Municipal Report

Subject:	IPC Interim Order MO-3798-I
Meeting:	Council in Committee - 06 Aug 2019
Prepared For:	Council
Staff Contact:	Sue Klatt, CAO/Clerk

RECOMMENDATION:
THAT Council in Committee accept this report as information.

BACKGROUND INFORMATION:
This report is to advise Council during the July break I received an Order to comply prior to August 6, 2019. I wish to confirm I have complied on behalf of the municipality to the Interim ORDER MO 3798-I- Appeal MA 16-545.
A Freedom of Information(FOI) request was filed 2016-01 and an appeal was filed appealing that FOI.
I have attached the interim order which I received on July 10, 2019 from Templeman Meninga Ltd.

- Response to this order with attachments is to be forwarded to the adjudicator no later than August 6, 2019.
- As this subject matter references 2016, I could not justify seeking an extension for more time and therefore postponed holidays and modified staff work projects to ensure the subsequent search for records was completed.
- To ensure independence of the search, I retained our IT consultant and contract Office Administrative Assistant to perform an independent search on the old server on all the drives to ensure all emails with the subject matter relevance were captured and compared to the previous documents submitted in the previous 2 FOI searches to identify if any additional documents which had not been provided as "responsive records" or identified and categorized areas which under different act/ legislation could not be released.
- I sought the assistance of Templeman and Meninga because they were the solicitor on record in 2016 and assisted with the original 2016-01 FOI request. I asked that their office provide me with the details of the search of records index and requested a subsequent search of records/emails. Due to short timeline I also asked they compare the documents resulting from our search to determine if additional records were found

and if can/should be released with specific request to identify the act if third party or solicitor privilege is relevant.

- I drafted the following letters to: 1. the Appelant advising would not seek extension and reply by Aug.6. 2. Telephone calls and Third Party release to CAO/Clerk Craig Kelley and Bruce Beakley 3. Advised all former council members we were doing additional email and correspondence search. 4. Telephone call and Email with 3rd party release from Margaret Michaels(former consultant Workplace Investigator)

FINANCIAL IMPACT:

- Will be paid from General Legal account:
- Invoice from IT Consultant for days of audit to drives on the "old server" which would have been in service between January 2016 and July 2016 as well as her time to oversee the record search process from the Administrative Office Assistant
- Time for Administrative Office Assistant.
- Invoice from Templeman Meninga- requested an audit of emails and correspondence be performed and a record of index identifying if there were any new records previously not released.
- CAO/Clerk time to catalogue, compare and prepare record of index(CAO/Clerk employment contract includes 70hr overtime maximum which had been previously reached as this is a salaried position)
- Compile and prepare a new record of index.

POLICY IMPLICATIONS:
none

ALTERNATIVES:
none

ATTACHED:
Interim Order04July19

Information and Privacy Commissioner,
Ontario, Canada

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

INTERIM ORDER MO-3798-I

Appeal MA16-545

The Corporation of the Township of Madawaska Valley

July 4, 2019

Summary: The appellant, a former employee of the township, made a request to the township under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to complaints that she had made to the township, and for her personnel records. In response, the township disclosed a number of records but denied access to others, including under section 52(3) (exclusion for labour relations and employment records), section 38(a) in conjunction with section 6(1)(b) (closed meeting records), and section 38(b) (personal privacy) of the *Act*. The appellant appealed the township's denial of access and the reasonableness of its search for records. In this interim order, the adjudicator finds that the appellant's rights of access to records and of appeal under the *Act* are not affected by a settlement reached by the parties in an outside proceeding. She upholds the township's denial of access to five records based on the grounds claimed by the township. However, she finds that the township's search for records was unreasonable, including because it failed to identify and to make a decision on access in respect of certain categories of records that are reasonably related to the appellant's request. She orders the township to conduct another search for responsive records.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56, sections 2 (definitions), 6(1)(b), 14, 17, 22, 38(a) and (b), and 52(3) and (4); *Municipal Act, 2001,* SO 2001, c.25, section 239(2).

Orders and Investigation Reports Considered: Orders PO-2520 and PO-2368.

Cases Considered: *Ontario (Correctional Services) v. Goodis,* 2008 CanLII 2603 (ON SCDC).

OVERVIEW:

[1] The appellant had been an employee of the Corporation of the Township of Madawaska Valley (the township). During her time as a township employee, the appellant made a complaint to the township about the conduct of a particular township councillor toward her at a public meeting. Among other things, the appellant alleged that the councillor's conduct amounted to a violation of her rights under the Ontario *Human Rights Code*. The appellant later made a second complaint to the township about an alleged incident of reprisal as a result of her complaint about the councillor. These allegations were the subject of various proceedings, including an investigation by an external consultant engaged by the township, a referral to an integrity commissioner, and an application by the appellant to the Human Rights Tribunal of Ontario (the HRTO).

[2] While some of these proceedings were ongoing, the appellant made a request to the township under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to these matters. Specifically, the appellant requested access to the following records:

1. Relating to my Complaint against [a named councillor] about his behaviour towards me at a meeting of [specified committee] dated [specified date], 2016.

2. Relating to my Complaint about the alleged impropriety of my travel expenses for a trip to [specified location] raised at [another specified committee meeting in 2016] and reported in [specified newspaper] on [a specified date], 2016.

3. My Personnel File

   Without limiting the generality of the foregoing, these records should include all relevant Minutes including minutes, or other record of in camera meetings, correspondence including emails, internal memoranda and emails, and audio recordings.

[3] The specified time period for the search for responsive records was January 12, 2016 to July 11, 2016.

[4] The township identified 29 records responsive to the request, and issued a decision granting access to 24 records, while denying access to five records. In denying access to the five records, the town relied on exemptions at sections 7(1) (advice and recommendations) and 12 (solicitor-client privilege) of the *Act*. With its decision, the township provided an index of records, setting out a general description of each record and its decision on access for each one. The township also set out a fee of $67.50 for search, preparation and photocopying of responsive records.

[5] The appellant appealed the township's decision to this office. During the mediation stage of the appeal process, the appellant took the position that there exist additional responsive records. The township then located additional records, and disclosed some of these to the appellant, along with a supplementary index of records. The township cited

exemptions at sections 6(1)(b) (closed meeting records), 7(1), 12 and 14 (personal privacy) of the *Act* in withholding some of the records. The township took the positon that there are no other responsive records beyond those already identified.

[6] The appellant maintained that additional records must exist. In response, the township issued a letter to the appellant, advising her that records that post-date her request are not responsive to the request, and that all responsive records have been located and identified in the supplementary index of records. The township also took the position that records from a specified law firm are not records of the institution. Finally, the township stated that it would provide the appellant with an affidavit with respect to its search for responsive records and, after some delay, it did.

[7] Also during the mediation process, the township amended its exemption claims to take into account that the appellant is seeking access to her own personal information. As a result, sections 38(a) and (b), which are discretionary exemptions permitting an institution to refuse to disclose a requester's own personal information, were added to the appeal. The township also decided to waive all fees for the responsive records.

[8] At the end of mediation, the appellant continued to assert that there exist additional records responsive to her request. In addition, while she withdrew her appeal in respect of records withheld under sections 7(1) and 12 of the *Act*, she continued to seek access to those records withheld under section 38(a), in conjunction with section 6(1)(b), and under section 38(b) (personal privacy) of the *Act*.

[9] As no further mediation was possible, the file was moved to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*. During the inquiry process, this office sought representations from the township and the appellant, and from two affected parties. The possible application of the *Act*'s exclusion for labour relations and employment records at section 52(3) was added as an issue in the appeal. The township, the appellant and one affected party provided representations, which were exchanged on the consent of the parties and in accordance with this office's Practice Direction 7.

[10] The appeal was transferred to me during the inquiry process.

[11] At this stage, legal counsel for the township contacted this office to inform the adjudicator of a settlement reached between the township, the appellant and another party in the HRTO proceeding commenced by the appellant. Based on the terms of that settlement, the township asked that the appeal be discontinued. As described in more detail below, I declined the township's request on the basis that the agreement reached between the parties in that other proceeding has no effect on the appellant's rights under the *Act*, including her right of access to the records at issue.

[12] In this interim order, I uphold the township's decision to withhold four sets of meeting minutes, either on the basis of the exclusion at section 52(3) of the *Act* or the discretionary exemption for closed meeting records at section 38(a) in conjunction with section 6(1)(b) of the *Act*. I also uphold the township's decision to withhold a fifth record

on the basis of the discretionary personal privacy exemption at section 38(b). I find, however, that the township's search for responsive records was deficient, including because of its flawed interpretation of its obligations under the *Act*. I order the township to conduct another search to identify all records responsive to the appellant's request, and to provide the appellant with a decision on access to any responsive records that it did not identify previously.

RECORDS:

[13] The records remaining at issue are numbered Records 32, 33, 34, 35 and 53 in the township's Supplementary Index of Records.

[14] Records 32-35 are minutes of *in camera* (closed) sessions of township council.

[15] Record 53 is a letter from a named individual to the township's then-Chief Administrative Officer (CAO). Although the Supplementary Index of Records misidentifies the author and the recipient of this record, the township corrected this error at the outset of the inquiry, and the appellant was made aware of the correction.

ISSUES:

Preliminary Matter—Effect on this appeal of settlement reached in other proceeding

A. Does the exclusion for labour relations and employment records at section 52(3) of the *Act* apply to Records 32, 33, 34 and 35?

B. Do any of the records contain "personal information" as defined in section 2(1) of the *Act*, and, if so, to whom does it relate?

C. Does the discretionary exemption for closed meeting records at section 38(a) of the *Act*, in conjunction with section 6(1)(b), apply to Records 32, 33 and 35? If so, should this office uphold the township's exercise of discretion?

D. Does the discretionary personal privacy exemption at section 38(b) of the *Act* apply to Record 53? If so, should this office uphold the township's exercise of discretion?

E. Did the township conduct a reasonable search for responsive records? What records are responsive to the request?

DISCUSSION:

Preliminary Matter—Effect on this appeal of settlement reached in other proceeding

[16] During the inquiry process, legal counsel for the township wrote to this office to request that this appeal be discontinued in light of a settlement reached by the parties in

an HRTO proceeding brought by the appellant against the township and another individual respondent. The township provided a redacted version of Minutes of Settlement executed between the parties to show that the settlement contains a clause that it described as a "full and final legal release of all claims," including (the township claims) the appellant's appeal to this office.

[17] In light of the township's request, I sought the appellant's views on the impact of the settlement reached in that other proceeding on the appeal before this office. The appellant took the position that this appeal is unaffected by the settlement because the release bars potential claims relating to the events that gave rise to the application, and does not bar existing claims (of which this appeal is one). The appellant confirmed her interest in pursuing the appeal.

[18] I found it unnecessary to address the dispute between the parties about the scope of the release contained in the agreement between them, because I concluded that, whatever its scope, the release cannot disentitle the appellant to her rights of access under the *Act*.

[19] This office has expressly rejected the notion that parties may "contract out" of access-to-information legislation, including by way of an agreement signed by parties to an appeal in order to settle other proceedings. In Order PO-2520, Adjudicator John Higgins considered, and rejected, an institution's arguments regarding the effect of such an agreement on the access regime established by the *Act*'s provincial counterpart, the *Freedom of Information and Protection of Privacy Act* (*FIPPA*):

> The College's arguments in this regard may be summarized as follows: (1) it is possible to "contract out" of [*FIPPA*] in a document such as the Minutes of Settlement; (2) such "contracting out" either removes the record from the scope of [*FIPPA*] and/or from the scope of the Commissioner's authority; (3) the College did, in fact, "contract out" of [*FIPPA*] via the Minutes of Settlement in this case, and (4) in the alternative, the College appears to argue that the Commissioner should somehow enforce the Minutes of Settlement. As outlined below, I reject arguments (1), (2) and (4), and it is therefore not necessary to resolve argument (3).
>
> Section 10(1) [setting out the right of access in *FIPPA*] creates an express and unambiguous right of access to records "in the custody or under the control" of an institution such as the College, subject to exceptions that do not include the provision of a contract. In my view, therefore, [*FIPPA*] applies in the circumstances of this appeal regardless of the contents of any agreement to the contrary, and the right of access in section 10(1) must be decided within the four corners of the statute. The Commissioner's authority is unaffected. If the Minutes of Settlement ending the grievance in this case in fact include an express provision contracting out of the right of access created by [*FIPPA*] (and I expressly decline to find that they do), any violation of that provision would be a matter of contract law, employment law or labour law, and enforceable in that context. ... There is nothing in

[*FIPPA*] or the Minutes that would empower the Commissioner or her delegates to, in effect, enforce the Minutes of Settlement.

[20] The principle that parties may not contract out of the provisions of access-to-information legislation has been upheld by the courts,[1] and consistently applied by this office.[2] I concluded that the agreement reached between the parties in an outside proceeding has no effect on the appellant's rights under the *Act*, including her rights of access and to appeal the township's decision to this office. I also stated that any dispute between the parties about compliance with or enforcement of the agreement is outside the purview of this office.

[21] Legal counsel for the township responded to my decision by maintaining that the settlement reached in the HRTO proceeding imposes a legal obligation on the appellant to abandon her appeal under the *Act*. Additionally, the township took the position that the settlement's obligation on the parties to maintain strict confidentiality with respect to the HRTO matter imposes a serious limitation on its ability to participate in the appeal. This is because, in the township's submission, the issues raised by the appellant in her application to the HRTO are not severable from many of the issues in the appeal before this office. The township thus asked that I strike from consideration in this appeal any representations from the appellant that were not received by the township before the date of the settlement, as the township could be hampered by the settlement's confidentiality terms from providing a proper response.

[22] I did not accept these further arguments from the township. I observed that the appeal before this office concerns the township's denial of access to five records on the basis of various sections of the *Act*, and the reasonableness of the township's search for records. These are records responsive to the appellant's request for records relating to complaints made by the appellant to the township, and for her personnel records. Although I accepted that a portion of the appellant's request refers to her complaint about an incident that gave rise to her HRTO application, I found no basis for limiting the appellant's statutory rights under the *Act* because of the subject matter of her request.

[23] As a result, I maintained my decision to continue the inquiry in this appeal. However, to the extent the township believed that it would be unable to make full reply on the specific issues in the appeal due to its obligations under the settlement agreement, I invited the township to indicate so in its representations, clearly identifying where and why this was the case.

[24] In its response to me, the township reiterated its position that the appellant's failure to discontinue the appeal is a breach of the settlement. The township agreed, however, that the HRTO is the proper body to adjudicate that claim. Furthermore, in spite

---

[1] Among others, see *St. Joseph Corp. v. Canada (Public Works and Government Services)*, 2002 FCT 274 (CanLII); *Brookfield Lepage Johnson Controls Facility Management Services v. Canada (Minister of Public Works and Government Services)*, 2003 FCT 254 (CanLII); *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, 2004 CanLII 11768 (ON SCDC), affirmed 2005 CanLII 34228 (ON CA), application to Supreme Court of Canada for leave to appeal dismissed [2005] SCCA No. 563.
[2] Among others, see Orders PO-2917, PO-3009-F, PO-3327 and MO-2833.

of its position, the township provided reply representations on the issues in the appeal (namely, the application of sections 52(3), 38(a) and (b), and 6(1)(b) of the *Act* to the records, and the reasonableness of the township's search for records), identifying only one area in which it felt constrained from making further submissions because of the terms of the settlement. As will be seen below, I am able to make a determination on that issue (and on all the other issues in the appeal) without the benefit of those further submissions from the township.

[25] I maintain my decision (made during the inquiry stage) that the agreement reached between the parties in an outside proceeding does not prevent me from deciding the issues in an appeal under the *Act*. In the discussion that follows, I consider each of the substantive issues raised in this appeal.

A. Does the exclusion for labour relations and employment records at section 52(3) of the *Act* apply to Records 32, 33, 34 and 35?

[26] The township claims that Records 32, 33, 34 and 35 are excluded from the operation of the *Act* by virtue of section 52(3). This section states:

> Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> 1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
>
> 2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
>
> 3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[27] If section 52(3) applies to the records, and none of the exceptions found in section 52(4) applies, then the *Act* does not apply to those records.

[28] Records 32, 33, 34 and 35 are minutes of *in camera*, or closed session, components of meetings of township council on four separate dates. These minutes indicate that during regular council meetings on each of these dates, council moved into closed session and discussed a number of items. During each of these closed sessions, council discussed matters relating to the appellant in the context of her role as an employee of the township.

[29] In all but one of the records, discussion of the appellant's matter is only one of a

number of items addressed during the closed session. This means that in Records 32, 33, and 35, the township's exclusion claim appears to be limited to the portion of each record addressing the appellant's matter, and not to the remainder of each record that documents council's *in camera* discussions of other, unrelated topics. However, as previous orders of this office have found, the exclusions at section 52(3) of the *Act* (and the equivalent section in the *Act*'s provincial counterpart) are record-specific and fact-specific.[3] This means that in order to qualify for an exclusion, the record is examined as a whole. The question is whether the record, as a whole, was collected, prepared, maintained or used by or on behalf of the institution in relation to an excluded purpose, so as to qualify for the claimed exclusion.

[30] Applying this approach, a number of recent orders of this office have rejected the claim that an exclusion can apply to a record in part.[4] I observed in Order PO-3642 that this whole-record-based approach is consonant with the language of the exclusions, which applies to "records" that meet the relevant criteria. It also corresponds to the legislature's decision not to incorporate into the public sector freedom-of-information statutes a requirement for the severance of excluded records, in contrast to their treatment of records subject to exemptions.[5] If the legislature had intended that the exclusions in the *Act* be applicable to records in part, it could have said so explicitly, as it did in its health sector-specific privacy and access legislation.[6]

[31] Applying the whole-record-based approach in the case before me, I conclude that section 52(3) cannot apply only to the portions of Records 32, 33 and 35 that address the appellant's matter. The township has not claimed that any of those records would qualify, in whole, for any of the exclusions, and based on the varied nature of the discussions reflected in each of the records, I am not satisfied on my own review that any of these records would qualify for exclusion under the *Act*. I therefore reject the township's exclusion claim for these records. I will consider the township's alternative exemption claim for these records under Issue C, below.

[32] Record 34 is different from the others, because it documents only one topic of discussion in closed session—namely, discussion of the appellant's employment matter. I find that unlike the other records, Record 34 satisfies the whole-record-based test of having been collected, prepared, maintained or used, in its entirety, by the township "in relation to" one of the excluded subjects enumerated in section 52(3). Specifically, I am satisfied that Record 34 was prepared by the township to document its closed session discussions about matters relating to the appellant's employment with the township. This satisfies both the test of connection between the record's preparation and the meeting or discussions, and the requirement that those discussions be about employment-related matters in which the township has an interest. As a result, I find that Record 34 is excluded from the scope of the *Act* by virtue of paragraph 3 of section 52(3).

---

[3] Among others, see Orders M-797, P-1575, PO-2531, PO-3572 and PO-3642.
[4] See, for example, Orders MO-3163, PO-3572, PO-3642, Order PO-3893-I and PO-3943.
[5] Section 4(2) of the *Act*, and section 10(2) of *FIPPA*.
[6] Section 51(2) of the *Personal Health Information Protection Act, 2004*.

[33] The appellant states that section 52(3)3 cannot apply because the township councillor who was the subject of her complaint was contractually bound to observe the township's human resources policy, and that this raises the possibility of the township's being found vicariously liable for his acts. She suggests that her situation is analogous to the one considered by the Divisional Court in *Ontario (Ministry of Correctional Services) v. Goodis*,[7] a decision cited in the Notice of Inquiry's guidance on this topic.

[34] In that decision, the court found, among other things, that the exclusion (in the provincial statute's equivalent to section 52(3) of the *Act*) is not so broad as to apply simply because an institution is alleged to be vicariously liable for the actions of its employees. The court recognized that such an interpretation would potentially exclude a large number of records from the operation of freedom-of-information legislation, and thus undermine such legislation's public accountability purposes. Instead, the court explained, the type of records excluded from the *Act* by section 52(3) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees' actions.[8]

[35] There is no claim here that the labour relations and employment exclusion applies because of the township's potential liability in relation to the actions of the councillor. Instead, the exclusion claim is clearly raised on the basis of the record's connection to matters relating to the appellant as an employee of the township, not to any actions of the councillor. The principle relied upon by the appellant has no relevance to the facts here.

[36] The appellant also argues that the following exception at paragraph 4 of section 52(4) applies:

> This Act applies to [...] [a]n expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment.

[37] This is because one component of the complainant's request is for records relating to her complaint about an allegation of impropriety in her travel expenses. While records responsive to this portion of the request would relate to the appellant's travel expenses, the plain language of section 52(4)4 makes it clear that the exception applies only to records in the particular form of an "expense account" (and that meet the other conditions of that paragraph). Record 34, a record of closed session discussions of township council about employment-related matters involving the appellant, does not qualify as an expense account within the meaning of this exception.

[38] I am also satisfied that none of the other exceptions in section 52(4) applies to the record.

---

[7] 2008 CanLII 2603 (ON SCDC).
[8] *Goodis*, cited above, at para 23.

[39] As I conclude that Record 34 is excluded from the scope of the *Act* under section 52(3)3, the appellant has no right of access to this record under the *Act*. (Of course, the township can disclose the record outside the *Act*'s process, if it so chooses.)

B. Do any of the records contain "personal information" as defined in section 2(1) of the *Act*, and, if so, to whom does it relate?

[40] For each of the records remaining at issue (namely, Records 32, 33, 35 and 53), it is necessary to decide whether each record contains "personal information" and, if so, to whom it relates. That term is defined at section 2(1) of the *Act*, which states, in part:

> "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,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual[.]

[41] 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.[9]

[42] Sections 2(2.1) and (2.2) also relate to the definition of personal information. These sections state:

> (2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[43] The parties agree that the records contain the appellant's personal information within the meaning of the *Act*.

[44] Records 32, 33 and 35 are records of closed session discussions of township council on a number of issues, including matters relating to the appellant. These records contain or reveal information about the appellant, including her employment history and views or opinions of other individuals about the appellant. The disclosure of the appellant's name in the context of these records would also reveal other personal information about her—including, namely, that she was the subject of council discussions on matters relating to her employment with the township. All this information qualifies as the appellant's personal information within the meaning of paragraphs (b), (g) and (h) of the definition at section 2(1) of the *Act*.

[45] Record 53 is a letter of complaint about the appellant from a member of the public that was sent to the township's then-CAO. This record contains information about the appellant's marital status, the views and opinions of the record's author about the appellant, and the particulars of the complaint against the appellant. This qualifies as the appellant's personal information within the meaning of paragraphs (a), (g) and (h) of the definition at section 2(1).

[46] All these records also contain the personal information of individuals other than the appellant. This includes, in Records 32, 33 and 35, council's discussion of matters involving other members of the public, such as property matters and receipt of correspondence from particular individuals. Record 53 contains information about the record's author, including her address and telephone number, her personal opinions and views, and the basis for her complaint about the appellant. It also contains references to a third individual and a township councillor. All these records contain personal information of these other individuals (who are, namely, various members of the public, the author of Record 53, and the third party named in the letter of complaint that is Record 53) within the meaning of paragraphs (d), (e), (g) and (h) of the definition at section 2(1) of

[9] Order 11.

the *Act*.

[47] The appellant argues that the information about the author in Record 53 is not personal information of the author under paragraph (f) of section 2(1), which refers to private or confidential correspondence sent to an institution by an individual. Among other reasons, the appellant submits that a complaint made by an individual against another person carries with it an implied understanding that the identity of the complainant and nature of the complaint will be communicated to the subject of the complaint.

[48] Directly above, I found that Record 53 contains the personal information of the record's author under various paragraphs of the definition at section 2(1) of the *Act*. I find it unnecessary to decide here whether Record 53 also qualifies as the author's personal information under paragraph (f). Under Issue D, below, I will consider the parties' arguments about whether disclosure of Record 53 would constitute an unjustified invasion of the personal privacy of the record's author.

[49] All the records also contain references to named council members, or to members of township staff by their titles. Some of these are clearly references to these individuals acting in their professional roles. This is the case, for example, where the records identify by name each councillor who moved or seconded a procedural motion during a council meeting, and where the records describe the positions taken by particular township councillors and staff on issues under consideration at council meetings. This type of information is about the councillors and staff members in their professional or official capacities, and falls within the exception to the definition of "personal information" at section 2(2.1) of the *Act*.

[50] Finally, some of the records contain references to the councillor who was the subject of the appellant's complaint to the township. These include descriptions of the views and opinions this councillor expressed on the topic of the appellant's matter during some closed session meetings, and a reference to the councillor in the letter of complaint that is Record 53. Given his particular connection to the matter, it is arguable that these references to the councillor, although identifying him in his professional capacity, could nonetheless qualify as his personal information. This office has recognized that information relating to an individual in his professional, official or business capacity may still qualify as personal information if it reveals something of a personal nature about the individual.[10] In some previous orders, for example, this office found that allegations of professional misconduct against employees were those employees' personal information.[11]

[51] In this particular appeal, I find that I am able to make determinations on the records without having to decide whether any of the information in them qualifies as this particular councillor's personal information. On this basis, I decline to make a finding on this issue.

---

[10] Orders P-1409, R-980015, PO-2225 and MO-2344.
[11] Among others, see Orders M-642, MO-1753 and PO-1912.

[52] In summary, I find that all the records remaining at issue contain the appellant's personal information, and also contain the personal information of other individuals. Under the next headings, I will consider the township's claims for withholding the records under the relevant discretionary exemptions of the *Act*.

C. Does the discretionary exemption for closed meeting records at section 38(a) of the *Act*, in conjunction with section 6(1)(b), apply to Records 32, 33 and 35? If so, should this office uphold the township's exercise of discretion?

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

[54] Section 38(a) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information [...] if section 6, 7, 8, 8.1, 8.2, 9, 9.1, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information[.][12]

[55] Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.[13]

[56] Where access is denied under section 38(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information. If I find that the withheld records of the appellant's own personal information are exempt from disclosure under section 38(a), I will go on to examine the township's exercise of discretion in doing so.

[57] In this case, the township relies on section 38(a) in conjunction with section 6(1)(b) to withhold Records 32, 33 and 35 in full. Section 6(1)(b) states:

> A head may refuse to disclose a record [...] that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

[58] For this exemption to apply, the institution must establish that:

1. a council, board, commission or other body, or a committee of one of them, held a meeting;

---

[12] This is the current version of section 38(a), containing an amendment introduced after the date of the appellant's request. This amendment has no bearing on the issues in this appeal.
[13] Order M-352.

2. a statute authorizes the holding of the meeting in the absence of the public; and

3. disclosure of the record would reveal the actual substance of the deliberations of the meeting.[14]

[59] Section 6(1)(b) is not intended to protect records merely because they refer to matters discussed at a closed meeting. For example, it has been found not to apply to the names of individuals attending meetings, and the dates, times and locations of meetings.[15]

[60] The first and second parts of the test for exemption under section 6(1)(b) require the institution to establish that a meeting was held by the institution and that it was properly held *in camera*.[16]

[61] I am satisfied that the first two parts of the test have been met. The records clearly indicate that they were created to document meetings of township council held on specified dates, and that the portions of these meetings captured in the records were closed to the public under the authority of the *Municipal Act, 2001*—specifically, in reliance on particular exceptions in section 239(2) of that act that permit council to close a meeting or part of the meeting to the public in order to consider specified subject matters. Each record reproduces the resolution identifying the subject matters to be discussed in closed session and the corresponding authorizing sections of the *Municipal Act, 2001*; in each case, the resolution was passed in open session before the commencement of *in camera* discussions, as required by the *Municipal Act, 2001* and the relevant township procedural by-law. The records also confirm that the discussions in closed session were about the specific subject matters described in the resolutions to go into closed session, and not about other, unauthorized, matters.

[62] The third part of the test requires that disclosure of the record would reveal the actual substance of the deliberations that took place during the *in camera* meeting, and not merely the subject of the deliberations.[17] "Deliberations" refers to discussions conducted with a view towards making a decision.[18]

[63] Records 32, 33 and 35 contain detailed summaries of council's closed session discussions of the various subject matters identified in each open session resolution to move into closed session. I am satisfied that disclosure of these records would reveal the actual contents of the discussions that were authorized to be held in closed session, and not merely their subject matter. I am also satisfied that the records are not reasonably severable in a manner that would permit disclosure under section 4(2) of the *Act*.

[64] Finally, there is no evidence before me to suggest that either of the exceptions at

---

[14] Orders M-64, M-102 and MO-1248.
[15] Order MO-1344.
[16] Order M-102.
[17] Orders MO-1344, MO-2389 and MO-2499-I.
[18] Order MO-1344.

section 6(2) of the *Act* applies to the records.

[65] I conclude that the discretionary exemption at section 38(a), in conjunction with section 6(1)(b), applies to Records 32, 33 and 35 in full. I also uphold the township's exercise of discretion under these sections. In withholding the records, the township balanced the appellant's right of access to her own personal information against its entitlement to *in camera* privilege for council discussion of authorized topics.

[66] I recognize that the appellant takes issue with the township's application of the closed meeting records exemption to records pre-dating the termination of her employment. However, I find no defect in the township's exercise of discretion on this basis. The township was entitled to apply this exemption to records that reveal the substance of council's closed session deliberations on authorized topics. Council's discussion of matters relating to the appellant's employment, including matters pre-dating her termination, fall within an authorized exception in the *Municipal Act, 2001*. In particular, section 239(2)(b) of that statute permits the closure of a meeting to consider personal matters about an identifiable individual, including a municipal employee. There is no requirement in the *Municipal Act, 2001* or in the *Act* that this exception be confined to discussions about termination of a municipal employee. The township's decision to apply this exemption to the records is not evidence of bad faith or other improper purpose in its exercise of discretion.

[67] For all these reasons, I uphold the township's decision to withhold Records 32, 33 and 35 under section 38(a) of the *Act*, in conjunction with section 6(1)(b).

D. Does the discretionary personal privacy exemption at section 38(b) of the *Act* apply to Record 53? If so, should this office uphold the township's exercise of discretion?

[68] The township withholds Record 53, in its entirety, under section 38(b) of the *Act*. Above, I found that this record (a letter of complaint) contains the personal information of the appellant and of the record's author. The record also contains the personal information of another party (the third party) to whom the author refers in her letter.

[69] Under section 38(b), where a record contains personal information of both the requester and one or more other individuals, and disclosure of the information would be an "unjustified invasion" of those other individuals' personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[70] Sections 14(1) to (4) of the *Act* provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy.

[71] 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).

[72] In this case, the third party provided a written consent to the disclosure of his personal information to the appellant, raising the potential application of the exception at section 14(1)(a) in relation to his personal information. I find, however, that the consenting party's personal information in the record is inextricably linked to the personal information of the record's author, who has not consented to disclosure of her information. Because all this information is intertwined in a manner that does not permit reasonable severance of the consenting party's personal information, the exception at section 14(1)(a) cannot apply.

[73] None of the other exceptions in section 14(1) applies in these circumstances. In addition, section 14(4), which lists situations that would not be an unjustified invasion of personal privacy, is not relevant here.

[74] I turn to the factors and presumptions in sections 14(2) and (3), which also help in determining whether disclosure of the personal information in the records would or would not be an unjustified invasion of personal privacy under section 38(b). In making this determination, this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.[19]

[75] None of the presumptions at section 14(3) is relevant in this case.

[76] Both parties address the potential application of the factor at section 14(2)(h) of the *Act*. Also potentially relevant is the factor at section 14(2)(f). If applicable, these sections weigh against disclosure of personal information. These sections state:

> (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;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence[.]

[77] In order for the factor at section 14(2)(f) to apply, there must be a reasonable expectation of significant personal distress if the information were disclosed.[20]

[78] The factor at section 14(2)(h) applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.[21]

[79] The record is a letter of complaint about the appellant (who was at that time an

---

[19] Order MO-2954.
[20] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[21] Order PO-1670.

employee of the township), drafted by a member of the public and addressed to the township's then-CAO. The township has disclosed the identity of the record's author but has not disclosed its contents.

[80] The appellant and the consenting third party assert that the record's author can have no expectation of confidentiality in a letter of complaint about the appellant that the author sent to the appellant's employer. In support, the appellant quotes a portion of Order PO-2368 in which the adjudicator expressed the view that when a person makes a complaint and seeks some form of action or intervention, it is reasonable to expect that a certain degree of disclosure will be required to address the complaint. I find this to be a commonsense observation. Nonetheless, it does not preclude a finding that the personal information in a letter of complaint was initially supplied "in confidence" by the complainant within the meaning of section 14(2)(h). In fact, this was the finding of the adjudicator in Order PO-2368. In that case, the adjudicator ultimately gave this factor only moderate weight because, he found, the complainant ought to have expected some degree of disclosure in the circumstances.

[81] In this case, too, I find that the factor at section 14(2)(h) applies, and ought to be given moderate weight. I find it reasonable for the record's author to have expected that her complaint about a township employee would be treated in confidence, at least initially, and would not be disclosed to that employee without there first being some kind of follow-up with her or notification to her. The letter concludes with an invitation for the township to contact the author directly, which in my view supports the claim of an initial expectation of confidentiality on her part. I also accept the township's evidence that it has treated this record confidentially, even without its having given the complainant an explicit assurance of confidentiality before receiving the complaint.

[82] I also find applicable the factor at section 14(2)(f). I find it reasonable to expect that disclosure of the record would cause the record's author significant personal distress, particularly in view of the fact that it is unclear what further involvement, if any, the record's author had with the complaint. I assign this factor moderate weight.

[83] I have also considered the potential application of any unlisted factors.[22] The appellant and the consenting third party argue that the township waived confidentiality in Record 53 by relying on it during the HRTO proceeding involving the appellant as the applicant and the township and another party as respondents. I do not agree that the township can waive the personal privacy rights of individuals whose personal information is contained in the record, or that the township's actions can be construed as a waiver on the part of the record's author. (Furthermore, as the HRTO proceeding is now concluded, I also find inapplicable the factor at section 14(2)(d) of the *Act*, which is a factor weighing in favour of disclosure of personal information that is relevant to a fair determination of a requester's rights.)

[84] I recognize, however, that denying the appellant access to information about a complaint made against her may raise fairness issues that militate in favour of disclosure.

---

[22] Order P-99.

This office has recognized, for example, that inherent fairness issues may arise where a party is denied access to information about allegations made against her; in those cases, a degree of disclosure may be consistent with, if not required by, the principles of natural justice to enable that party to respond to the allegations.[23] I find this unlisted factor to be a relevant factor in these circumstances, but I assign it low weight. Among other reasons, it appears that the appellant had an opportunity to address these allegations through other avenues, including by filing a complaint to the township and by raising this matter during the HRTO proceeding.

[85] Finally, in view of the appellant's argument about the township's reliance on Record 53 in other proceedings, I have considered whether the absurd result principle applies in this case. The absurd result principle recognizes that information may not be exempt under section 38(b) where withholding the information would be absurd and inconsistent with the purpose of the exemption.[24] This principle has been applied where, for example, the information is clearly within the requester's knowledge.[25]

[86] The appellant provided a copy of a reply filed by the township and another party as respondents in the HRTO proceeding. She directs my attention to a particular paragraph of the reply, in which the township advises the HRTO that it is in receipt of a complaint filed by a named individual against the appellant. This named individual is the same person who wrote the letter of complaint that is Record 53. In the paragraph of the reply highlighted by the appellant, the township asks the HRTO for an opportunity to make submissions on this matter if the HRTO deems it to be relevant to the application under consideration. The township also states that it would seek permission from the letter's author in order to divulge details of the complaint if necessary.

[87] Above, I rejected the appellant's claim that there can be a waiver of another individual's personal privacy rights through the actions of the township. I also find that the absurd result principle does not apply here. Beyond showing that Record 53 may have been mentioned in submissions filed by the township during the HRTO proceeding (in response to an issue raised by the appellant), the appellant has not provided any evidence that the record was actually disclosed to her as part of that proceeding, or even of the extent to which it was actually relevant in that proceeding. On the other hand, the township maintains that Record 53 was never disclosed to the appellant during that proceeding.

[88] In summary, I find that two factors weigh moderately against disclosure of Record 53, while an unlisted factor, given low weight, favours disclosure. In these circumstances, I conclude that disclosure of the record would be an unjustified invasion of personal privacy within the meaning of section 38(b). I also uphold the township's exercise of discretion under this section. Among other reasons, I am satisfied that in making its decision, the township took into account appropriate considerations, including the appellant's right of access to her own personal information and the important privacy

---

[23] See, for example, Orders P-1014 and PO-1767.
[24] Orders M-444 and MO-1323.
[25] Orders MO-1196, PO-1679 and MO-1755.

protection purposes of the section 38(b) exemption.

[89] The appellant questions whether the township acted in good faith, given the manner in which it responded to her access request, but these arguments do not identify any particular defects in the township's exercise of decision in withholding Record 53 on personal privacy grounds. These arguments have instead to do with the reasonableness of the township's search for records, and I will consider them under the next heading.

E. Did the township conduct a reasonable search for responsive records? What records are responsive to the request?

[90] The appellant maintains that the township failed to identify and to disclose additional records that are responsive to her request. For the reasons that follow, I conclude that the township did not conduct a reasonable search, including because it failed to recognize that certain categories of records are responsive to the request and so subject to its search obligations under the *Act*.

[91] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. It states, in part:

> (1) A person seeking access to a record shall,
>
> > (a) make a request in writing to the institution that the person believes has custody or control of the record, and specify that the request is being made under this Act;
> >
> > (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record[.]
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).[26]

[92] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.[27] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[28]

[93] To be responsive, a record must be "reasonably related" to the request.[29]

---

[26] This is the current version of section 17, reflecting an amendment to paragraph (a) that post-dates the appellant's access request to the township. The amendment has no bearing on the issues in this appeal.
[27] Orders P-85, P-221 and PO-1954-I.
[28] Orders P-624 and PO-2559.
[29] Order PO-2554.

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[30]

[94] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[31]

[95] In this case, the township provided an affidavit of the person who was the CAO and information officer for the township at the time of the appellant's request. The former CAO explains that in response to the appellant's request, he conducted a search of his own paper and electronic files, including emails, letter mail and personal notes. He also asked his staff and the director of human resources for the County of Renfrew (of which the township is a part) to conduct their own searches for the records described in the appellant's request. The former CAO reports that these same searches were undertaken again at the appeal stage. There is no dispute that the township's second search during the appeal process resulted in the identification of additional records, and that these were included in the township's supplementary index of records. The supplementary index identifies 53 responsive records, the majority of which were disclosed to the appellant in full.

[96] In response, the appellant provided a detailed list of additional records that she believes the township ought to have located during its search for responsive records. Among these are records that she reports having disclosed to the township's legal counsel as part of the parties' exchange of documents in the HRTO proceeding, and correspondence with the township in which the appellant was a sender or recipient.

[97] This information was shared with the township on several occasions, before and during the appeal process. Most recently, I provided this information to the township in the form of a list compiled by the appellant. This list identifies records that the appellant submits are responsive to her request, and that were exchanged between the parties during the HRTO process, but that were not included in the township's supplementary index of records. These include email correspondence (mainly between township staff) to which the appellant was a party, all of which fall within the time period specified in the appellant's access request.

[98] In reply, the township provides several potential explanations for not having located these records during its searches.

[99] First, the township suggests that it is reasonable to assume that the records were not located because they no longer exist in the township's record-holdings. The township characterizes the appellant and the consenting third party as repetitive correspondents, in terms of both the frequency and the volume of their communications. Based on this, the township surmises that the former CAO did not retain all the email correspondence

[30] Orders P-134 and P-880.
[31] Order MO-2185.

sent by (or to) the appellant or the third party once the appellant's matter was referred to legal counsel.

[100] If the township believes that email records responsive to the appellant's request no longer exist as a result of their having been deleted or destroyed, it was obligated to identify these and to provide details of the records' destruction, such as any relevant township email retention policies. The fact that the appellant and a third party may have sent many emails to the township does not relieve the township of its obligation to deal with such records in accordance with the *Act* and with applicable township records maintenance policies and practices.

[101] The township's explanation also fails to account for responsive email records that may have been destroyed by the former CAO but that may nonetheless exist elsewhere in the custody or control of the township, such as with lawyers for the township. Even if the township would deny access to such records based on solicitor-client privilege or other grounds in the *Act*, it is still obligated to identify these as responsive records. Also irrelevant is the township's observation that the appellant may already have in her possession copies of all these records. The township is nonetheless required to identify all records in its custody or control that are responsive to the access request, and then either to grant access to them or to specify the grounds under the *Act* for denying access.

[102] The township's second explanation has to do with the existence of records in the public domain. The appellant identified as responsive records the minutes of certain council and committee meetings that were open to the public. The township denies that these records are responsive to the appellant's request, but states that, in any event, these are public documents that are already available to the appellant through the township's website.

[103] It is not evident to me why records of public meetings involving discussion of the appellant's matter would not be responsive to the appellant's access request. The request is broadly framed and encompasses all records, including meeting minutes, that generally relate her employment with the township. If the township's position continues to be that such records are not responsive to the appellant's request, the township must say so explicitly. If, instead, the township's refusal to produce these records is based on a claim that they are already publicly available within the meaning of the exemption at section 15(a) of the *Act*, or based on another ground in the *Act*, then the township must specify this. In either case, the township must explain the basis on which it refuses to disclose any records that appear to be responsive to the appellant's request.

[104] The township takes the position that certain other records are not "records of the institution," by which I understand the township to be saying that these records are not in the township's custody or under its control. The right of access in the *Act* applies only to those records that are in the township's custody or control [section 4(1)]. The township makes this claim for such records as emails between the appellant, the consenting third party, and the township mayor or members of council, which the township characterizes as "constituent records." The township also makes this claim for records of correspondence between the appellant, the consenting third party and the media, and

email correspondence between the appellant, the consenting third party and the external consultant engaged by the township to investigate the appellant's complaint about a named councillor.

[105] In response, the appellant states that the township was included as a recipient on many of these records.

[106] As above, even if the township's claim is that some or all of these records are not subject to the appellant's right of access under the *Act*, because they are not within the township's custody or control or for some other reason, it is the township's obligation to identify them as responsive records and to specify the basis under the *Act* for the denial of access. It is only after an institution has identified the specific provisions of the *Act* under which it denies access, and the reasons for its decision (among other obligations in section 22 of the *Act*) that a requester is in a position to understand the institution's decision on access and to decide whether to appeal the decision to this office. By failing even to identify the records to which it denies access, the township has not fulfilled its basic obligations under the *Act.*

[107] Lastly, I find relevant the appellant's observation that her complaint to the township about the councillor (which forms part of the subject matter of her request) led to a number of actions by the township, including an internal investigation by the township, the appointment of an external consultant, and referral of the matter to an integrity commissioner. Despite this, the appellant notes that the township failed to locate any records addressing these matters, other than the complaint itself and the report of the external consultant. I find it reasonable to expect these events to have generated additional records, such as records of the township's internal review of the complaint and about the appointment of the external consultant. In my view, the absence of any records addressing these topics is another ground for questioning the adequacy of the township's initial searches.

[108] For all these reasons, I will order the township to conduct another search for records, this time identifying all records that are reasonably related to the appellant's access request, in accordance with the principles outlined above. The township must make an access decision in respect of all newly identified responsive records. I remain seized of this appeal in order to address matters arising from the township's further search.

ORDER:

1. I uphold the township's denial of access to Record 34 on the basis of section 52(3)3 of the *Act*.
2. I uphold the township's denial of access to Records 32, 33 and 35 on the basis of section 38(a) of the *Act*, in conjunction with section 6(1)(b).

3. I uphold the township's denial of access to Record 53 on the basis of section 38(b) of the *Act*.

4. I do not uphold the township's search for records. I order the township to conduct a further search for records responsive to the appellant's request, and to provide me with representations on its search by **August 6, 2019.** These representations are to be provided in the form of an affidavit signed and sworn or affirmed by the person or persons who conduct the search, and should include the following information:

   a. the names and positions of the person or persons who conduct the search and who are contacted in the course of the search;

   b. details of the searches carried out, including the date of the search and the nature and location of the files searched;

   c. the results of the search; and

   d. whether it is possible that responsive records existed but no longer exist. If so, the township must provide details of when such records were destroyed and any relevant record maintenance policies and practices, such as evidence of retention schedules.

   For greater clarity, responsive records may include the following:

   - records of email and other correspondence irrespective of whether the township believes the appellant is already in possession of such records;
   - records that are in the public domain, such as minutes of public meetings;
   - email records involving the township mayor or members of township council; and
   - records relating to the appointment of the external consultant.

5. I may provide the appellant with a copy of the township's representations described in order provision 4, unless there is an overriding confidentiality concern. If the township believes that portions of its representations should remain confidential, it must identify these portions, and it must explain why the confidentiality criteria in Practice Direction 7 of the IPC's *Code of Procedure* apply to these portions.

6. If the township locates additional records as a result of its further search, it must issue a decision to the appellant in accordance with the *Act* regarding access to such records. The township is to treat the date of this order as the date of the request. I direct the township to provide me with a copy of this decision.

7. I remain seized of this appeal to address matters arising from order provisions 4 and 5.

July 4, 2019

Jenny Ryu
Adjudicator