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Privacy ruling on emails shows system works as intended



A recent ruling by the Information and Privacy Commissioner that resulted in the City of Oshawa releasing an email sent from a councillor's private account is precedent-setting and will likely be used when crafting decisions on similar matters, Toronto mediator and arbitrator [Marvin J. Huberman](#) tells [Law Times](#).

The commissioner's decision relates to a dispute that began two years ago, when Oshawa was involved in a public debate with its auditor general, Ron Foster, over the acquisition of a parcel of land by the city.

In 2013, Foster released portions of a report that suggested the city paid nearly \$2 million too much for the land. In May of that year, a motion to appoint a municipal lawyer to investigate the allegations of misconduct on the part of city employees and departments was passed, the article notes.

Shortly before that meeting, Coun. Nancy Diamond emailed the lawyer from her personal account using her iPad, asking for feedback on a draft motion to appoint him as the investigator.



"A resident of the city subsequently made a request under the Municipal Freedom of Information and Protection of Privacy Act for all communication between the councillor and the lawyer, but the city refused the request on the grounds those records were not in its custody or control," *Law Times* reports.

The matter was appealed to the Information and Privacy Commissioner of Ontario, which ruled that, despite the communication coming from a personal device and account, the email was under the city's custody and control.

In disagreeing with the city's position, adjudicator Gillian Shaw writes: "The record contains, in effect, negotiations between the councillor and the investigator relating to the city's potential hiring of him. This relates directly to the city's mandate and functions."

She adds, "... the councillor's email played a crucial role in the negotiations resulting [in] the hiring of the investigator."

As Huberman says in the article, the ruling "... offers clarity and an appropriate application of the relevant principles of law and statutory provisions to the facts and circumstances in that case.

"To me, the system worked as it was supposed to work and how it was intended to work."

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