



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER MO-2521**

**Appeal MA08-452**

**City of Vaughan**



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## **NATURE OF THE APPEAL:**

The City of Vaughan (the City) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

1. A copy of any and all detailed 407 ETR [Express Toll Route] Toll Charge Invoices incurred by [named City employee] processed for the years 2004, 2005, 2006, 2007 and 2008. These invoices would normally be paid directly from [his] Operating Budget Account Number ... These invoices can be found in the city of Vaughan's Finance Department and/or Purchasing Department and/or Accounts Payable Department.
2. If any payment of the above invoices were made directly by [his] credit card or paid at any Bank by [him], a copy of the receipts of payment in relation to any of the above invoices, specifically in relation to 407 ETR Toll Charge Invoices for the years 2004, 2005, 2006, 2007 and 2008. Together with any records from the City of Vaughan's Finance Department, should any reimbursement submission was made as a result of this payment from [him] related to this personal payment of the above expense. These records can be found in the Financial Department, or specifically Accounts Payable.
3. A copy of all 2004, 2005, 2006, 2007 and 2008 detailed invoices, purchase orders, FPO's [Field Purchase Orders] and/or personal expenses paid from [his] Operating Budget Account Number[s]..., as well as copies of all cheques issued and/or cancelled by the City of Vaughan in relation to this account number. The location of these records can be found in the City's Finance Department and/or Accounts Payable Department, more specifically the City's Accounts Payable Department-Finance.

The City located the responsive records and issued its decision granting partial access to them. Access was denied to portions of the responsive records pursuant to sections 10 (third party information), 11 (economic and other interests), 13 (advice to government) and 14(1) (personal privacy) of the *Act*.

The requester (now the appellant) appealed the City's decision to deny access to the undisclosed portions of the records. She also appealed the amount she paid the City for fees in the amount of \$318.70 and the City's denial of her request for a fee waiver.

During mediation, the appellant removed part 2 of her request from the scope of the appeal. As well, she advised the mediator that she is not interested in obtaining access to the severed portions of the records, disclosed to her by the City, responsive to part 3 of the request. Therefore, the application of the exemptions in sections 10 and 11 are no longer at issue. In addition, the appellant advised the mediator that she believes there is a compelling public interest in the remaining withheld information. Therefore, she wished section 16 (the public interest override) to be added as an issue in the appeal.

The appellant also advised the mediator that invoices should exist for the period November 18 to December 15, 2005 (responsive to part 1) and detailed invoices and receipts from restaurants should also exist (responsive to part 3 of her request). Therefore, the reasonableness of the City's search for these records is at issue.

As this appeal was not fully resolved at mediation, the file was transferred to adjudication where an adjudicator conducts an inquiry under the *Act*. I sent a Notice of Inquiry, setting out the facts and issues in this appeal to the City and an individual whose personal information may be contained in the records (the affected person) initially. I received representations from both parties. I sent a copy of the City's representations to the appellant, along with a Notice of Inquiry. Portions of the City's representations and all of the affected party's representations were withheld due to concerns about confidentiality. I received representations from the appellant. I then sent a copy of the appellant's representations to the City and sought reply representations. Portions of the appellant's representations were withheld due to concerns about confidentiality. I received reply representations from the City.

During adjudication, the appellant indicated that she was only appealing the fee of \$90.00 charged by the City to sever the responsive records. As a result of the provisions of this order ordering disclosure of the records in an unsevered form, the appellant should seek reimbursement of this severance fee directly from the City.

## **RECORDS:**

The information at issue is contained in the severed portions of the records responsive to part 1 of the request, namely, 407 ETR invoices, as set out in the Appendix to this order. Severed from these records are 407 ETR entry and exit points used by the affected person and the time of day those entries/exits were used.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) 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,
- (e) the personal opinions or views of the individual except where 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;

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 [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

Section 2(2.1) modifies the definition of the term "personal information" by excluding an individual's name, title, contact information or designation which identifies that individual in a "business, professional or official capacity." Section 2(2.2) further clarifies that contact information about an individual who carries out business, professional or official responsibilities from their dwelling does not qualify as "personal information" for the purposes of the definition in section 2(1).

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The City submits that the records in question, namely 407 ETR invoices, contain the personal information of the affected person. It states that:

Although not explicitly one of the paragraphs of subsection 2(1), the City of Vaughan contends that the 407 ETR entry and exit points used by [the affected person] and the dates and times those entries/exits were used, constitute personal information. As discussed in Dr. Cavoukian's [the Information and Privacy Commissioner of Ontario] publication titled *407 Express Toll Route: How You Can Travel the 407 Anonymously*, ... there are many privacy issues related to the 407 ETR. For audit purposes, it is not feasible for the City of Vaughan to maintain anonymous 407 ETR accounts as advocated in Dr. Cavoukian's work...

The dates, times, and locations are specific and directly attributable to the [affected person]. The City of Vaughan submits that this information is about [the affected person] in both a professional and personal capacity because some of the travel undertaken by [him] was for personal reasons. ... Due to the format of 407 ETR invoices, it is not possible to separate [the affected person's] personal travel from his business travel.

The appellant provided extensive representations; however, she did not directly address the issue of whether the information in the records is personal information, other than stating that the information requested does not reveal anything about the affected person and the information does not identify an individual. She submits that *407 Express Toll Route: How You Can Travel the 407 Anonymously* is not relevant as it concerns billing information, not the information at issue in this appeal. She states that:

... the 407 ETR invoices are submitted on a business capacity... The entry & exit points and time & dates are not specific to any one individual and considering the number of vehicles that travel on the 407 and 400 series highways on a daily basis, it is unreasonable for an individual to be identified if the information is released.

It is the appellant's position that the severed information "is not inherently personal, but rather, is information that relates exclusively to the professional activities and responsibilities" of [the affected person].

In reply, the City submits that:

The 407 ETR invoices are about one identifiable individual... Contrary to the appellant's assertions, Accounts Payable invoices can contain personal information. The appellant appears to equate the City's payment of invoices to their being free of personal information. This is an erroneous conclusion to

reach... Purchasing and paying for an item or a service does not render that item or service devoid of personal information simply because payment came from the City of Vaughan...

The City of Vaughan is not able to separate the [affected person's] personal and business travel on the 407 ETR invoices in question.

### **Analysis/Findings**

The only information remaining at issue from the subject invoices is the entry and exit points and the time of day of these entry and exits on the 407 ETR for the affected person. This information is contained in invoices that have been disclosed to the appellant. These severed invoices also contain the affected person's name.

As stated above, information associated with the affected person in a business capacity will not be considered to be his personal information. However, information that relates to him in a business capacity may still qualify as his personal information if the information reveals something of a personal nature about him. Therefore, although all of the information at issue is associated with the affected person in a business capacity, I must determine whether this information reveals something of a personal nature about him. In making this and other determinations in this order, I have taken into account the confidential representations of the affected person, as well as the confidential and non-confidential portions of the City's and the appellant's representations.

Former Assistant Commissioner Tom Mitchinson in Order PO-2225, sets out the following two step process applicable to a determination of whether information is "about" an individual in a business rather than a personal capacity, and, therefore, does not constitute personal information:

... the first question to ask in a case such as this is: "in what context [does the information] of the individuals appear"? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere? ...

The analysis does not end here. I must go on to ask: "is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual"? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

I have reviewed the contents of the records at issue and the confidential and non-confidential portions of the parties' representations. Although the invoices relate to the use of a City vehicle by the affected person, the personal and business trips made by the affected person recorded on these invoices are intertwined. Information that relates to personal trips taken by the affected person on the ETR 407 is his personal information in accordance with the definition of that term in section 2(1). Therefore, I conclude that all of the information at issue in the records qualifies as the personal information of an identifiable individual, the affected person.

I will now consider whether the personal privacy exemption at section 14(1) applies to this information.

## **PERSONAL PRIVACY**

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies.

If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14.

In the circumstances, it appears that the exception that could apply is paragraph (f) of section 14(1). This section reads:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 14(1)(f).

If paragraphs (a), (b) or (c) of section 14(4) applies, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14. The City provided representations as to the applicability of section 14(4)(a) to the information at issue in the records.

Section 14(4)(a) provides that a disclosure of personal information does not constitute an unjustified invasion of personal privacy if it discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution.

The City acknowledges in its representations that payment of the 407 ETR invoices is a benefit accorded to the affected person. It submits that the information at issue in the records should not be disclosed. The City states that:

... [Section] 14(4)(a) was not intended to disclose personal information that is contained in records related to benefits. The City of Vaughan contends that disclosure of the severed portions of the 407 ETR invoices would constitute an unjustified invasion of privacy.

The appellant submits that:

The entry and exit points along with the date and time are clearly required to justify the expense to [the Canada Revenue Agency] as well as the City's policy. This is no different than the time, date, name, location and food & beverage items identified in a [disclosed] restaurant expense receipt.

In reply, the City reiterates that, in accordance with section 14(4)(a), a 407 ETR account is a benefit accorded to the affected person. It also referred me to the City's By-law Number 100-2002, which states: "that the Corporation will provide the City Manager, Deputy City Manager and the Commissioners with a City vehicle as a taxable benefit including license, fuel, insurance, maintenance and repairs."

**Analysis/Findings re: Section 14(4)(a)**

The City appears to be claiming that section 14(4)(a) does not allow the disclosure of personal information. I do not agree with this claim of the City. In order for information to come within section 14(4)(a), it must first be determined to be personal information about an identifiable individual.

Assistant Commissioner Brian Beamish in Order PO-2641 discussed the application of section 14(4)(a). He stated that:

... previous orders of this office have given a broad meaning to the term "benefits" in section 21(4)(a) [of the *Freedom of Information and Protection of Privacy Act*, (the provincial *Act*), the equivalent of section 14(4)(a) of the *Act*].

The following definition of "benefits" was articulated by former Commissioner Wright in Order M-23:

Since the "benefits" that are available to officers or employees of an institution are paid from the "public purse", either directly or indirectly, I believe that it is consistent with the intent of section 14(4)(a) and the purposes of the Act that "benefits" be given a fairly expansive interpretation. In my opinion, the word "benefits" as it is used in section 14(4)(a), means entitlements that an officer or employee receives as a result of being employed by the institution. Generally speaking, these entitlements will be in addition to a base salary. They will include insurance-related benefits such as, life, health, hospital, dental and disability coverage. They will also include sick leave, vacation, leaves of absence, termination allowance, death and pension benefits. As well, a right to reimbursement from the institution for moving expenses will come within the meaning of "benefits". Therefore, clause 10, as well as clauses 7 and 11-16 of the record would fall within the meaning of "benefits". In my view, the disclosure of



these clauses would not constitute an unjustified invasion of personal privacy.

Former Assistant Commissioner Mitchinson considered and applied Order M-23 in Order P-1212 which involved a request for access to the “benefits” of the President of Algonquin College pursuant to his contract of employment. In that order, the former Assistant Commissioner stated:

It is clear from a reading of Order M-23 that Commissioner Wright did not intend the list of enumerated benefits in that order to be exhaustive or that the meaning of “benefits” should be restricted to a dollar value only. In my view, the list of enumerated benefits in Order M-23 were merely provided as examples, and I agree that the term “benefits” should be given an expansive definition, in order to be consistent with the intent of both section 21 and the *Act* as a whole.

After referring to Order P-380, the former Assistant Commissioner stated:

Therefore, in my view, all of the entitlements provided to the former President as part of his employment or upon conclusion of his employment as an officer and/or employee of the College are properly characterized as “benefits” for the purpose of section 21(4)(a).

I find that the benefits provided to the former President under the terms of his employment agreement, fall within the scope of section 21(4)(a) of the *Act* and, therefore, release of the parts of the record which would disclose this information would not constitute an unjustified invasion of his personal privacy...

Adjudicator Steven Faughnan reviewed the definition of benefits applied in previous orders of this office in Order PO-2519 where he stated:

The Commissioner’s office has interpreted “benefits” to include entitlements, in addition to base salary, that an employee receives as a result of being employed by the institution (Order M-23). Order M-23 lists the following as examples of “benefits”:

- insurance-related benefits
- sick leave, vacation
- leaves of absence
- termination allowance
- death and pension benefits
- right to reimbursement for moving expenses

In subsequent orders, adjudicators have found that “benefits” can include:

- incentives and assistance given as inducements to enter into a contract of employment [Order PO-1885]
- all entitlements provided as part of employment or upon conclusion of employment [Order P-1212]

These principles and this reasoning have been applied in previous orders issued by this office including MO-1749 and MO-1796...

I adopt the reasoning consistently set out in the series of orders quoted above. In my opinion, that approach is consistent with the language of section 21(4) [of the provincial *Act*] and the intent of the Legislature.

I agree with and adopt Assistant Commissioner Beamish’s findings concerning the meaning of benefits in section 14(4)(a) of the *Act*. Having reviewed the records, I find that all of the information at issue is information about a benefit accorded to the affected person, who is a City employee. Therefore, the exception in section 14(4)(a) applies to that information [Orders MO-2520, PO-2519 and PO-2641]. This benefit accorded to the affected person concerns payment by the City of the affected person’s 407 ETR expenses. I find that this payment is an entitlement that the affected person receives as a result of being employed by the institution and is an entitlement received in addition to his base salary.

According to the publication referred to above by both the City and the appellant, *407 Express Toll Route: How You Can Travel the 407 Anonymously*:

Tolls are calculated based on time of day, day of the week, distance travelled, and class/weight of vehicle, all collected using electronic technology... When you enter one of the 29 interchanges on this highway, you simply drive under an overhead tolling gantry that automatically records the beginning of your trip into the 407 ETR’s electronic toll collection system. When you exit the highway, you drive under another overhead frame and the toll system logs your vehicle off the highway.

Therefore, the amount payable in the records (the invoices) is calculated utilizing the distance travelled by the affected person between entry and exit points on the 407 ETR and the time of day travelled. The information at issue in this appeal determines the amount of the affected person’s 407 ETR “benefit” as contemplated by section 14(4)(a).

In Order PO-2641, Assistant Commissioner Beamish found that information related to a vehicle leased by an institution for the personal use of an employee comes within section 21(4)(a) of the provincial *Act*, the equivalent of section 14(4)(a) of the *Act*. Similarly, I conclude that in this case, the payment by the City of the affected person’s expenses for personal travel is a benefit accorded to the affected person under section 14(4)(a) [see also Order PO-2536].

When section 14(4)(a) is found to apply, disclosure of that information is not considered to be an unjustified invasion of personal privacy. Under section 14(1)(f), therefore, disclosure of that information is not an unjustified invasion of personal privacy and the section 14(1) exemption does not apply. Therefore, I conclude that the information at issue is not exempt under section 14(1). I will now consider whether this information is exempt under section 13.

### **THREAT TO SAFETY OR HEALTH**

Section 13 states:

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

For this exemption to apply, the institution must demonstrate that disclosure of the record “could reasonably be expected to” lead to the specified result. To meet this test, the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

An individual’s subjective fear, while relevant, may not be sufficient to establish the application of the exemption [Order PO-2003].

The term “individual” is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization [Order PO-1817-R].

The City provided both confidential and non-confidential representations on this issue. In its non-confidential representations, it submits that the 407 ETR invoices demonstrate a clear pattern of behaviour on the part of the affected person and that, if disclosed, would allow a third party to know, with fair certainty, where the affected person will be at certain times of the day. The City states that:

Records disclosed to both the appellant and [another individual] responsible for following City employees have, on several occasions, been given to members of the media and presented before Council. For example, on April 20, 2009, [an individual] who posts the blog under the name "City of Vaughan Citizen's Group", posted the contents of an email that he wrote to the Mayor and Members of Council of the City of Vaughan, the Minister of Finance, Canada Revenue Agency, "Members of the Media", Ernst and Young, KPMG, and the Minister of Municipal Affairs. The appendices of the email include the severed versions of [the affected person’s] 407 ETR records that were released to the appellant as part of access request [#]. Furthermore, the author of the email goes on to explain how some of the entry and exit points used by [the affected person] were determined, despite severances made by the City of Vaughan. The author notes that he used Canada411 to locate [the affected person’s] home address (he

discloses the [affected person's] city of residence), a 407 ETR Toll Calculator and the location of Christmas card purchases to ascertain this information... The conduct of the appellant and the appellant's associates ensures that disclosure of these records will indeed be "disclosure to the world".

Another matter to be considered is the appellant's own behaviour. On March 6, 2009 the appellant caused a disturbance in the City Clerk's Department at the City of Vaughan Civic Centre. The appellant demanded "her records" in a loud and boisterous fashion and became increasingly agitated when it was apparent that the records were not available for pick-up. The appellant has also, as noted above, made personal attacks on [the affected person] in the form of attempted audits and professional discredit. The appellant has submitted two other access to information requests specifically seeking the financial and tax information of [the affected person].

The appellant submits that:

The appellant's actions are neither illegitimate nor dishonest, however disadvantageous they may appear to the City. The requests are genuine and not designed to harass. Only by examining City records obtained through access to information procedures, in particular the severed sections, can the appellant determine whether or not the 407 ETR expense is illegal, contrary to City policy and not in keeping with the *PSSDA* [*Public Sector Salary Disclosure Act*] and, if so, subsequently file a legitimate complaint.

Human Behaviour & Routine:

The City states [if the records are] disclosed, the invoices would allow a third party to know, with fair certainty, where the [affected person] will be at certain times of the day.

With respect to employment travel from place of residency to employment and employment to place of residency for much of the working general population, there is a large body of information that suggest most people follow a routine...

Travel directories, such as MapQuest (<http://www.mapquest.com>) provide directions using publicly available routes. If any driver seeking to travel from one destination to another enters the same reference points, the directions will be the same. ... There is nothing private about the route...

Furthermore, the environment that endangers the safety or health of all persons needs to be looked at a macro - not micro level and is very dependant on the environment they are traveling in...

[The affected person's routine]

... all City staff and in particular those working in the [named] department, had knowledge of [the affected person's] routine and whereabouts on a business day [including]:

- [the affected person's] parking habits.
- [the affected person's] vehicle ... make/model/colour ... is available through FOI [a freedom of information request] or by asking City staff (it is common knowledge)...
- ... any individual parking in the visitor parking lot could easily identify [the affected person's] vehicle, even without conducting an FOI request or asking staff, by simply waiting for him to exit the building or arrive in the morning. The same holds true for any vehicle owner parked in the designated or undesignated area... [T]he designated area is provided to senior management [including the affected person]...

There are limited "practical" routes that [the affected person] could take to travel to and from his home... Knowing the highway entrance/exit point would not be helpful as these are points that don't generally allow parking for vehicles and between police vehicles and tow trucks, these are highly visible locations that are not conducive to any wrongful activity. With respect to the 407 ETR, ... "road patrol" "routine ramp patrols, highway operations control centre and closed-circuit television", the 407 ETR is the safest place to be...

Anyone seeking to cause harm to [the affected person] would not go through the trouble of making an FOI request and find out the 407 ETR times, entry and exit points. It would be much easier to follow him from the Civic building or simply travel to the [name of city] address to determine whether [his car] is parked in the driveway.

[The affected person] sits in the same designated chair labeled [with his name and title], in Council Chambers...

[The affected person's] picture is also located on the City's Website, and is located in various areas of the [City's municipal building]...

[The affected person's] name/position, office/section and location [are] identified by signage in the lower hall. [His] office is adjacent to a very public area...

Appellant's own behaviour

... It is the appellant's position that the City has targeted the appellant and is using exaggeration and negative characterization to describe the appellant...

"appellant has made personal attacks"

With respect to the City's statement that the appellant has made personal attacks on [the affected person] in the form [of] audits and professional discredit, the City provides a supporting letter [from the] City of Vaughan Citizens Group. The letter is not addressed from the appellant and does not appear to be addressed to the FOI Department. The letter is in respect to a "Request for Expenses Audit of all Council and Senior Management". It is not exclusive to [the affected person]... The blog also provides links to the City's website and the information is not presented in a threatening or evil manner... [T]here is nothing in that letter that threatens the safety or health of any of the Council members and Senior Management Team. Rather, it is highly constructive, raises many questions and since some of the information has been reported in various media outlets...

In reply, the City submits that:

... the appellant's representations regarding the safety and health of [the affected person is] evidence in favour of the City's decision to withhold the records. It is clear from the appellant's representations that she has considered ways to circumvent the City's attempt to protect the [affected person's] safety and health. It is also clear that the appellant has contemplated following [him] to his home.

### **Analysis/Findings**

In reviewing this exemption claim, the question to be asked is whether the City has demonstrated that disclosure of the information at issue "could reasonably be expected to" give rise to the specified result, i.e. endangerment of the affected person.

Past orders of this office relating to this exemption have emphasized the need to consider both type of information at issue and the behaviour of the individual who is requesting the information. The lead authority on this exemption is a case of the Ontario Court of Appeal: *Big Canoe v. Ontario* (1999), 46 O.R. (3d) 395 (C.A.) (*Big Canoe*). In *Big Canoe*, the Court refers to consideration of the quality of the information contained in the record and, more specifically, any "potentially inflammatory" character. In considering the perceived risk of threat from the appellant under this exemption, the Court in *Big Canoe* expressed the importance of establishing an evidentiary foundation for assertions of threatening behaviour by an appellant. For section 13 to apply, the expectation of harm must be reasonable, but need not be probable [Orders MO-2209 and PO-2606].

It has been acknowledged by this office that individuals working in public positions will occasionally have to deal with "difficult" individuals. In a postscript to Order PO-1939, Adjudicator Laurel Croyley stated the following with regard to section 20 of the provincial *Act* (the equivalent of section 13 of the *Act*):

In these cases, individuals are often angry and frustrated, are perhaps inclined to using injudicious language, to raise their voices and even to use apparently aggressive body language and gestures. In my view, simply exhibiting inappropriate behaviour in his or her dealings with staff in these offices is not

sufficient to engage section 20... claim. Rather... there must be clear and direct evidence that the behaviour in question is tied to the records at issue in a particular case such that a reasonable expectation of harm is established should the records be disclosed.

I agree with Adjudicator Cropley's comments. In the circumstances of the present appeal, I do not accept that the evidence tendered by the City and the affected person that the appellant's behaviour meets the required threshold for exemption under section 13. In particular, the City and the affected person have not provided clear and direct evidence that the behaviour of the appellant is tied to the records at issue such that a reasonable expectation of harm is established should the information at issue in the records be disclosed.

I find that the appellant has provided detailed and convincing representations in response to those of the City refuting its position that the appellant, or any other individual, would be able to use the records to track the affected person's movements and threaten his safety. The appellant has provided evidence that the whereabouts of the affected person is ascertainable from publicly available information, including information originating from the City. She has also provided evidence that the 407 ETR has numerous safety features that provide deterrence to those who would contemplate causing harm to a person utilizing that toll road.

Furthermore, I do not agree with the City's claim that in providing a thorough response to the detailed representations of the City, that the appellant has "considered ways to circumvent the City's attempt to protect the [affected person's] safety and health. It is also clear that the appellant has contemplated following [him] to his home."

In addition, I do not agree that the instigation by the appellant of an audit, an access request or a complaint to a professional body concerning the affected person could, in the circumstances of this appeal, establish an evidentiary foundation for assertions of threatening behaviour by the appellant.

Concerning the incident of March 6, 2009, after review of the parties' representations, including the detailed information from the City and the email chain between the appellant and the City concerning this incident, I find that this incident was not tied to the records at issue nor does it establish a reasonable basis for believing that endangerment will result from disclosure of the information at issue in the records. At most, during the incident, the appellant was "angry and frustrated ...inclined to using injudicious language, to raise [her] voice..." as outlined in Order PO-1939, above.

Therefore, I find that disclosure of the information at issue in the records could not reasonably be expected to seriously threaten the safety and/or health of the affected person. Accordingly, I find that information in the records cannot be withheld under section 13. As no further exemptions have been claimed for this information, I will order it disclosed.

## SEARCH FOR RESPONSIVE RECORDS

I will now determine whether the City conducted a reasonable search for additional invoices for the period November 18 to December 15, 2005 (responsive to part 1) and for detailed invoices and receipts from restaurants (responsive to part 3 of her request).

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 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

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 [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

The City was asked to provide a written summary of all steps taken in response to the request. In particular, the City was asked to respond to the following preferably in affidavit form:

1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the institution did not contact the requester to clarify the request, did it:
  - (a) choose to respond literally to the request?
  - (b) choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?
3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including



information about record maintenance policies and practices such as evidence of retention schedules.

The City submits that:

City staff spent significant amounts of time searching through 407 ETR invoices in order to locate records responsive to this access request. As part of the mediation process, the City undertook another search for an invoice for the 407 ETR account assigned to [the affected person] and that search did not yield any results. The City of Vaughan submits that an invoice for the period between November 18 and December 25, 2005 does not exist.

To support this submission the City of Vaughan has appended a printout of account number ...which is the 407 ETR account for the [affected person]. The printout covers the time period between November 1, 2005 and January 31, 2006. There are two charges to the account during that time period... Document 21 is the November 18, 2005 407 ETR bill and document 22 is the January 18, 2006 407 ETR toll bill. Had a December 2005 ETR toll bill been issued to the [affected person], it would have been paid in between the two entries on the printout. In addition to this documentary evidence in support of the City's claim, [the affected person] has sworn an affidavit ... to affirm that he did not incur any 407 ETR toll charges during the time period in question.

Detailed invoices and receipts from restaurants

In accordance with the mediation process, [the affected person] and his Secretary/Administrative Assistant [name] were contacted to determine whether or not detailed invoices and receipts from restaurants exist. They have both confirmed that it is not the usual practice of [the affected person] to retain the itemized portion of the American Express receipt. In instances where the itemized portion was retained, it was provided to the appellant...

The appellant did not take issue with the City's response concerning the search for additional 407 ETR invoices. Concerning the responsive detailed invoices and receipts from restaurants, which are responsive to part 3 of the request, she submits that:

... the receipts were either not submitted or discarded to prevent FOI access. For example, notwithstanding the City's Policy 03.03, *Attendance at Conferences and Seminars Members of Council and Staff*, the City has not provided the appellant with the receipt as is required, under Section 5 of that Policy for the accommodations in [named city] otherwise it would have been provided along with the Credit Card Statement...

In reply, the City submits that:

The appellant's access request did not ask for records related to conference/seminar accommodation.

In your letter dated August 20, 2009 you ask the City to speak specifically to records retention and the possibility that detailed invoices and receipts from restaurants existed but no longer exist. Because the City of Vaughan does not require the submission of detailed invoices or receipts in support of meal reimbursements, there is no entry in the City's records retention by-law to govern their retention and destruction. Should an individual opt to submit a detailed invoice or receipt it would be kept for seven years as part of the Accounts Payable records series.

The City of Vaughan had a records retention by-law in place during the time period covered by this access request. The records responsive to this access request are subject to the records retention by-law. The City of Vaughan has a copy of the original and severed records that are responsive to this access request. The City of Vaughan has not destroyed any responsive records.

### **Analysis/Findings**

The only items that remain at issue are the detailed restaurant receipts and invoice as the appellant has accepted the City's explanation concerning the 407 ETR invoice for November 18 to December 15, 2005.

I find that the City has provided sufficient evidence to show that it has made a reasonable effort to identify and locate any responsive detailed restaurant receipts and invoices that may exist [Order P-624]. The City has provided a comprehensive description of the steps it undertook to locate the information sought by the appellant. I find that the appellant has not provided me with a reasonable basis for concluding that this responsive information exists. Accordingly, I find that the City has performed a reasonable search.

### **ORDER:**

1. I order the City to disclose to the appellant all of the information at issue in the records by **June 17, 2010** but not before **June 11, 2010**.
2. I uphold the City's search for responsive records and dismiss that part of the appeal.

3. In order to verify compliance with this order, I reserve the right to require the City to provide me with a copy of the records disclosed to the appellant.

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

\_\_\_\_\_ May 13, 2010

**APPENDIX**

**INDEX OF RECORDS**

<u>Record No.</u>	<u>Description</u>	<u>Pages</u>	<u>Disclosure</u>
1.	407 ETR bill dated February 18, 2004 and payment thereof	4	Partial, sever section 13 - danger to safety or health and section 14(1) - personal information.
2.	407 ETR bill dated March 18, 2004 and payment thereof	5	Partial, sever section 13 - danger to safety or health and section 14(1) - personal information.
3.	407 ETR bill dated April 18, 2004 and payment thereof	5	Partial, sever section 13 - danger to safety or health and section 14(1) - personal information.
4.	407 ETR bill dated June 18, 2004 and payment thereof	5	Partial, sever section 13 - danger to safety or health and section 14(1) - personal information.
5.	407 ETR bill dated July 18, 2004 and payment thereof	5	Partial, sever section 13 - danger to safety or health and section 14(1) - personal information.
6.	407 ETR bill dated August 18, 2004 and payment thereof	5	Partial, sever section 13 - danger to safety or health and section 14(1) - personal information.
7.	407 ETR bill dated September 18, 2004 and payment thereof	7	Partial, sever section 13 - danger to safety or health and section 14(1) - personal information.
8.	407 ETR bill dated October 18, 2004 and payment thereof	5	Partial, sever section 13 - danger to safety or health and section 14(1) - personal information.
9.	407 ETR bill dated November 18, 2004 and payment thereof	5	Partial, sever section 13 - danger to safety or health and section 14(1) - personal information.

10.	407 ETR bill dated December 18, 2004 and payment thereof	6	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
11.	407 ETR bill dated January 18, 2005 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
12.	407 ETR bill dated February 18, 2005 and payment thereof	6	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
13.	407 ETR bill dated March 18, 2005 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
14.	407 ETR bill dated April 18, 2005 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
15.	407 ETR bill dated May 18, 2005 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
16.	407 ETR bill dated June 18, 2005 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
17.	407 ETR bill dated July 18, 2005 and payment thereof	6	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
18.	407 ETR bill dated August 18, 2005 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
19.	407 ETR bill dated September 18, 2005 and payment thereof	6	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
20.	407 ETR bill dated October 18, 2005 and payment thereof	6	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13

21.	407 ETR bill dated November 18, 2005 and payment thereof	6	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
22.	407 ETR bill dated January 18, 2006 and payment thereof	4	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
23.	407 ETR bill dated February 18, 2006 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
24.	407 ETR bill dated April 18, 2006 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
25.	407 ETR bill dated September 10, 2004 and payment thereof	4	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
26.	407 ETR bill dated May 18, 2006 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
27.	407 ETR bill dated June 18, 2006 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
28.	407 ETR bill dated July 18, 2006 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
29.	407 ETR bill dated August 18, 2006 and payment thereof	6	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
30.	407 ETR bill dated September 18, 2006 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
31.	407 ETR bill dated October 18, 2006 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13

32.	407 ETR bill dated November 18, 2006 and payment thereof	10	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
33.	407 ETR bill dated January 18, 2007 and payment thereof	6	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
34.	407 ETR bill dated February 18, 2007 and payment thereof	6	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
35.	407 ETR bill dated March 18, 2007 and payment thereof	6	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
36.	407 ETR bill dated April 18, 2007 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
37.	407 ETR bill dated May 18, 2007 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
38.	407 ETR bill dated June 18, 2007 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
39.	407 ETR bill dated July 18, 2007 and payment thereof	4	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
40.	407 ETR bill dated August 18, 2007 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
41.	407 ETR bill dated September 18, 2007 and payment thereof	4	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
42.	407 ETR bill dated October 18, 2007 and payment thereof	4	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13

43.	407 ETR bill dated November 18, 2007 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
44.	407 ETR bill dated December 18, 2007 and payment thereof	6	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
45.	407 ETR bill dated January 18, 2008 and payment thereof	4	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
46.	407 ETR bill dated February 18, 2008 and payment thereof	7	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
47.	407 ETR bill dated April 18, 2008 and payment thereof	4	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
48.	407 ETR bill dated May 18, 2008 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
49.	407 ETR bill dated June 18, 2008 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
50.	407 ETR bill dated July 18, 2008 and payment thereof	5	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
51.	407 ETR bill dated August 18, 2008 and payment thereof	4	Partial, sever section - danger to safety or health and section 14(1) - personal information.	13
52.	407 ETR bill dated September 18, 2008 and payment thereof	10	Partial, sever section - danger to safety or health and section 14(1)	13