

September 6, 2018

DELIVERED VIA EMAIL

Ms Kelly Donovan
11 Daniel Place
Brantford, Ontario
N3R 1K6

Dear Ms Donovan:

Re: Your Request to the Waterloo Regional Police Service ("WRPS") for Access to Information under the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA") dated August 2, 2018

As you are aware, we act as counsel for the Waterloo Regional Police Services Board ("WRPSB") in a number of legal proceedings involving yourself. At present, those proceedings include:

1. Kelly Lynn Donovan v. WRPSB and Bryan Larkin, filed in the Ontario Superior Court of Justice (Court File No. CV-18-00001938-0000);
2. WRPSB v. Kelly Donovan, filed with the Human Rights Tribunal of Ontario (HRTTO File No. 2018-33237-S);
3. Kelly Donovan v. WRPSB and Bryan Larkin, filed with the Human Rights Tribunal of Ontario (HRTTO File No. 2018-33503-S); and
4. Kelly Donovan Claim for Benefits under the *Workplace Safety & Insurance Act*, 1997 (WSIB Claim #30505408).

We have been informed of your Request for Access to Information submitted to the WRPS under *MFIPPA* that includes "copies of all incoming and outgoing email communication sent by and to" Gary Melanson, Virginia Torrance and Bryan Larkin where your name appears between the dates of May 4, 2016 and August 2, 2018 (the "FOI Request").

(i) Your FOI Request Is Not the Appropriate Means to Obtain Document Production

Both the Rules of Civil Procedure (applicable to your Court action) and the HRTTO Rules of Procedure (applicable to the two proceedings before the Human Rights Tribunal of Ontario) contain document production provisions governing what must be produced in the course of these legal proceedings. These provisions also include procedures for claiming privilege and adjudicating disputes relating to privilege claims. Your FOI Request constitutes, in whole or in part, an attempt to obtain production of documents relating to the outstanding legal proceedings where such production is already governed by applicable rules of procedure. In short, production in respect of all outstanding legal proceedings will take place in the normal course. Moreover, if you do wish to raise production issues relating to these outstanding legal proceedings, such issues should be raised directly with our office as counsel for the WRPSB.

(ii) Your FOI Request is Likely to be Declined Under *MFIPPA*

Pursuant to section 3(2) of *MFIPPA*, the WRPSB will have designated the “head of the institution” for the purposes of this legislation. To be clear, our office is not acting as counsel for the WRPSB in respect of your FOI Request. In fact, you have already received a letter from the WRPS Records Manager and Freedom of Information Coordinator, Paul Cormier, dated August 30, 2018 indicating that a 30 day extension has been imposed in respect of your FOI Request, and further extensions may well be deemed necessary. If your FOI Request is not withdrawn (as we submit it should be), you will continue to hear directly from the Access to Information Unit of the WRPS regarding your FOI Request.

Nonetheless, we wish to bring to your attention that there are a number of grounds upon which your FOI Request is likely to be declined by the WRPS. These grounds include, without limitation:

1. Generally speaking, *MFIPPA* does not apply to records relating to labour relations or employment-related matters, especially in the context of outstanding or anticipated legal proceedings (see section 52(3) of the *Act*). Given the ongoing litigation between yourself and the WRPSB, your FOI Request appears to be directly targeted at labour relations and employment-related documents pertaining to outstanding proceedings.
2. Sections 6 to 15 of *MFIPPA* outline various exemptions pursuant to which an institution may refuse to disclose a record in its possession (see section 4(1)(a) of *MFIPPA*). The WRPSB no doubt expressly reserves the right to rely upon any and all available

exemptions under the statute. It is clear, however, that the following exemptions in particular will apply to your FOI Request:

a) Solicitor-Client Privilege and/or Litigation Privilege

Section 12 of the *MFIPPA* provides:

Solicitor-client privilege

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.

As you are aware, both Gary Melanson and Virginia Torrance act as in-house counsel for the WRPS. Their communications to other members of the Service and/or to outside counsel are clearly captured by this exemption.

b) Advice or Recommendations by an Officer or Employee

Section 7(1) of the *MFIPPA* provides:

Advice or recommendations

7(1) A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

Any email communications among Gary Melanson, Virginia Torrance and Chief Larkin and/or with outside counsel are more than likely captured by this exemption.

c) Records Related to Economic and Other Interests

Section 11 of *MFIPPA* outlines a number of bases upon which the head of an institution may refuse to disclose records that impair or compromise an institution's economic/financial interests, or that relate to the management of personnel. Your FOI Request will likely engage the exemptions listed in this section.

d) Law Enforcement Records

Your FOI Request is so broad and extends for such a lengthy period of time that the exemptions outlined in section 8 of *MFIPPA* – designed to prevent interference in law enforcement matters – is likely to be applicable.

Finally, please note that your FOI Request may be refused if, on reasonable grounds, the request for access is deemed frivolous or vexatious (see section 4(1)(b) of the *MFIPPA*). Given that all of your outstanding legal proceedings are governed by existing production procedures and the object of your FOI Request appears to be directly targeted at privileged communications (contrary to both the common law and *MFIPPA*), your FOI Request will likely be declined on this basis as well.

(iii) Your FOI Request Should Be Withdrawn Forthwith

In conclusion, for all of the foregoing reasons, we respectfully request immediate confirmation that you have withdrawn, or will forthwith withdraw, your FOI Request. In all of the circumstances, we respectfully submit that your FOI Request has been submitted for improper purposes and will be declined in any event. Should you choose not to withdraw your FOI Request, the Access to Information Unit of the WRPS reserves the right to refer to and rely upon the contents of this letter in response to your FOI Request.

Thank you in advance for your immediate attention to this matter. Should you have any questions regarding the foregoing, please do not hesitate to contact me.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Donald B. Jarvis", with a long horizontal flourish extending to the right.

Donald B. Jarvis
DBJ/ca

cc: Virginia Torrance – Waterloo Regional Police Service (via email)