

APPENDIX A

AFFIDAVIT OF JAMIE FORREST

IN THE MATTER OF Appeal Number PA13-84 under the *Freedom of Information and Protection of Privacy Act*.

I, Jamie Forrest, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I AM EMPLOYED IN Cabinet Office as the Freedom of Information and Issues Coordinator. I have been employed by Cabinet Office since January 2010. I have held the position of Freedom of Information and Issues Coordinator in various Ministries of the Government of Ontario for the past ten years. My current role includes processing access to information requests on behalf of Cabinet Office and the Premier's Office. As such, I have knowledge of the matters herein deposed to, except where I have been informed of facts by other people. Where information is stated to be received by others, I verily believe it to be true.
2. I have been asked to provide information about the search conducted in the Premier's Office in response to the access request at issue in the current appeal, PA13-84, before the Information and Privacy Commissioner.
3. On November 30, 2012, I received an access request from the requester, now the appellant, for the following records from the Office of the Premier of Ontario:

"...all correspondence, minutes, presentations, emails, videos, audio recordings, other electronic communication, handwritten notes, reports, briefs, maps, photos, any other communication, and any other document, whether it appears or appeared on paper, microfilm, computer disk, or any other medium, produced, sent or received in period January 1, 2012 through October 1, 2012 by the Premier, the Premier's Office, consultants to the Premier's office, or advisors to the Premier's Office relating to the construction, contracting, relocation, or any other arrangements associated with of the gas-fired power plants once contracted for development in Oakville by the firm Eastern Power or related entities and also Mississauga by the firm TransCanada Energy or related entities. Where any of these materials are available as electronic text, .PPT, .PPTX, .ODTs, .EXE, .DOC, .DOCX, .EML, .MBX, .PST or any other kind of application file, please provide the search results in machine searchable format".

Search for Responsive Records

4. Upon receipt of the access request, I determined that the request was clear on its face. Further, on December 5th 2012, the appellant telephoned and subsequently sent correspondence to me to clarify an error in the original freedom of information request submitted. The appellant requested that I exchange the names of the firms Eastern Power and TransCanada. Accordingly, I did not need to seek any further clarification of the request from the appellant.
5. I met with Ms. Beckie Codd-Downey, Special Assistant to the Premier, and Ms. Lauren Ramey, Special Assistant, Issues Management, to discuss the approach to the search. Ms. Codd-Downey and I worked together to identify individuals who may have responsive records based on their senior roles within the former Premier's Office or their proximity to the former Premier. It was determined that Ms. Codd-Downey would search the records of the Premier.
6. It was determined that Ms. Ramey would coordinate the search for responsive records in the Premier's office and would contact staff identified as possibly having responsive records based on their senior roles and proximity to the Premier. The following staff members were contacted:
 1. David Livingston (Chief of Staff)
 2. Lauren Ramey (Special Assistant, Issues Management)
 3. Wendy McCann (Executive Director of Communications)
 4. Kevin Spafford (Manager, Legislative Affairs, Government House Leader's Office)
 5. Laura Miller (Deputy Chief of Staff, Communications and Strategy)
 6. Neala Barton (Director of Media Relations)
 7. John Brodhead (Deputy Chief of Staff, Policy and Cabinet Affairs)
 8. Karim Bardeesy (Director of Policy)
 9. David Phillips (Chief of Staff, Government House Leader's Office)
7. Staff were instructed to search the following:
 - a. Email accounts, including all email folders using the search/find function in Outlook;
 - b. Electronic records by searching all folders on the drives assigned to or accessible to the employee;
 - c. Paper and hard copy files accessible to the employee;

- d. A search of the electronic records of former staff was also indicated, if the records still existed on the government's servers.
8. During the processing of this request, I discovered that Kevin Spafford, Manager, Legislative Affairs, Government House Leader's Office, had left the employment of the Premier's Office. I was advised by Ms. Ramey, and verily believe to be true, that Mr. Spafford was contacted via telephone and Mr. Spafford advised that he did not believe he had responsive records but could not confirm this fact.
 9. Accordingly, I contacted Mr. Thom Stenson, Manager, Field Services in Infrastructure Technology Services, Ministry of Government Services, to have Mr. Spafford's email account re-activated. I was advised, and verily believe to be true, that a search of Mr. Spafford's re-activated email account was undertaken by a current Premier's Office staff member, Drew Davidson, Assistant, Issues and Media & Associate Press Secretary. Ms. Davidson advised me that no responsive records were located.
 10. I was advised by Ms. Codd-Downey that Premier McGuinty's records were reviewed and no responsive records were located.
 11. I contacted the Premier's Correspondence Unit and was subsequently provided with responsive records from the Correspondence Unit.
 12. Three individuals confirmed that they had responsive records (Lauren Ramey, Neala Barton and David Phillips) and five individuals confirmed in writing that they had no responsive records.
 13. A total of 88 pages of records were produced to me by the former Premier's office.
 14. On February 11, 2013 I issued a letter to the appellant advising that 88 responsive pages had been located in the Office of the Premier.
 15. On March 7, 2013, I was advised by the IPC that the requester had filed an appeal. I subsequently received a Notice of Mediation in the appeal on or about March 21, 2013.
 16. Mediation discussions between the appellant and my office commenced through Ms. McIntyre, a mediator with the Office of the Information and Privacy Commissioner.

Discussions in the Mediation

17. During the course of mediation, the mediator and I discussed the search effort undertaken by the Office of the Premier.
18. I advised Ms. McIntyre that we explored the possibility of searching email accounts of former staff that might have had responsive records.
19. It was confirmed during the processing of a different access request and subsequent appeal that the email accounts of Chris Morley, the former Premier's Chief of Staff, Jamieson Steeve, the former Premier's Principal Secretary and the former Premier's Deputy Director of Policy, Sean Mullin, no longer existed as they had ended their employment in the Premier's Office and their accounts were decommissioned before the Premier's office received this FOI request. I had previously (in response to another appeal) confirmed with IT staff (Mr. Stenson, Manager, Field Services in Infrastructure Technology Services, Ministry of Government Services) that these email accounts could not be restored from any back-up tapes because back-up tapes are maintained for system and disaster recovery, and are only maintained for a two week period.
20. During mediation, the current Premier's Office advised that it had undertaken a further search for records in response to another access request by another requester. In this search, the Premier's Office identified records that were prepared by the Government House Leader's Office relating to the conduct of matters in the Legislature. On April 26, 2013, I sent a letter advising the appellant that while these records are normally considered outside the scope of the *Freedom of Information and Protection of Privacy Act*, in the interest of transparency, the government had made the decision to voluntarily disclose the records.

Search in response to Committee Motions

21. On May 7, 2013 the Standing Committee on Justice Policy passed a motion requiring the current Premier's Office to produce records relating to the cancellation and relocation of the Oakville and Mississauga gas plants. To assist the Premier's office search for responsive records, I requested that Mr. Stenson, Manager, Field Services in Infrastructure Technology Services, Ministry of Government Services, reactivate all former Premier Office staff's email accounts that were still in existence so that searches

could be performed on these accounts. Fifty-two accounts were identified and subsequently searched by staff in the current Premier's office.

22. This affidavit is made for the purpose of the reasonable search appeal herein and for no other purpose.

Affirmed before me in the City of Toronto, in the
Province of Ontario, on June 27, 2013

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Donald R. Faircliff
Commissioner for Taking Affidavits

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