88(5) because section 88(6.1) applies to them.

[115] The city concedes that these spreadsheets were not literally contained in the ballot box, and the city acknowledges that the appellant is not seeking access to the ballots themselves. However, the city submits that these spreadsheets ought to be considered part of the "contents of a ballot box" for the purposes of section 88(6.1). The city submits that determining whether the actual voters spreadsheet and the ballot spreadsheet are part of the sealed contents of a ballot box or whether they are public records that may be inspected under section 88(5), should not turn on their format.

[116] The city argues that when physical paper copies of the voters' list were used instead of electronic copies, the actual voters spreadsheet would have been physically placed into the ballot box and sealed after voting closed, in accordance with section 55(1) of the *MEA*, and could be destroyed 120 days after the election. Due to the evolution of the voters' list from a physical paper copy to an electronic format and database that is updated throughout election day, the actual voters spreadsheet physically cannot be placed into the ballot box after voting closes on election day. As such, the city is arguing that the actual voters spreadsheet should still be considered "contents of the ballot box" for the purposes of section 88(6.1) because the city used to place the physical copy of the actual voters spreadsheet into the ballot box and would still do so today, but for the physical impossibility of doing so.

[117] With respect to the ballot spreadsheet, the city submits that the information contained in it was derived from the ballots themselves, and therefore, is not subject to the section 88(5) right of access because section 88(6.1) applies. The city submits that

²⁹ Section 17(2) does not require a person to be on the voters' list to vote, and section 17(3), which lists persons prohibited from voting, does not identify persons not on the voters' lists as being persons prohibited from voting. There was no evidence before the Divisional Court that the Jane Does could no longer vote as a result of removing themselves from the voters' list.

³⁰ The city did not argue that the eligible voters spreadsheet was part of the contents of the ballot box. I assume this is because the eligible voters spreadsheet is essentially the "voters' list" as defined by the *MEA*, and it must be provided to the candidates (now with certain restrictions).

section 88(6.1) limits the scope of the right of access under section 88(5) to exclude the contents of the ballot box. The city submits that not only does the *MEA* not “expressly authorize” the disclosure of this information, but it also expressly excludes this information from the scope of authorized disclosures under the *MEA*.

[118] I agree with the city’s argument that the ballot spreadsheet falls under section 88(6.1) of the *MEA*. I accept the city’s submission that the information contained in the ballot spreadsheet was derived from the ballots themselves. Also, as the ballot spreadsheet captures the identities of those voters who received a ballot, but then rejected, refused, declined, or cancelled their ballot, it seems clear that the ballot spreadsheet would have been created at the polls where the return of these ballots would have been carried out.

[119] It is logical that ballots would be considered the contents of a “ballot box” under the *MEA*, because the box was made and named specifically to store ballots and all other materials and documents related to the election, except the original statement of results, in accordance with section 55(1)(b) of the *MEA*. Section 88(6.1) of the *MEA* limits the scope of section 88(5) to exclude the “contents of the ballot box,” and the information contained in the ballot spreadsheet was derived from the ballots themselves. Therefore, I find that section 88(5) does not expressly authorize the disclosure of the ballot spreadsheet, and the section 14(1)(d) exception does not apply to permit its disclosure under the *Act*.

[120] Similarly, I am persuaded by the city’s post-*Mississauga* argument that section 88(6.1) applies to exclude the actual voters spreadsheet from section 88(5) of the *MEA* for several reasons.

[121] As I mentioned earlier, the actual voters spreadsheet is the same type of record that the IPC ordered the city to disclose in Order MO-4176 and this decision was upheld by the Divisional Court in *Mississauga*. However, in that appeal the city did not argue, in its representations to the IPC, that section 88(6.1) applied to the spreadsheet at issue to exempt it from section 88(5) of the *MEA*, nor did the city argue that the electronic format of the spreadsheet, and its physical impossibility to be placed into the ballot box, should not exclude it from protection under section 88(6.1) of the *MEA*. The Divisional Court properly declined to hear the city’s section 88(6.1) arguments in *Mississauga* because the city raised them for the first time during the judicial review of Order MO-4176. The Divisional Court’s finding that Order MO-4176 was reasonable was based on the IPC’s consideration of the arguments that were before the IPC in that appeal. However, as the city points out, the Divisional Court did not substantively reject the argument and stated that it is open to the city to raise it before the IPC.

[122] Following *Mississauga*, the city advanced new arguments in support of its position that the actual voters spreadsheet is subject to section 88(6.1) of the *MEA*, which exempts it from section 88(5). While the record at issue here is similar to the one put forward before the Divisional Court in *Mississauga*, a finding that section 14(1)(d) does not apply

to the actual voters spreadsheet is not inconsistent with Order MO-4176, as the section 88(6.1) exception to section 88(5) of the *MEA* was not argued in MO-4176. Given that this argument is before me in this appeal, it is open to me to consider it and to come to a different conclusion having had the benefit of the city's submissions on section 88(6.1)

[123] The issue of whether section 88(6.1) applies to the actual voters spreadsheet turns on what documents constitute "contents of a ballot box." The *MEA* is silent on this as there is no section which defines what the "contents of the ballot box" include. However, the city argues that it is necessary to consider section 55(1) of the *MEA*, when considering what constitutes the "contents of a ballot box."

[124] Section 55(1) states:

As soon as possible after counting the votes, the deputy returning officer shall,

(a) prepare a statement, in duplicate, showing the results of the election at the voting place;

(b) place the ballots and all other materials and documents related to the election, except the original statement of results, in the ballot box;

(c) seal the ballot box so that ballots cannot be deposited in or withdrawn from it without breaking the seal; and

(d) deliver the original statement of results and the ballot box to the clerk.

[125] I accept the city's position that a paper copy of the actual voters spreadsheet would have been physically placed into the ballot box on election day per section 55(1)(b) of the *MEA*. This is based on the established election procedures that the city references, which require the deputy returning officer to put "all other materials and documents" into the ballot box at the completion of voting on election day. I also accept that it qualifies as part of the "contents of a ballot box" for the purposes of section 88(6.1) of the *MEA*.

[126] As the city notes, the actual voters spreadsheet is no longer placed physically into the ballot box because paper copies are no longer used. However, if it were to be placed in the ballot box, by operation of section 55(1)(b) of the *MEA*, I accept that it would be sealed in the ballot box together with the ballots. Furthermore, such a seal cannot be broken except for specific enumerated circumstances in the *MEA*, none of which include responding to a FOI request seeking access to some or all the contents of the ballot box.³¹

[127] Furthermore, the phrase "all other materials and documents related to the election" in section 55(1)(b) of the *MEA* is broad and it must refer to documents other

³¹ That is, to interpret the statement of results (section 55(5) of the *MEA*), for the purpose of a recount, or by court order.

than the ballots, given that "ballots" are explicitly mentioned in addition to these documents. It is reasonable to interpret this phrase as including all election-related documents at the polls, except for the original statement of results.

[128] I also agree with the city that, in determining whether the actual voter spreadsheet is part of the sealed contents of a ballot box or whether they are a public record that may be inspected under section 88(5) of the *MEA*, such a determination should not depend on their format. To do so would have the effect of requiring the city to maintain only physical copies of the actual voter spreadsheet to afford it of the exception in section 88(6.1), thereby ignoring the technological realities of conducting modern municipal elections.

[129] The appellant argues that he cannot reconcile the city's position about the electronic copy of the actual voters spreadsheet forming part of the ballot box on election day, but not on advanced voting days. He argues that this difference in treatment of the electronic copy of the actual voters spreadsheet supports his position that the spreadsheet does not form part of the contents of the ballot box. I am not persuaded by his argument.

[130] The city points out, and I accept, that section 55(1), which outlines the procedure on election day, and section 43(5), which outlines the procedure for advanced voting days, treat the actual voters spreadsheet differently with respect to placing it in the ballot box.

[131] Section 43(5)³² of the *MEA* does not require that the partial actual voters spreadsheet from advanced voting days to be placed into the ballot box and sealed because the spreadsheet is still required to be used on later dates and election day. This contrasts with section 55(1) of the *MEA*, which requires the deputy returning officer to place the ballots and "all other materials and documents related to the election" into the ballot box and seal it. Therefore, I am not persuaded that the difference in treatment of the electronic copy of the actual voters spreadsheet on advanced voting days and after voting ends on election day supports the appellant's argument that the actual voters spreadsheet does not form part of the contents of the ballot box.

[132] For the reasons above, I find that the "contents of a ballot box" include the actual voters spreadsheet and section 88(6.1) applies to exempt it from disclosure under section 88(5) of the *MEA*. As a result, section 88(5) does not expressly authorize the disclosure of the actual voters spreadsheet and the section 14(1)(d) exception does not apply to

³² Section 43(5) states: "On each day of the advance vote the deputy returning officer of the voting place shall, (a) immediately after the close of voting, seal the ballot box so that ballots cannot be deposited in or withdrawn from it without breaking the seal; and (b) as soon as possible after the close of voting, (i) prepare a list showing the name of each person who has voted on that day and identifying his or her voting place, and (ii) deliver to the clerk for safekeeping the ballot box, the list of names, and all other materials and documents related to the advance vote."

permit its disclosure under the *Act*.

Eligible voters spreadsheet conclusion

[133] As noted above, if the exception at section 14(1)(d) applies to the eligible voters spreadsheet, the personal privacy exemption at section 38(b) cannot apply to exempt it from disclosure. For the reasons above, I find that section 88(5) of the *MEA* expressly authorizes the disclosure of the eligible voters spreadsheet, and the section 14(1)(d) exception applies. Consequently, I find that the eligible voters spreadsheet is not exempt from disclosure under the discretionary personal privacy exemption at section 38(b) of the *Act*. I order it be disclosed.

Sections 14(1) and 38(b): ballot spreadsheet and actual voters spreadsheet

[134] Based on my review of the two spreadsheets remaining at issue and the representations of the parties, I find that the mandatory section 14(1) personal privacy exemption applies to the ballot spreadsheet and the discretionary section 38(b) personal privacy exemption applies to the actual voters spreadsheet. Accordingly, I find that they are both exempt from disclosure under the *Act*. My reasons are set out below.

Section 14(1) and the exceptions at section 14(4)

[135] As noted above, if the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy, and the information is not exempt under section 38(b).³³

[136] In contrast, under section 14(1), where a record contains personal information of another individual but *not* the requester, the institution cannot disclose that information unless one of the exceptions in sections 14(1)(a) to (e) applies, or the section 14(1)(f) exception applies, because disclosure would not be an “unjustified invasion” of the other individual’s personal privacy.

[137] I have already found that the *MEA* does not expressly authorize the disclosure of the actual voters spreadsheet and the ballot spreadsheet, and the exception at section 14(1)(d) of the *Act* does not apply to permit their disclosure. I must now consider whether the section 38(b) personal privacy exemption applies to the actual voters spreadsheet and whether the section 14(1) personal privacy exemption applies to the ballot spreadsheet to exempt them from disclosure under the *Act*.³⁴ I will also consider the

³³ Sections 14(2) and (3) also help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy. If any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). Because I find here that the exception at section 14(1)(d) applies, I do not need to address section 14(2), (3) or (4).

³⁴ Section 14(1) is the appropriate personal privacy exemption to consider for the ballot spreadsheet because it does not contain the appellant’s personal information. Section 38(b) is the appropriate personal

appellant's argument that the section 14(1)(e) research exception applies to the withheld personal information in these two spreadsheets.

Section 14(1)(e) – exception for research purposes

[138] Section 14(1)(e) states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(e) for a research purpose if,

(i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,

(ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and

(iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations;

[139] The appellant submits that section 14(1)(e)(ii) of the *Act* applies, because he wants to research the effectiveness of his interactions with voters during the election campaign, look for patterns of voter turnout, and measure the effectiveness of his interaction with voters through various mediums to see how voting patterns in neighbourhoods were affected by his efforts.

[140] The section 14(1)(e) exception only applies if the disclosure of the personal information is for a "research purpose." If that preliminary requirement is met, paragraphs (i), (ii), and (iii) must also be satisfied for section 14(1)(e) to apply.³⁵ Previous IPC orders have adopted the definition of the term "research" from section 2 of the *Personal Health Information Protection Act (PHIPA)*, which states:

"research" means a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them, and includes the development, testing and evaluation of research.³⁶

[141] Based on this definition and the appellant's representations, I find that the

privacy exemption for the actual voters spreadsheet because it does contain the appellant's personal information.

³⁵ Order MO-3050.

³⁶ Orders PO-2693 and PO-2694.

appellant is not seeking the actual voters spreadsheet or the ballot spreadsheet for a "research purpose," because he is not requesting disclosure of the withheld personal information in these two spreadsheets to conduct a systematic investigation of the nature defined in past IPC orders, but rather for a personal purpose, which is the effectiveness of his campaign efforts as a candidate in the municipal election. Accordingly, I find that the section 14(1)(e) exception does not apply to the personal information at issue in these two spreadsheets.

Section 14(3)(e) presumption

[142] The city argues that the section 14(3)(e) presumption against disclosure applies to the information contained in the actual voters spreadsheet and the ballot spreadsheet, while the appellant argues that it does not.

[143] The section 14(3)(e) presumption applies to personal information obtained on a tax return or gathered for the purpose of collecting tax.

[144] The city submits that the presumption at section 14(3)(e) applies to the information in the actual voters spreadsheet and the ballot spreadsheet, because the information was originally "obtained on a tax return or gathered for the purpose of collecting a tax." The city submits that the MPAC is responsible for preparing the preliminary list of electors for each municipality and school board in Ontario. It submits that it is MPAC's Municipal Property Assessment database of property owners and tenants that is used to prepare this preliminary list, which aids in the preparation of the final voters' list. The city argues, therefore, that disclosure of the information at issue is presumptively an unjustified invasion of personal privacy because it was originally gathered for tax related purposes.

[145] The appellant submits that the section 14(3)(e) presumption does not apply to the personal information contained in the actual voters spreadsheet and the ballot spreadsheet. While the appellant concedes that some of the withheld personal information in the actual voters spreadsheet and the ballot spreadsheet did come from MPAC, he argues that not all of it came from MPAC. The appellant argues that there is no explicit tax information contained in these two spreadsheets, but he concedes that the record contains the school district, address, and identity of the resident.

[146] The actual voters spreadsheet contains the following information about each voter on the list: the voter's full name, address, ward, voter ID number, residency, type of occupancy, school designation, the date the voter attended a polling station and received a ballot, and which polling station the voter attended.

[147] The ballot spreadsheet contains the following information about each voter on the list: the voter's full name, address, ward, voter ID number, residency, type of occupancy, school designation, citizenship, French language designation, and vote time (time and date the voter voted).

[148] I accept that most of the information contained in the actual voters spreadsheet and the ballot spreadsheet was provided to the city by MPAC³⁷ to create the voters' list under the *MEA*. I further accept that this information is from MPAC's property assessment database, and it was collected by MPAC for the purposes of collecting property tax. Therefore, I find that the section 14(3)(e) presumption against disclosure applies to some of the information contained in the actual voters spreadsheet and the ballot spreadsheet.

[149] While the vote date, time, polling station, and the date the voter attended a polling station and received a ballot were not provided by MPAC, I find that severing everything in these two spreadsheets except for this information would render this disclosure meaningless under the *Act*.³⁸ Accordingly, this information³⁹ is no longer at issue in this appeal.

Ballot spreadsheet conclusion

[150] In reviewing the mandatory personal privacy exemption in section 14(1), once a section 14(3) presumption has been established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies. I have found that the section 14(3)(e) presumption applies to some of the withheld personal information in the ballot spreadsheet, and that none of the exceptions in section 14(4) apply in the circumstances of this appeal. I note that neither party raises any of the exceptions to presumptions found at section 14(4). The parties also did not argue that the "public interest override" at section 16 applies to the personal information at issue, and I am satisfied that it does not. Therefore, I find that the mandatory personal privacy exemption at section 14(1) applies to the withheld personal information in the ballot spreadsheet, and it is exempt from disclosure.

Section 14(2) factors

[151] The discretionary exemption under section 38(b) recognizes that a requester has a greater right of access to a record that contains their personal information. In deciding whether the disclosure of the personal information in the actual voters spreadsheet would be an unjustified invasion of personal privacy under section 38(b), I must consider and weigh the section 14(3) presumptions with the factors in section 14(2), and balance the interests of the parties.⁴⁰ Therefore, my finding that the section 14(3)(e) presumption applies to the actual voters spreadsheet does not end my analysis. I will consider, weigh,

³⁷ Section 19(1) of the *MEA*.

³⁸ Section 4(2) of the *Act* requires that institutions disclose as much of a record as "can reasonably be severed without disclosing the information that falls under one of the exemptions." However, the IPC has found that the duty to sever does not apply where non-exempt information is so intertwined with exempt information that any disclosure would result in the release of only "disconnected snippets," or of information that is "worthless," "meaningless," or "misleading:" see Order PO-1663, followed in numerous IPC orders.

³⁹ The vote date, time, polling station, and the date the voter attended a polling station and received a ballot.

⁴⁰ Order MO-2954.

and balance the relevant factors in sections 14(2) and the interests of the parties, in considering whether the disclosure of the actual voters spreadsheet would result in an unjustified invasion of the other identifiable individuals' personal privacy.

[152] The city argues that the factors at sections 14(2)(f) (highly sensitive), 14(2)(g) (inaccurate or unreliable information), and 14(2)(i) (unfair damage to reputation) apply to the actual voters spreadsheet. These factors weigh against disclosure of the personal information in the actual voters spreadsheet, if they are found to apply.

[153] The appellant did not argue any section 14(2) factors that weigh in favour of disclosure, and he did not comment on the city's section 14(2) representations.

[154] Sections 14(2)(f), (g), and (i) state:

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

(f) the personal information is highly sensitive;

(g) the personal information is unlikely to be accurate or reliable;

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

[155] The city argues that the section 14(2)(f) (highly sensitive) factor applies to weigh against disclosure of the actual voters spreadsheet in this appeal. In order for section 14(2)(f) to apply, the personal information at issue must be considered to be highly sensitive, which means there must be a reasonable expectation of significant personal distress if the information were disclosed.⁴¹

[156] The city submits that the actual voters spreadsheet contains the voting information of all Ward 6 voters who voted in the election. The city submits that this information is highly sensitive because it can be used to identify residents who did not attend a polling station to receive a ballot, which would reveal which Ward 6 residents did not vote.

[157] Based on the circumstances of this appeal, I find that the withheld personal information in the actual voters spreadsheet is highly sensitive and section 14(2)(f) applies to it. Given that the actual voters spreadsheet contains the voter information of tens of thousands of Ward 6 voters, including whether or not they attended a polling station to obtain a ballot, I agree that its disclosure could be reasonably expected to cause significant personal distress to the residents whose personal information is contained in the spreadsheet. Accordingly, I find that the factor in section 14(2)(f) applies to the personal information in the actual voters spreadsheet and weighs against its

⁴¹ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

disclosure.

[158] I also considered whether any other unlisted factors favouring disclosure, such as inherent fairness issues, apply, and I find that none apply in the circumstances of this appeal.

Actual voters spreadsheet conclusion

[159] I have found that the presumption against disclosure at section 14(3)(e) and the section 14(2)(f) (highly sensitive) factor apply to weigh against disclosure of the actual voters spreadsheet. As no factors, listed or unlisted, weighing in favour of disclosure apply, I do not need to consider whether all the other section 14(2) factors argued by the city weighing against disclosure apply to the actual voters spreadsheet.

[160] Balancing the interests of the parties, the facts of this appeal weigh against disclosure of the withheld personal information in the actual voters spreadsheet. I find that disclosure of the actual voters spreadsheet would constitute an unjustified invasion of the personal privacy of tens of thousands of Ward 6 voters whose personal information is contained in the spreadsheet. Therefore, I find that the withheld personal information in the actual voters spreadsheet is exempt from disclosure under the discretionary personal privacy exemption at section 38(b) of the *Act*.

[161] Since the section 38(b) exemption is discretionary, and would permit the city to disclose information, even though it could withhold it, I considered the city's exercise of discretion. Based on the circumstances of this appeal, I am satisfied that the city considered relevant factors and did not appear to consider irrelevant factors in exercising its discretion. I am satisfied that the city properly exercised its discretion to withhold the personal information of Ward 6 voters in the actual voters spreadsheet from the appellant under section 38(b) of the *Act*.

Conclusion

[162] In conclusion, I find that the section 14(1)(d) exception applies to the eligible voters spreadsheet and it is not exempt from disclosure under section 38(b) of the *Act*. However, I uphold the city's decision to withhold the actual voters spreadsheet under section 38(b) and the ballot spreadsheet under section 14(1) of the *Act*.

ORDER:

1. I uphold the city's decision to withhold the actual voters spreadsheet and the ballot spreadsheet under the personal privacy exemptions at sections 14(1) and 38(b).
2. I order the city to disclose the eligible voters spreadsheet in its entirety to the appellant by **March 28, 2025** but not before **March 24, 2025**.

3. In order to verify compliance with order provision 2, I reserve the right to require the city to provide me with a copy of the spreadsheet disclosed to the appellant.

Original Signed by: _____

Anna Truong
Adjudicator

February 21, 2025 _____