

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4770

Appeal MA23-00709

City of Toronto

February 23, 2026

Summary: The City of Toronto received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for all permits and permit drawings relating to a specified address. After the city decided to grant full access to the records requested, a party with an interest in those records appealed that decision on the basis that the records should have been withheld in their entirety under the mandatory exemption for third party information (section 10(1)).

In this order, the adjudicator finds that none of the information in the records is exempt from disclosure because the appellant did not have a reasonable expectation that the permits and permit drawings would be kept confidential. She upholds the city's decision to disclose the records in full to the requester and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 8(1)(i) and 10(1).

Orders Considered: IPC Order MO-2735.

OVERVIEW:

[1] The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for all permits and permit drawings relating to a specified address.

[2] The city notified the affected party of the request, seeking its view regarding disclosure of the responsive records. The affected party objected to the disclosure of the

records. The city issued an access decision to the affected party and the requester, advising them of its decision to grant the requester full access to the responsive records. The affected party (the appellant) appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC), on the basis that the records should be withheld pursuant to section 10(1) of the *Act* (third party information).

[3] Mediation did not resolve the appeal, so the appeal was moved to the adjudication stage, where an adjudicator may conduct an inquiry. I decided to conduct an inquiry and sought representations from the city, the appellant, and the requester. The city and appellant provided representations in response,¹ and the requester confirmed that he continued to seek access to the records at issue.

[4] In their representations, the appellant raised the possible application of the discretionary exemption in section 8 (law enforcement) to the records at issue.

[5] For the reasons that follow, I do not allow the appellant to raise the discretionary exemption at section 8. I find that the mandatory exemption for third party information has not been established and I uphold the city's decision to disclose the records in full to the requester. I dismiss the appeal.

RECORDS:

[6] The records at issue consist of 516 pages of building plans and drawings, including site plans, floor plans, traffic design plans, parking plans, excavation and shoring drawings, cross-sections, and elevations.

PRELIMINARY ISSUE:

[7] In their representations, the appellant states, for the first time, that the discretionary exemption in section 8 may apply to the records. Beyond this bare assertion, the appellant did not provide their reasons for believing that section 8 applied. The appellant also did not specify whether section 8(1) or 8(2) applies, or which subsection(s) of 8(1) or 8(2) the records fell under.

[8] The *Act* contains both mandatory and discretionary exemptions. A mandatory exemption indicates that a head "shall" refuse to disclose a record if the record qualifies for exemption. A discretionary exemption uses the permissive "may." The legislature expressly contemplated that the head of the institution is given the discretion to claim, or not to claim, discretionary exemptions such as those set out in section 8.

[9] Many IPC orders have considered the issue of whether a party other than an

¹ These representations were shared in accordance with the IPC's *Code of Procedure*.

institution can claim a discretionary exemption.² These orders have found that, as the purpose of discretionary exemptions is to protect institutional interests, it is only in “the most unusual of cases” that an affected party may raise the application of a discretionary exemption that has not been claimed by an institution.³

[10] Section 8 contains several exemptions from a requester’s right of access, mostly related to the context of law enforcement. While the appellant has not specified which subsection within section 8 they believe applies to the present circumstances, it is likely that they are referring to section 8(1)(i), which states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to [...] endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required.

[11] The application of section 8(1)(i) is not restricted to law enforcement uses and can apply to any building or system which requires protection.⁴ Previous orders have upheld the application of section 8(1)(i) to building plans;⁵ others have found the evidence required to establish that section 8(1)(i) applies to a building plan insufficient, particularly for residential building plans.⁶

[12] For section 8(1)(i) to apply requires evidence about the potential for harm that demonstrates a risk of harm that is well beyond the merely possible or speculative, although it need not prove that disclosure will in fact result in such harm.

[13] As an affected party to the original request, the appellant does not have the same right to assert the application of section 8(1)(i) of the *Act* as the city does, unless they establish that “rare and unusual circumstances” exist such that they should be permitted to claim the discretionary exemption. However, the appellant’s representations focus on confidentiality. These representations do not include evidence relating to the security of the residential building complex at issue, which is necessary to establish that the section 8(1)(i) exemption would apply. On this basis, I find that the “rare and unusual circumstances” that might justify a third party raising a discretionary exemption do not exist in this case.

[14] Moreover, the appellant has provided no evidence to support a conclusion that any of the other law enforcement exemptions in sections 8(1) and 8(2) apply to the records at issue. As a result, I decline to allow the appellant to raise the discretionary exemption in section 8(1)(i) or any of the other discretionary exemptions found within sections 8(1) or 8(2). The appellant’s simple assertion that section 8 applies to the records is not a

² See Orders P-1137, PO-1705, PO-3489, PO-4632, MO-2635, and MO-2792.

³ Orders P-1137, PO-1705, MO-2635, MO-2792 and PO-3489.

⁴ Orders P-900 and PO-2461.

⁵ Orders MO-2074 and MO-3043-R.

⁶ Orders MO-2181, MO-2353, and MO-2635.

sufficient basis to permit the appellant to raise any of the discretionary exemptions found within sections 8(1) and 8(2).

DISCUSSION:

[15] The sole issue in this appeal is whether the mandatory exemption at section 10(1) for third-party information applies to the records.

[16] The purpose of section 10(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,⁷ where specific harms can reasonably be expected to result from its disclosure.⁸

[17] Section 10(1) states, in part:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

...

(c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

[18] For section 10(1) to apply, the party arguing against disclosure must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information;
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 10(1) will occur.

[19] As the parties resisting disclosure of the information at issue must satisfy the

⁷ *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

⁸ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

requirements of **all** parts of the test, the failure to satisfy any part of the test will lead to a finding that the section 10(1) exemption does not apply.

[20] For the reasons set out below, I find that section 10(1) does not apply because part 2 is not established in the circumstances of this appeal.

Part 1: type of information

Representations of the parties

[21] The appellant states that the records are effectively trade secrets whose disclosure would significantly prejudice their competitive position. The appellant describes the permit drawings as proprietary and confidential in relation to the construction project.

[22] The city states that the records describe the demolition, construction, operation and/or maintenance of the property development, including floor plans, roof plans, elevation drawings, shoring drawings and servicing drawings. Given this, the city acknowledges that the plans contain "geotechnical information belonging to an organized field of engineering knowledge that would fall under the general categories of applied sciences or mechanical arts."

Analysis and finding

[23] Technical information is information belonging to an organized field of knowledge in the applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. Technical information usually involves information prepared by a professional in the field, and describes the construction, operation or maintenance of a structure, process, equipment or thing.⁹

[24] The records at issue were prepared by engineering and architectural firms, and contain technical information related to the construction of a townhouse project. Based on my review of these records, I find that the first part of the section 10(1) test has been met.

Part 2: supplied in confidence

Supplied

[25] The requirement that the information have been "supplied" to the institution reflects the purpose in section 10(1) of protecting the informational assets of third parties.¹⁰

[26] Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate

⁹ Order PO-2010.

¹⁰ Order MO-1706.

inferences with respect to information supplied by a third party.¹¹

[27] The parties do not dispute, and I am satisfied that, the permit plans were supplied to the city by the appellant as required under section 10(1).

In Confidence

Representations of the parties

[28] The appellant states that permit drawings are filed with the city with an expectation that they will be kept confidential and will not be disclosed to other parties. In particular, the appellant states that there is an expectation that they will not be disclosed to competitors of those who file the documents.

[29] The city's position is that the appellant's belief that the building plans would only be used for the building permit application process does not amount to a reasonable expectation of confidentiality. The city notes that the appellant did not set out any expectation of confidentiality during the application process.

[30] The city states that its *Disclosure of Building Records and Plans* policy lists the entities that the city routinely discloses building plans to. These include the property's owner or management company, city councillors and their staff, and officers of the Municipal Property Assessment Corporation. The city notes that this policy states that all other requests for building records should be submitted to the city clerk's office to be processed under the *Act*. The city's position is that those submitting these records should have an expectation that the city may disclose building records, including plans.

[31] The city states that its position is consistent with previous IPC orders.¹²

Analysis and finding

[32] In order to satisfy the "in confidence" component of part two, the party resisting disclosure must establish that, as the supplier of the information, it had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.¹³

[33] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, all the circumstances of the case must be considered, including whether the information was:

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential,

¹¹ Orders PO-2020 and PO-2043.

¹² The city cites MO-2735, MO-3125, and MO-3567.

¹³ Order PO-2020.

- treated consistently by the third party in a manner that indicates a concern for confidentiality,
- not otherwise disclosed or available from sources to which the public has access, and
- prepared for a purpose that would not entail disclosure.¹⁴

[34] Based on my review of the records, the permit drawings are not marked confidential, and the appellant does not claim that they advised the city that the records at issue were confidential. Rather, the appellant's position is that parties assume that the city will keep confidential documents submitted as part of the building permit application process.

[35] The issue of whether building plans are supplied to a municipality "in confidence" has been addressed in a number of IPC Orders, including by former Commissioner Brian Beamish in MO-2735, where he stated:

While I appreciate that the building plans were submitted as part of the building permit application process, the expectation that the plans would be used for this purpose alone is not equivalent to a reasonable expectation of confidentiality. In addition, the city provided evidence that it is its practice to make building plans available to the public upon request, for a fee. Such a practice is contrary to a reasonable and objective expectation of confidentiality on the part of the appellant. Had the appellant or property owner made inquiries of the city, they would have been informed that building plans are routinely disclosed to third parties on request. [...] Finally, the building plans were not stamped Confidential or otherwise noted as having been provided in confidence. [...] While the lack of a Confidential stamp or notation is not necessarily determinative, in my view, the circumstances of this appeal, the city's routine practices and the plans themselves lead me to conclude that they were not supplied with a reasonable expectation of confidentiality.¹⁵

[36] I adopt the reasoning of former Commissioner Beamish and apply it here, where similar circumstances are present. The city has a policy under which it discloses building records to certain entities as a matter of course and advises others that they may make a request for these plans under the *Act*. The appellant has not indicated that they communicated their expectation that these documents remain confidential to the city, by way of stamping them "confidential" or otherwise. The appellant's expectation that building permits would only be used for the building permit application process is not a reasonable expectation of confidentiality, evaluated on an objective basis. Given this, I

¹⁴ Orders PO-2043, PO-2371 and PO-2497, *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

¹⁵ MO-2735 at para. 29.

find that part two of the test for the application of section 10(1) to the records at issue is not met.

[37] As the appellant has failed to establish that the information at issue was supplied in confidence, it has not met part two of the test for the application of section 10(1).

[38] All three parts of the test must be met in for section 10(1) to apply to the permit drawings. As I find that the appellant has not satisfied the second part of the section 10(1) test, the exemption does not apply to the records at issue. I dismiss the appeal.

ORDER:

1. I uphold the city's decision to disclose the records at issue to the requester and dismiss the appeal.
2. I order the city to disclose the records in accordance with their access decision by **March 30, 2026** but not before **March 25, 2026**.

Original Signed by: _____
Jennifer Olijnyk
Adjudicator

February 23, 2026