

**IN THE MATTER OF an Appeal before the Information and Privacy  
Commissioner/Ontario, pursuant to the *Municipal Freedom of Information and Protection  
of Privacy Act*, R.S.O. 1990, c. M.56, IPC File No. MA18-395**

**BEFORE IPC/Ontario Adjudicator Justine Wai**

**TAY VALLEY TOWNSHIP**

**Representations on Behalf of Tay Valley Township**

**June 19, 2019**

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**TAY VALLEY TOWNSHIP**

**Representations on Behalf of Tay Valley Township  
Dated June 19, 2019**

**INTRODUCTION**

1. The following representations are provided by Tay Valley Township (the “Township”) in response to the Notice of Inquiry received from the Information and Privacy Commissioner/Ontario (“IPC”) dated April 30, 2019 in IPC File No. MA18-395 (the “Appeal”), Township File Nos. 2018-02 and 2018-05, under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, C. M.56 (“*MFIPPA*” or the “*Act*”).
2. The Appeal arises from two requests for records in the custody or under the control of the Township described as follows (the “Request”):
  - 2018-02:** All correspondence mentioning myself [appellant’s name] or “Blueberry Creek Forest School” and: Tay Valley Township staff, contractors, councillors and planners, including but not limited to: [twelve named individuals].
  - 2018-05:** All records, including but not limited to emails, letters, memoranda, post-it notes, records of calculations, and draft (unsent) copies of the foregoing written by [two named individuals] or any other member of Tay Valley Township staff (including any contractors), relating to the May 2 letter responding to [the appellant’s] request for information relating to herself and/or Blueberry Creek, and in particular to the claim that the costs to complete such search would amount to \$789 for a manual search of records, \$1,200 for staff time, \$100 for shipping costs, and \$250 for photocopies.
3. These representations address the issues set out by the IPC in the Notice of Inquiry. The Township specifically reserves the right to respond to the Appellant’s representations if necessary, and hereby requests a copy of any such submissions.
4. Given the large number of records at issue in the Appeal, we have provided additional representations in respect of each of the specific records in issue at Schedule “A”.

5. In summary, the Township submits that it responded to the Request reasonably and in good faith. The Township adopted a broad and liberal interpretation of the Request and applied the exemptions and exclusions to withhold information only as minimally necessary to protect the interests served by the exemptions applied. Where the exemptions in question were discretionary, the Township exercised its discretion reasonably and in good faith, considering only the relevant factors and not considering any irrelevant factors. The Township provided the Appellant with a reasonable fee estimate which was calculated in accordance with the relevant statutory guidelines and based on actual time and resources expended by the Township in responding to the Request. The Township submits that its decision should be upheld in full.

## **BACKGROUND INFORMATION**

6. The Township is a township which forms a part of the upper-tier municipality of Lanark County, located in Eastern Ontario. The Township was formed in 1998 through an amalgamation of the former townships of Bathurst, North Burgess, and South Sherbrooke. The Township was renamed Tay Valley in 2002.
7. The Township contains the hamlets of Dewitt's Corners, Balderson, Fallbrook, Glen Tay, Stanleyville, Bolingbroke, and Maberly. Murphy's Point Provincial Park is located within the Township.
8. The Appellant owns property within the Township, namely 17638 Highway 7 (the "Property"). The Property is zoned under the Township's Zoning By-Law<sup>1</sup> as General Commercial. The Property is also located within a floodplain.
9. The Appellant sought approval for a building permit on the Property in order to construct an "Artist's Studio." The Township granted the permit as it fell within the permitted uses of General Commercial land under part 6.1 of the Zoning By-Law.
10. Once construction began on the Property, the Rideau Valley Conservation Authority ("RVCA") and the Township's Chief Building Official ("CBO") conducted a site visit to the Property. The site visit revealed that the entire building was within thirty (30) meters of the watercourse and was within the floodplain. The RVCA advised the Appellant that a permit would be needed. During the site visit, the CBO noted that there were differences between the plans the Appellant submitted to get the work permit, and the construction that was being done. As a result, the CBO issued a Stop Work Order.
11. Following the issuance of the Stop Work Order, the Appellant met with the Township, the CBO, and the RVCA and confirmed that the building was to be used as a private

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<sup>1</sup> Tay Valley Township By-Law No. 02-121 ("Zoning By-Law"), Tab 2.

school. A school is not one of the permitted uses listed under part 6.1 of the Zoning By-Law.

12. Permitted uses for land within a floodplain are governed by the Provincial Policy Statement (“PPS”) and the Township’s Official Plan<sup>2</sup>, and include agriculture, forestry, conservation, wildlife management, and outdoor recreation. No buildings are to be constructed or erected within the floodplain, and development and site alteration is not permitted without approval of the RVCA.<sup>3</sup>
13. The first part of the Request (Township File No. 2018-02) came following the issuance of the Stop Work Order. The Township provided the Appellant with a fee estimate in order to respond to the Request, which led to the second part of the Request (Township File No. 2018-05), in which the Appellant sought documents relating to the calculation of the fee estimate.
14. The records which have been withheld are communications between a combination of employees and consultants of the Township, Councillors, and the Township’s solicitor. These records are exempt from disclosure, either in whole or in part, as they are subject to a variety of exemptions under the Act. The Township has exercised its discretion to withhold the portions in issue in consideration of the interests protected by the exemptions in question.

#### **ISSUE A: SHARING OF REPRESENTATIONS**

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<sup>2</sup> Tay Valley Township Official Plan, Tab 3.

<sup>3</sup> *Ibid*, s. 3.5.

## **ISSUE B: PERSONAL INFORMATION**

18. Section 2(1) defines personal information as “recorded information about an identifiable individual.” The section goes on to list a number of non-exhaustive examples, including information relating to the employment history of the individual or financial transactions in which the individual has been involved, and the individual’s name if it appears with other information relating to the information where disclosure of the individual’s name would reveal other personal information.
19. The Township accepts that the Records in issue for the most part contain the personal information of the Appellant, and therefore s. 38(a) in conjunction with ss. 7, 8, and 12, apply to the determination of whether information in the records is exempt from disclosure. While some records do not strictly contain the personal information of the Requester, the Township understood Request 2018-02 to be at heart a request for personal information and took this into consideration while exercising its discretion to withhold information under the exemptions in issue in this Appeal.

## **ISSUE C: DISCRETION TO REFUSE ACCESS TO REQUESTER’S OWN PERSONAL INFORMATION**

20. Under s. 38(a) of *MFIPPA*, the Township is authorized to withhold records or parts of records where it determines that one or more of the exemptions found in ss. 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13, or 15 apply.
21. The Township relies on ss. 7(1), 8(1)(a), 8(1)(b), and 12 to withhold records in the present Appeal.

### **Section 6(1)(b) – Closed Meetings**

22. Section 6(1)(b) of the *Act* authorizes an institution to withhold records “that reveal 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 the meeting in the absence of the public.”
23. The Township relied upon s. 6(1)(b) in error. The Township intended to rely on the exemption contained in s. 7(1) on the basis that the records in issue contain deliberations that would reveal the substance of advice and recommendations the Township received from “an employee of the institution or a consultant retained by the institution.”

24. The Township's submissions with respect to these records and the application of s. 7(1) are set out below.

**Section 7(1) – Advice or Recommendations**

25. Under s. 7(1) of the *Act*, an institution is authorized to withhold a record where its disclosure “would reveal advice or recommendations of an employee of the institution or a consultant retained by the institution.”
26. The Supreme Court of Canada recently affirmed the broad scope of protection provided for a confidential space for decision making within government institutions. The Court, in looking at s. 13(1) of the *Freedom of Information and Protection of Privacy Act*<sup>4</sup>, which mirrors s. 7(1) of the *Act*, emphasized that the section protects both “recommendations,” which usually describe a specific course of action, and “advice,” which encompasses a broader analysis of and opinions regarding various policy options available to a decision maker.<sup>5</sup>
27. The purpose of s. 7 is to preserve an effective and neutral public service by ensuring that individuals employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.
28. Advice or recommendations may be revealed in two ways:
- a. the information itself consists of advice or recommendations; or
  - b. the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.<sup>6</sup>

29. Records 1, 2, 6, 7, 14-17, 19, 22, 27, 28, 32, 38, 80, 81, 92, 95, 103, 110, and 138 refer to advice and recommendations the Township received from consultants and the RVCA.

Disclosure of these records would either reveal the advice or recommendations themselves or allow accurate inferences to be drawn about the nature of the advice or recommendations. Even in the absence of the actual advice in the records themselves, it is plain and obvious that

<sup>4</sup> R.S.O. 1990, c. F.31 (“FIPPA”).

<sup>5</sup> *John Doe v. Ontario (Ministry of Finance)*, 2014 SCC 36, Tab 4, at paras. 24 and 46.

<sup>6</sup> *Order PO-2084* (December 11, 2002), Information and Privacy Commissioner/Ontario.

changes are made to draft documents on the basis of advice given, allowing inferences to be made as to the content of the advice and recommendations.

30. Records 47, 48, 57, 58, 61, 62, 68, 78, 81, 83, 95, 97, 100, 117, 123, 128, 129, 137, and 138, if disclosed, would allow accurate inferences to be drawn as to the nature of the advice or recommendations Council received from the various consultants it retained. The records contain conversations between members of Council that

Disclosure of these records would either reveal the advice or recommendations themselves or allow accurate inferences to be drawn about the nature of the advice or recommendations. Even where the actual summary of the advice and recommendation which was received is not contained in the records, disclosure of the records would reveal the advice sought by the Township and would therefore allow inferences to be made as to the content of the advice and recommendations the Township received. Similarly, where the records contain drafts document, disclosure of the drafts would permit comparisons to the final version of the documents in question and thereby reveal the advice and recommendations which the Township received.

31. None of the records are subject to the exceptions under ss. 7(2) or 7(3) of the *Act*.
32. The Township has severed all parts of the records that can be disclosed without revealing the nature of the advice or recommendations or allowing inferences to be made as to same. The disclosure of the withheld information is therefore contrary to s. 7(1) of the *Act*, and the Township submits that its decision in this respect should be upheld.

#### **Section 8(1) – Law Enforcement**

33. Section 8(1)(a) permits an institution to withhold a record where disclosure “could reasonably be expected to interfere with a law enforcement matter.” Section 8(1)(b) permits an institution to withhold a record where disclosure “could reasonably be expected to interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.”
34. Section 2(1) of the *Act* defines “law enforcement” as

*“law enforcement” means,*

*(a) policing,*

*(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or*



(c) the conduct of proceedings referred to in clause (b).

35. The term "law enforcement" includes a municipality's investigation into a possible violation of a municipal by-law.<sup>7</sup>
36. The scope of ss. 8(1)(a) and 8(1)(b) are similar. They both require that the Township establish that there is an ongoing law enforcement matter or investigation, and that disclosure of the records in question could reasonably be expected to interfere with the matter or investigation.
37. The Township is currently involved in an ongoing investigation into the Appellant's breach of the Zoning By-Law.
38. Section 8(1) requires that the institution show that there is a risk of harm associated with the disclosure of the records. In *Order PO-2099*,<sup>8</sup> Adjudicator Hale stated that the *FIPPA* equivalent of s. 8 requires that the expectation of a harm coming to pass should be based on reason, and that an institution asserting a s. 8 exemption bears the onus of providing sufficient evidence to substantiate the reasonableness of the expected harm(s).
39. In *Order MO-2074*, it was confirmed that the test in s. 8(1) does not require evidence of actual harm, or intent to harm, or actual intent to harm.
40. Records 2, 5, 6, 14, 15-19, 22, 27, 27, 28, 32, 37-39, 92, and 103 relate to the investigation undertaken by the Township regarding the Appellant's breach of the Zoning By-Law.
41. Disclosure of the information contained in these records may compromise the investigation. For example, disclosure of this information would reveal the Township's conclusions in the current investigation to the public. This would allow other parties to utilize the results and conclusions of the Township to avoid detection of similar violations of the Zoning By-Law, thus reducing the efficacy of the Township's future investigations.
42. Further, disclosure of Records 2 and 5 specifically would reveal details of the Township's investigation and by-law enforcement processes that could interfere with the Township's enforcement of the Zoning By-Law both against the Appellant and other Township residents.

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<sup>7</sup> *Order M-16* (May 8, 1992) and *Order MO-1245* (October 19, 1999), Information and Privacy Commissioner/Ontario.

<sup>8</sup> *Order PO-2099* (January 17, 2003), Information and Privacy Commissioner/Ontario.

43. The Township has severed all parts of the records that can be disclosed without revealing the nature of the information withheld or allowing inferences to be made as to same. The disclosure of the withheld information is therefore contrary to s. 8(1) of the *Act*, and the Township submits that its decision in this respect should be upheld.
44. The Township has withdrawn reliance on s. 8(2) as it relates to any of the records in issue.

### **Section 12 – Solicitor-Client Privilege**

45. The Township submits that Records 46-50, 53, 54, 67-69, 84-91, 93, 94, 96, 98, 104-106, 109, 114-116, 118-127, 132, 136, and 140 are solicitor-client privileged and exempt from disclosure under s. 12 of the *Act*.
46. The records in issue form part of the continuum of communications between the Township and its solicitor. The Township was justified in withholding the records under s. 12.

### ***The Importance of Privilege***

47. In *Ontario (A.G.) v. Big Canoe*, the Court of Appeal recognized that “[t]he broad intention of the *Act* is to offer transparency to government functioning with exceptions where the interests of public knowledge are overbalanced by other concerns.”<sup>9</sup> The privileges protected by s. 12 are among the most significant countervailing concerns warranting confidentiality under the *Act*. The Supreme Court of Canada has repeatedly expressed the fundamental importance of solicitor-client privilege to the Canadian legal system.
48. In *Descôteaux v. Mierzwinski*, the Court recognized that solicitor-client privilege is not merely a rule of evidence, but a substantive rule of law protecting the right to confidentiality in the solicitor-client relationship. The Court articulated the following principles of interpretation of solicitor-client privilege which continue to be authoritative:

*1. The confidentiality of communications between solicitor and client may be raised in any circumstances where such communications are likely to be disclosed without the client's consent.*

*2. Unless the law provides otherwise, when and to the extent that the legitimate exercise of a right would interfere with another person's right to have his*

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<sup>9</sup> [2002] OJ No 4596, 62 OR (3d) 167 (ONCA) (“*Big Canoe 2002*”), Tab 5, at para 12. Leave refused [2003] SCCA No 31.

*communications with his lawyer kept confidential, the resulting conflict should be resolved in favour of protecting the confidentiality.*

3. *When the law gives someone the authority to do something which, in the circumstances of the case, might interfere with that confidentiality, the decision to do so and the choice of means of exercising that authority should be determined with a view to not interfering with it except to the extent absolutely necessary in order to achieve the ends sought by the enabling legislation.*

4. *Acts providing otherwise in situations under paragraph 2 and enabling legislation referred to in paragraph 3 must be interpreted restrictively.*<sup>10</sup>

49. In the over thirty years since its decision in *Descôteaux*, the Court has reaffirmed this holding again and again. In *Lavallée v. Canada (Attorney General)*, the Court referred to solicitor-client privilege as “a principle of fundamental justice and civil right of supreme importance in Canadian law...” and held that “solicitor-client privilege must remain as close to absolute as possible if it is to retain relevance.”<sup>11</sup>

50. In *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, the Court reiterated the comments in *Lavallée*.<sup>12</sup> In the context of contemplated disclosure to the federal Privacy Commissioner, the Court noted the particular threat to privilege posed by the risk of a public disclosure of the information:

*To a client, compelled disclosure to an administrative officer, even if not disclosed further, would constitute an infringement of the confidentiality. The objection is all the more serious where (as here) there is a possibility of the privileged information being made public or used against the person entitled to the privilege...*<sup>13</sup>

51. The Supreme Court examined the importance of protecting privilege in the context of *FIPPA*, in *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*. In rejecting the argument that s. 2(b) of the *Canadian Charter of Rights and Freedoms*<sup>14</sup> required that the public interest override in s. 23 be applied to s. 19 of *FIPPA*, the Court noted that:

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<sup>10</sup> [1982] 1 SCR 860, [1982] SCJ No 43 (“*Descouteaux*”), Tab 6, at para 27.

<sup>11</sup> 2002 SCC 61, [2002] 3 SCR 209 (“*Lavallée*”), Tab 7, at para 36.

<sup>12</sup> 2008 SCC 23, [2008] 2 SCR 574 (“*Blood Tribe*”), Tab 8, at para 9.

<sup>13</sup> *Ibid* at para 21.

<sup>14</sup> 1982, R.S.C. 1985, App. II, No. 44, Schedule B (“*Charter*”).

*Given the near-absolute nature of solicitor-client privilege, it is difficult to see how the s. 23 public interest override could ever operate to require disclosure of a protected document.*<sup>15</sup>

The Court accepted that the wording of s. 19 of *FIPPA*, which is nearly identical to the language of s. 12 of the *Act*, and the nature of solicitor-client privilege already provided for adequate consideration of the public interest, and the exclusion of s. 19 from the scope of the override in s. 23 was not a violation of the *Charter*.

52. Most recently, the Supreme Court conducted a thorough review of the importance of solicitor-client privilege in *Canada (Attorney General) v. Federation of Law Societies of Canada*. The Court noted that:

*...the reasonable expectation of privacy in relation to communications subject to solicitor-client privilege is invariably high, regardless of the context. The main driver of that elevated expectation of privacy is the specially protected nature of the solicitor-client relationship, not the context in which the state seeks to intrude into that specially protected zone. ...As Arbour J. put it:*

*It is critical to emphasize here that all information protected by the solicitor-client privilege is out of reach for the state... [A]ny privileged information acquired by the state without the consent of the privilege holder is information that the state is not entitled to as a rule of fundamental justice. [Emphasis added; para. 24.]<sup>16</sup>*

53. The Court affirmed its previous holding in *Lavallée*, noting that:

*...solicitor-client privilege "must remain as close to absolute as possible if it is to retain relevance": Lavallee, at para. 36. This means that there must be a "stringent" norm to ensure its protection, such that any legislative provisions that interfere with the privilege more than "absolutely necessary" will be found to be unreasonable...<sup>17</sup>*

54. The importance of solicitor-client privilege cannot be overstated. The protection afforded by the privilege does not vary with the circumstances in which it is claimed, nor with the identity of the client. Every individual, every organization, and every institution is entitled to the benefit of confidential legal advice.

<sup>15</sup> 2010 SCC 23, [2010] 1 SCR 815 ("*Criminal Lawyers Association*"), Tab 9, at para 54.

<sup>16</sup> 2015 SCC 7, [2015] 1 SCR 401 ("*FLS*"), Tab 10, at para 38.

<sup>17</sup> *Ibid* at para 44.

55. The IPC must approach claims of privilege cautiously, with due regard for the importance of solicitor-client privilege to the effective functioning of the Canadian legal system.

### *The Scope of Section 12*

56. Section 12 provides a broad exemption for records subject to solicitor-client and litigation privilege. Section 12 reads as follows:

*12. A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.*

57. Section 12 incorporates an exemption for records subject to common law solicitor-client or litigation privilege.

58. The scope of protection afforded by solicitor-client privilege is well-established: the privilege protects any and all communications forming part of the “continuum of communications” between client and lawyer for the purpose of seeking and providing legal advice.<sup>18</sup> It further protects documents which are compiled by and work done by legal counsel in the course of seeking, formulating, and giving legal advice.<sup>19</sup>

59. The IPC has also accepted that s. 12 of the *Act* permits an institution to withhold documents relating to investigations conducted by or on behalf of legal counsel to assist in providing legal advice.

60. In *Order MO-2781*, the appellant sought access to an engineering report which was commissioned by the Town of Oakville. The Town refused to disclose the report, noting that it was prepared for legal counsel to assist counsel in providing legal advice to the town. Notwithstanding that the report was not prepared by legal counsel, Adjudicator Haly accepted that it was exempt from disclosure under the statutory portion of s. 12:

*I find that the town has established the engineering report was a confidential report prepared by the engineering firm for the town's legal counsel for the purposes of providing legal advice to council. I accept the town's evidence that council requested legal counsel retain an engineering firm for the purposes of looking into various issues caused by the SPS at the appellant's condominium. I further accept*

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<sup>18</sup> *Order MO-2945-I* (September 13, 2013), Information and Privacy Commissioner/Ontario, at paras 41-44.

<sup>19</sup> *Ontario (Correctional Services) v. Goodis*, [2008] OJ No 289, 89 OR (3d) 457 (ON SCDC), Tab 11 at para 54.

*that the town's counsel retained the engineering firm for the purposes of investigating and providing a report on the issues set out above. Finally, I accept the town's submissions that its counsel provided legal advice to the council about this matter following receipt of the engineering report.*<sup>20</sup>

61. In **Order MO-2195**, the appellant sought access to a forensic audit conducted by an accounting firm for a law firm retained to provide a legal opinion to the City of Vaughan. The City refused on the basis that the Report was privileged and exempt from disclosure under s. 12 of **MFIPPA**. Adjudicator Cropley accepted that the report was prepared for counsel retained by the City for use in giving legal advice.<sup>21</sup>
62. It is not necessary to discuss the contents of the records in issue to confirm that they are privileged. Whether the records contain statements of legal advice, a blend of fact and legal advice, or form part of the continuum of conversation between the Township and its solicitor, they are clearly subject to solicitor-client privilege. The IPC accepted in **Order PO-2800** that privilege under s. 19 of **FIPPA** (and by extension under s. 12 of **MFIPPA**) will extend even to documents exchanged with counsel or factual information provided to counsel in the course of seeking or receiving legal advice.<sup>22</sup>
63. The records in this case are subject to solicitor-client privilege at common law. Even if they were not, they would nonetheless meet the plain language of the exemption in s. 12 and can be withheld on that basis. The Township's decision in this respect should be upheld.

#### ***Waiver of Privilege***

64. There has been no waiver of privilege. The Township has at all times throughout these proceedings asserted privilege over all communications forming the continuum of communications with its solicitor for the purpose of obtaining legal advice.

#### **ISSUE D: EXERCISE OF DISCRETION**

65. The Township has exercised its discretion properly in withholding the records in issue. The Township considered only relevant factors in this exercise and did not consider any irrelevant or improper factors. At all times, the Township has acted in good faith and in furtherance of its duties under the *Act*.

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<sup>20</sup> *Order PO-2781* (August 21, 2012), Information and Privacy Commissioner/Ontario, at para 29.

<sup>21</sup> *Final Order MO-2195* (May 17, 2007), Information and Privacy Commissioner/Ontario, at 4.

<sup>22</sup> *Order PO-2800* (June 30, 2009), Information and Privacy Commissioner/Ontario, at 6.

66. The Township considered the Appellant's interest in receiving the records, and the public interest in transparency and access to information, but also the Township's need for confidentiality for the reasons articulated above. The Township did not apply a blanket approach to the exemptions. Instead, wherever possible the Township severed and disclosed portions of the records to the Appellant while protecting the minimum information necessary to protect the interests in question.
67. The Township determined that the potential harm from disclosure far outweighed any public interest in the release of the records in question to the Appellant. The Township determined, in fact, that the public interest in the Township's ability to receive advice (including legal advice) and ensure its ability to enforce its by-laws through effective investigations and proceedings supported withholding the portions of the Records in issue.
68. The Township did not consider any irrelevant factors in exercising its discretion, and instead focused on weighing the interests in favour of disclosure with those weighing against disclosure.
69. The Township has properly exercised its discretion and its decision in this respect should be upheld.

#### **ISSUE E: RESPONSIVENESS OF RECORDS**

70. The Township submits that the Request was not ambiguous. The Request itself clearly sets out the boundaries of relevancy and circumscribes the records which were ultimately identified as being responsive.
71. The Township responded liberally and in good faith to the Request, in accordance with the plain and ordinary meaning of the Request. The Appellant has offered no specific complaints about the Township's interpretation of the scope of her Request, nor is there any reason whatsoever to believe that the Township's interpretation of the Request was inappropriate or improper.
72. With respect to Township File No. 2018-05, there was only one (1) responsive record, which was the Township's letter setting out the fee estimate. There were no other records which were responsive to the Appellant's request.
73. The records and portions thereof which were determined to be non-responsive do not respond to the clear and unambiguous wording of the Request. The Township is under no obligation to provide records and portions thereof which are not responsive to the Request.

## ISSUE F: FEES

74. The fee imposed by the Township in this case was calculated pursuant to the provisions of s. 45(1) of the *Act* and the Regulations thereto. It was calculated on the basis of the work actually performed by Township staff in order to search for the information responsive to the Appellant's request and to prepare that information for disclosure to the Appellant.
75. The Township assessed fees on the basis of the permitted activities as set out in the *Act*, which include manual search time, staff time to prepare the records, photocopying costs, and shipping costs. Staff time to prepare the records included reviewing records to determine their responsiveness, exercising discretion to apply the exemptions under the *Act*, and redacting information.
76. The Township's search included e-mail and hard copy files, and was performed by the Chief Administrative Officer, Planning Consultant, Planning Administrative Assistant, Clerk, Corporate Administrative Assistant, and a summer student. The keywords used for searching electronically were the Property's address, the roll number, the building permit number, and the name of the Appellant and the Blueberry Creek Forest School. The search returned a total of three hundred and six (306) responsive records, for a total of approximately nine hundred and fifteen (915) pages. Of those three hundred and six (306) records, one hundred and forty (140) of them were subject to an exemption. The Township's calculation of manual search time and staff time was assessed only for the activities actually permitted pursuant to the *Act*.
77. In calculating the fees, the Township had reference to s. 6 of the General Regulations<sup>23</sup> under the *Act*, which provides that the Township may charge \$0.20 per photocopy or computer printout, \$7.50 for each fifteen (15) minutes spent by a person manually searching a record, \$7.50 for each fifteen (15) minutes spent preparing a record for disclosure, and the costs incurred in locating, retrieving, processing, and copying the records. The Township spent a total of 32.5 hours (15.5 hours for the search and 17 hours for preparation of the records) and assessed a total of \$1,114.20 in respect of the search and preparation work, including reviewing and applying redactions for disclosure, undertaken by the Chief Administrative Officer, Planning Consultant, Planning Administrative Assistant, Clerk, Corporate Administrative Assistant, and the summer student. This total was calculated on the basis of \$465 for manual search time, \$124.20 for photocopying, \$15 for shipping, and \$510 for staff time spent reviewing the documents for disclosure and applying redactions.

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<sup>23</sup> RRO 1990, Reg. 823.



78. The Township submits that this fee is reasonable in all the circumstances and should be upheld.

## CONCLUSION

79. For all of the above reasons, the Township submits that it responded to the Request reasonably and in good faith and its decisions under review should be upheld.
80. The Township adopted a broad and liberal interpretation of the Request and applied the exemptions and exclusions to withhold information only as minimally necessary to protect the interests of the Township. Where the exemptions were discretionary, the Township exercised its discretion reasonably and in good faith, considering only the relevant factors and not considering any irrelevant factors. The Township provided the Appellant with a reasonable fee estimate which was calculated in accordance with the relevant statutory guidelines and based on actual time and resources expended by the Township in responding to the Request. The Township's actions have at all times been in compliance with the *Act*.
81. The Township's decision should be upheld in all respects and the Appeal should be dismissed.
82. Should you have any further questions please do not hesitate to contact the undersigned.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED,  
THIS 19th DAY OF JUNE, 2019.**



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**EMOND HARNDEN LLP**  
Porter Heffernan  
Lawyers for the Township

## SCHEDULE "A"

The Township is providing the following supplementary submissions to assist the IPC in applying the exclusions of the *Act* to the specific records in issue in this Appeal.

As detailed above, the Township submits that the highlighted portions of the detailed submissions below should be withheld from the Appellant as confidential. The Township cannot make effective submissions about the specific records in issue without disclosing the content of the records, the circumstances of their creation, and any use which was made of them, any or all of which may be confidential and/or privileged, and/or which may reveal the content of records which are excluded under the *Act*.

Record No.	Disclosure	Section of MFIPPA	Rationale for Exceptions Applied
1	Withheld	7(1)	<i>Disclosure of this record would reveal the advice and recommendations provided to the Township by its consultant.</i>
2	Withheld	7(1), 8(1)(a), 8(1)(b)	<i>This record contains notes made by a consultant the Township retained in preparation for the meeting with the Appellant regarding zoning. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township by its consultant. Further, disclosure of this record could compromise the Township's investigation into the Appellant's breach of the Zoning By-Law for the reasons set out in the Township's representations.</i>
5	Withheld	8(1)(a), 8(1)(b)	<i>Disclosure of this record could compromise the Township's investigation into the Appellant's breach of the Zoning By-Law for the reasons set out in the Township's representations.</i>
6	Partial release	7(1), 8(1)(b)	<i>This record refers to notes made in preparation for the meeting with the Appellant regarding zoning. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township by its consultant and could compromise the Township's investigation into the Appellant's breach of the Zoning By-Law for the reasons set out in the Township's representations.</i>
7	Partial release	7(1)	<i>This record refers to an opinion provided by the RVCA in preparation for the meeting with the Appellant regarding zoning. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township by its consultant.</i>

14	Partial release	7(1), 8(1)(b)	<i>This record contains the consultant's proposed response to the letter the Township received from the Appellant. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township by its consultant. Further, disclosure of this record could compromise the Township's investigation into the Appellant's breach of the Zoning By-Law for the reasons set out in the Township's representations.</i>
15	Partial release	7(1), 8(1)(b)	<i>This record reproduces the exempted parts of Record 14.</i>
16	Partial release	7(1), 8(1)(b)	<i>This record reproduces the exempted parts of Record 14.</i>
17	Partial release	7(1), 8(1)(b)	<i>This record reproduces the exempted parts of Record 14.</i>
19	Withheld	7(1), 8(1)(b)	<i>This record reproduces the exempted parts of Record 14.</i>
21	Withheld	NR	<i>The Township withdraws reliance on the exemption in s. 8(2)(a) as this record is not responsive to the Request.</i>
22	Withheld	7(1), 8(1)(b)	<i>This record contains advice given to the Township from the RVCAs in the course of the investigation into the Appellant's breach of the Zoning By-Law. Disclosure would allow inferences to be made as to the nature of the advice and recommendations provided to the Township by the RVCAs. Further, disclosure of this record could compromise the Township's investigation into the Appellant's breach of the Zoning By-Law for the reasons set out in the Township's representations.</i>
27	Withheld	7(1), 8(1)(b)	<i>This record duplicates Record 5.</i>
28	Partial release	7(1), 8(1)(b)	<i>This record reproduces the exempted parts of Records 2 and 6.</i>
32	Partial release	7(1), 8(1)(b)	<i>This record reproduces the exempted parts of Records 14 and 19.</i>
37	Withheld	8(1)(b)	<i>This record duplicates Records 5 and 27.</i>

38	Partial release	7(1), 8(1)(b)	<i>This record reproduces the exempted part of Record 14.</i>
39	Withheld	8(1)(b)	<i>The Township withdraws reliance on the exemption in s. 8(1)(b) as it relates to this record.</i>
43	Withheld	7(1)	<i>The Township withdraws reliance on the exemption in s. 6(1)(b) as it relates to this record and submits that the record is exempt from disclosure under s. 7(1). This record contains conversations between Council members that, if disclosed, would reveal the nature of the advice the Township received from its consultants. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township.</i>
44	Withheld	7(1), 12	<i>The Township withdraws reliance on the exemption in s. 6(1)(b) as it relates to this record and submits that the record is exempt from disclosure under s. 7(1). This record contains conversations between Council members that, if disclosed, would reveal the nature of the advice the Township received from its consultants. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township. This record further references the Township's desire to seek legal advice, which is part of the continuum of communications between the Township and its legal counsel. This record also references legal advice and is subject to solicitor-client privilege.</i>
45	Withheld	7(1), 12	<i>The Township withdraws reliance on the exemption in s. 6(1)(b) as it relates to this record and submits that the record is exempt from disclosure under s. 7(1). This record contains conversation between Council members that, if disclosed, would reveal the nature of the advice the Township received from its consultants. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township. This record references the Township's intention to seek legal advice, which is part of the continuum of communications between the Township and its legal counsel. This record contains information that is subject to solicitor-client privilege.</i>

46	Partial release	12	<i>This record references the Township's intention to seek legal advice, which is part of the continuum of communications between the Township and its legal counsel. This record contains information that is subject to solicitor-client privilege.</i>
47	Withheld	7(1), 12	<i>This record references legal advice and is subject to solicitor-client privilege. The Township withdraws reliance on the exemption in s. 6(1)(b) as it relates to this record and submits that the record is exempt from disclosure under s. 7(1). This record contains conversations between Council members that, if disclosed, would reveal the nature of the advice the Township received from its consultants. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township.</i>
48	Withheld	7(1), 12	<i>This record reproduces the exempted parts of Record 47.</i>
49	Withheld	12	<i>This record references legal advice and is subject to solicitor-client privilege.</i>
50	Withheld	7(1), 12	<i>The record duplicates Record 44.</i>
52	Withheld	7(1)	<i>This record duplicates Record 45. The Township withdraws reliance on the exemption in s. 8(1)(b) as it relates to this record.</i>
53	Withheld	12	<i>The record reproduces the exempted parts of Record 44.</i>
54	Withheld	12	<i>The record reproduces the exempted parts of Record 44.</i>
55	Withheld	7(1), 12	<i>The record reproduces the exempted parts of Record 44.</i>
56	Withheld	7(1), 12	<i>The record reproduces the exempted parts of Record 44.</i>
57	Withheld	7(1), 12	<i>The record reproduces the exempted parts of Record 47.</i>
58	Withheld	7(1), 12	<i>The record reproduces the exempted parts of Record 47.</i>
59	Withheld	7(1), 12	<i>The record duplicates Record 45.</i>

60	Withheld	12	<i>The record reproduces the exempted parts of Record 44. The Township withdraws reliance on the exemption in s. 6(1)(b) as it relates to this record and submits that the record is subject to solicitor-client privilege. This record references the Township's desire to seek legal advice, which is part of the continuum of communications between the Township and its legal counsel.</i>
61	Withheld	7(1), 12	<i>This record reproduces the exempted parts of Record 47.</i>
62	Withheld	7(1), 12	<i>This record reproduces the exempted parts of Record 47. The Township withdraws reliance on the exemption in s. 6(1)(b) as it relates to this record and submits that the record is exempt from disclosure under s. 7(1). This record contains conversations between Council members that, if disclosed, would reveal the nature of the advice the Township received from its consultants. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township.</i>
63	Partial release	7(1)	<i>The Township withdraws reliance on the exemption in s. 6(1)(b) as it relates to this record and submits that the record is exempt from disclosure under s. 7(1). This record contains conversations between Council members that, if disclosed, would reveal the nature of the advice the Township received from its consultants. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township.</i>
67	Partial release	12	<i>This record reproduces the exempted parts of Record 46.</i>
68	Withheld	7(1), 12	<i>This record reproduces the exempted parts of Record 47.</i>
69	Withheld	7(1), 12	<i>This record reproduces the exempted parts of Record 44.</i>
72	Withheld	7(1), 12	<i>This record reproduces the exempted parts of Record 44.</i>
73	Withheld	7(1), 12	<i>This record reproduces the exempted parts of Record 44.</i>

75	Partial release	7(1)	<i>This record reproduces the exempted parts of Record 63.</i>
78	Withheld	7(1), 12	<i>This record reproduces the exempted parts of Record 47.</i>
79	Partial release	12	<i>This record references the Township's intention to seek legal advice, which is part of the continuum of communications between the Township and its legal counsel. This record contains information that is subject to solicitor-client privilege.</i>
80	Withheld	7(1)	<i>The Township withdraws reliance on the exemption in s. 6(1)(b) as it relates to this record. This record contains advice and recommendations the Township received from a communications consultant regarding a media release. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township by its consultant.</i>
81	Withheld	7(1)	<i>The Township withdraws reliance on the exemption in s. 6(1)(b) as it relates to this record. This record contains a draft media release that differs from the final version released by the Township. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township by its consultant.</i>
83	Withheld	NR, 7(1), 14(1)	<i>This record contains information that is not responsive to the Request. The Township withdraws reliance on the exemption in s. 6(1)(b) as it relates to this record and submits that the record is exempt from disclosure under s. 7(1). This record contains conversations between Council members that, if disclosed, would reveal the nature of the advice the Township received from its consultants. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township. This record also contains personal information of an individual who is not an employee of the Township.</i>
84	Withheld	12, NR	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege. This record is not responsive to the Request.</i>



85	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
86	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
87	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
88	Withheld	NR, 7(1), 12	<i>This record contains information that is not responsive to the Request. The Township withdraws reliance on the exemption in s. 6(1)(b) as it relates to this record and submits that the record is exempt from disclosure under s. 7(1). This record contains conversations between Council members that, if disclosed, would reveal the nature of the advice the Township received from its consultants. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township. This record also contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
89	Withheld	12	<i>This record contains information that is not responsive to the Request. This record also contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
90	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
91	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
92	Partial release	7(1), 8(1)(b)	<i>This record contains advice and recommendations the Township received from a consultant regarding how to respond to the Appellant's lawyer in the course of the investigation into the Appellant's breach of the Zoning By-Law. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township by its consultant and could compromise the Township's</i>

			<i>investigation into the Appellant's breach of the Zoning By-Law for the reasons set out in the Township's representations.</i>
93	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
94	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
95	Withheld	7(1)	<i>The Township withdraws reliance on the exemption in s. 6(1)(b) as it relates to this record.</i>  <i>Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township by its consultant.</i>
96	Withheld	12	<i>This record reproduces the exempted parts of Record 44.</i>
97	Withheld	7(1), 12	<i>This record reproduces the exempted parts of Record 57.</i>
98	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
99	Withheld	NR, 7(1), 14(1)	<i>This record contains information that is not responsive to the Request. This record also reproduces the exempted parts of Record 88 and contains personal information of an individual who is not an employee of the Township.</i>
100	Withheld	NR, 7(1), 14(1)	<i>This record contains information that is not responsive to the Request. The Township withdraws reliance on the exemption in s. 6(1)(b) as it relates to this record and submits that the record is exempt from disclosure under s. 7(1). This record contains conversations between Council members that, if disclosed, would reveal the nature of the advice the Township received from its consultants. Disclosure of this record would allow</i>

			<i>inferences to be made as to the nature of the advice and recommendations provided to the Township. This record also contains personal information of an individual who is not an employee of the Township.</i>
102	Withheld	7(1), 12	<i>This record reproduces the exempted parts of Record 44.</i>
103	Partial release	7(1), 8(1)(b)	<i>This record reproduces the exempted parts of Record 6.</i>
104	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
105	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
106	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
108	Withheld	8(1)(b)	<i>This record reproduces the exempted parts of Record 45.</i>
109	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
110	Partial release	7(1), 8(1)(b)	<i>This record contains advice and recommendations the Township received from a consultant</i> <i>Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township by its consultant and could compromise the Township's investigation into the Appellant's breach of the Zoning By-Law for the reasons set out in the Township's representations.</i>
114	Partial release	12	<i>This record reproduces the exempted parts of Record 105.</i>

115	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
116	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
117	Withheld	7(1)	<i>The Township withdraws reliance on the exemption in s. 6(1)(b) as it relates to this record and submits that the record is exempt from disclosure under s. 7(1). This record contains conversations between Council members that, if disclosed, would reveal the nature of the advice the Township received from its consultants. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township.</i>
118	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
119	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
120	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
121	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
122	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
123	Withheld	7(1), 12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege. This record also reproduces the exempted parts of Record 47.</i>
124	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>

125	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
126	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
127	Withheld	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
128	Withheld	NR, 7(1)	<i>This record contains information that is not responsive to the Request. The Township withdraws reliance on the exemption in s. 6(1)(b) as it relates to this record and submits that the record is exempt from disclosure under s. 7(1). This record contains conversations between Council members that, if disclosed, would reveal the nature of the advice the Township received from its consultants. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township.</i>
129	Partial release	7(1), 12	<i>The Township withdraws reliance on the exemption in s. 6(1)(b) as it relates to this record and submits that the record is exempt from disclosure under s. 7(1). This record contains conversations between Council members that, if disclosed, would reveal the nature of the advice the Township received from its consultants. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township. This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>
130	Partial release	7(1), 12	<i>This letter reproduces the exempted parts of Record 129.</i>
132	Withheld	NR, 7(1), 12	<i>This record contains information that is not responsive to the Request. This record also reproduces the exempted parts of Record 88.</i>
136	Partial release	7(1), 12	<i>This record reproduces the exempted parts of Record 44.</i>

137	Partial release	7(1)	<i>The Township withdraws reliance on the exemption in s. 6(1)(b) as it relates to this record and submits that the record is exempt from disclosure under s. 7(1). This record contains conversations between Council members that, if disclosed, would reveal the nature of the advice the Township received from its consultants. Disclosure of this record would allow inferences to be made as to the nature of the advice and recommendations provided to the Township.</i>
138	Partial release	NR, 7(1), 14(1)	<i>This record contains information that is not responsive to the Request. This record also contains personal information of employees of the Township that is not employment-related information. This record refers to discussions that took place in a closed Council meeting and to advice and recommendations given to the Township. Disclosure of this record would reveal the substance of deliberations of Council members at a closed meeting and would allow inferences to be made as to the nature of the advice and recommendations provided to the Township.</i>
140	Partial release	12	<i>This record contains a conversation between the Township and its solicitors and is subject to solicitor-client privilege.</i>