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

ORDER 204

Appeal 890140

Stadium Corporation of Ontario Limited

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O R D E R

INTRODUCTION:

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987, (the "Act") which gives a person who has made a request for access to a record under subsection 24(1) a right to appeal any decision of a head under the Act to the Information and Privacy Commissioner.

On January 5, 1990, the undersigned was appointed Assistant Commissioner and received a delegation of the power to conduct inquiries and make Orders under the Act.

On January 16, 1989, the requester wrote to Stadium Corporation of Ontario Limited (the "institution") seeking access to the following information:

> Costs associated with the scoreboard, the Sony contract and records on Scoreboard Productions Inc., CIBC commitment, the options on how the scoreboard will work.

The institution responded to the request on March 30, 1989 stating that it intended to give notice of the request to certain third parties and provide those parties with an opportunity to make representations as to how the disclosure of the requested records might affect their interests. It also indicated that the statutory 30 day time limit for responding to the request would be extended to April 30, 1989 to allow for

consultations and review of the representations of the third parties.

On April 17, 1989, the requester appealed the institution's decision, and notice of the appeal was given to the institution and the appellant. In his letter of appeal the appellant stated that:

> I am still entitled to see those records that do not fall under Section 28 notice assuming such a claim itself is valid (Skydome does not require Section 28 to release a Sony contract; who controls Scoreboard Productions Inc.? and who made the CIBC commitment? Skydome did, a public agency covered under the FOI Act.) (sic)

The institution wrote to the appellant on April 26, 1989, and disclosed the information contained in the records that related to
"the options on how the scoreboard will work". The balance of the records were withheld from disclosure in their entirety under subsections 17(1)(a), (b) and (c) and 18(1)(c), (d), (e), (f) and (g) of the Act.

Initially it appeared that the appellant had appealed the issuance of the notices to third parties whose interests might be affected by the disclosure of the requested records. However, within days of the appeal, the head made a decision on access to the records. In view of this, it was agreed that the subject matter of the appeal would be the denial of access and the exemptions cited by the head.

The records were obtained and reviewed by an Appeals Officer. In the opinion of the Appeals Officer, settlement of this appeal was unlikely and therefore the appeal proceeded to an inquiry.

On November 7, 1989, notice was sent to the appellant, the institution and one affected party, Sony of Canada Ltd. ("Sony"), that an inquiry was being conducted to review the decision of the head. Enclosed with the notice was a report prepared by the Appeals Officer. This report was prepared in order to assist the parties in making their representations concerning the subject matter of the appeal. The Appeals Officer's Report outlines the facts of the appeal and sets out questions which paraphrase those sections of the Act which appear to the Appeals Officer, or any of the parties, to be relevant to the appeal. The Appeals Officer's Report indicates that the parties, in making their representations, need not limit themselves to the questions set out in the report.
Written representations were received from the institution and Sony. In its representations, the institution advised that it was now also relying on subsections 13(1), 18(1)(a), and 21(1), (2) and (3)(d) and 22(a) to exempt portions of the records.

The appellant was advised of the institution's reliance on these new exemptions. He indicated that he did not wish disclosure of the portions of the records for which personal privacy concerns were expressed. Therefore the application of subsections 21(1), (2) and (3)(d) of the Act are not at issue. In addition, the appellant advised that he was not interested in obtaining access to the portion of Record 1 consisting of a performance bond, a labour and material bond, Workers' Compensation Board certificates, a certificate of insurance from Sony and covering letters to these documents. Consequently, pages 16 and 214_222 of Record 1 are not at issue. With regard to the other exemptions newly cited by the institution, the appellant objected to their lateness, but made no other specific comments

concerning them. To date, written representations have not been received from the appellant, who appears to be relying on the comments made in his letter of appeal.

I have taken all the representations into consideration in making this Order.

RECORDS IN ISSUE:

The following records, which have been withheld from disclosure in their entirety, are at issue in this appeal:

Record 1. Sony of Canada Ltd./Stadium Corporation of Ontario Limited, Video Display and Scoreboard System Contract, dated June 17, 1988 including a binder of supporting documents. This record consists of 229 pages and access was denied under subsections 13(1), 17(1)(a), (b) and (c), 18(1)(a), (c), (d), (e) and 22(a) of the Act.

Record 2. Scoreboard Productions Inc. _ Capital Budget and Financing, dated October 11, 1988. Access to this one page record was denied under subsections 18(1)(c), (d), and (g) of the Act.

Record 3. Canadian Imperial Bank of Commerce _ Summary of Terms and Conditions, dated October 26, 1988. This three page record outlines the bank's commitment regarding the scoreboard, among other things and access was denied under subsections 18(1)(c), (d) and (g).

PURPOSES OF THE ACT/BURDEN OF PROOF:

It should be noted, at the outset, that one of the purposes of the Act as set out in subsection 1(a) is to provide a right of access to information under the control of the institutions in accordance with the principles that necessary exemptions from the right of access should be limited and specific.

Further, section 53 of the Act provides that the burden of proof that the record or part of the record falls within one of the specified exemptions in the Act lies with the head. In this case, the burden of proving the applicability of the section 17 exemption lies with both the head and Sony, the affected party, as they are both resisting disclosure.

BACKGROUND:

The institution consulted with Sony and the Canadian Imperial Bank of Commerce, pursuant to section 28 of the Act. Scoreboard Productions Inc., having never been incorporated, has no legal status and thus was not consulted. Only Sony advised the institution that it objected to disclosure of the information that related to it.

As a result of the above, this office requested representations from Sony only. The existence of another affected party, White Way Sign ("White Way"), became apparent as the appeal progressed. As White Way informed the Appeals Officer it had no objection to disclosure of its information, detailed representations were not requested.

ISSUES/DISCUSSION:

For the sake of clarity, I have organized this Order on a record by record basis rather than by issues. Each of the three records are discussed individually, with reference to the exemptions claimed by the institution.

R E C O R D 1

Record 1 contains 229 pages in total of which 219 are at issue in this appeal. It consists of the agreement between the institution and Sony regarding the Sony video display and scoreboard system as well as supporting documentation. For ease of reference, I have numbered the pages of the record provided to this office in the upper right-hand corner.

ISSUE A: Whether any part of the record falls within the discretionary exemptions contained in subsections 18(1)(a), (c), (d), and (e) of the Act.

The institution has cited subsections 18(1)(a), (c), (d), and (e) as the basis for denying access to Record 1.

The relevant subsections of section 18 read as follows:

A head may refuse to disclose a record that contains,

> (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
>
> ...
>
> (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
>
> (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;

> (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;

In addressing section 18, in an Order related to the same institution as is involved in this appeal, Commissioner Sidney B. Linden stated that:

> Broadly speaking, section 18 was drafted to protect certain interests, economic and otherwise, of the Government of Ontario and/or institutions. Subsections 18(1)(c) and (g) both take into consideration the consequences which could reasonably be expected to result from disclosure of a record. Subsections 18(1)(a) and (e) are both largely concerned with the content of a record, rather than the consequences of disclosure. [See Order 163 (Appeal 880262) dated April 24, 1990 p. 5-6.]

At pages 15 and 16 of Order 203 (Appeal Number 890131), dated November 5, 1990, I referred to representations of the same institution which outlined the unique problems which it feels it faces. The institution made the identical representations in this appeal. In summary, the institution indicates that unlike other institutions covered by the Act, it does not have a monopoly and therefore it must compete openly and directly in the private marketplace. The institution submits that disclosure of financial, commercial or business arrangements would adversely affect the institution's ability to compete in the marketplace.

I believe that the following comments that I made in Order 203 supra, with respect to the institution's representations are worth reiterating:

> In its representations the institution seems to be suggesting that it is "different" from other institutions covered by the Act. I am prepared to accept that the milieu in which the institution operates is "different" from that in which the majority of institutions conduct business. However, it appears to me that there is one overriding characteristic that is common to this institution and to all other institutions covered by the Act, i.e. public monies are at stake in the operation of the institution. I believe that the exemptions from disclosure available under the Act can adequately address the legitimate interests and concerns of the institution. In this sense any unique circumstances related to the environment in which the institution operates can be addressed in the context of the application of particular exemptions.

The institution also provided me with two schedules by which it documented its current financial projections and future financial projections, should there arise a minimal drop_off in revenue of 10% due to a deterioration in the institution's competitive position. These schedules purport to document the economic consequences flowing to the institution if release of the records at issue in this appeal would result in a drop_off in revenue of 10%.

I will first deal with the application of subsection 18(1)(c) to Record 1. To qualify for exemption under subsection 18(1)(c), the record in question must contain information the disclosure of which could reasonably be expected to prejudice the economic interests or the competitive position of an institution.

In considering the evidence required to support a claim of reasonable expectation of harm or loss under section 17, Commissioner Linden indicated that the evidence must be "detailed and convincing". Commissioner Linden also indicated that the standard of proof is no less stringent under section 18 than in section 17 of the Act. [See Order Numbers 36 and 163 supra.] I concur with Commissioner Linden's position and adopt it for the purposes of this appeal.

As previously stated, in order to qualify for exemption under subsection 18(1)(c), the record in question must contain information the disclosure of which could reasonably be expected to prejudice the economic interests or competitive position of an institution. [emphasis added] I have considered the meaning of the words "could reasonably be expected to" in the context of subsection 14(1) of the Act and found that the expectation must not be fanciful, imaginary or contrived, but rather one that is based on reason. [See Order 188 (Appeal Number 890265), dated July 19, 1990.] In my view, subsection 18(1)(c) similarly requires that the expectation of prejudice to the economic interests or competitive
position of an institution, should a record be disclosed, must not be fanciful, imaginary or contrived, but rather one which is based on reason.

Some of the information in Record 1 is highly technical and was produced using specific expertise on the part of either the institution or the third party with whom it was dealing. There are also portions of the record which reveal the negotiating strategy of the institution and related issues such as what kind of costs it is willing to absorb. This information could be used by other parties in other negotiations with the

institution. I find that the release of portions of this record could reasonably be expected to prejudice the economic interests and/or the competitive position of the institution.

I find that the same portion of the record I have found to be exempt under subsection 18(1)(c) qualifies for exemption under subsection 18(1)(d) of the Act. It is my view that disclosure of this portion of the record could reasonably be expected to be injurious to the financial interests of the Government of Ontario. My conclusion is based upon the fact that the Government of Ontario has financial interests at stake in SkyDome.

The portions of the record which, in my opinion, qualify for exemption under subsections 18(1)(c) and/or (d) are the following:

Pages: 8 (*), 11, 12 (**), 14, 15, 17, 65 (*), 87_99, 105_106, 115_122, 124, 132_176, 180 and 182_190, 227(*).

(*) Only the percentage mark-up indicated.

(**) Except the total contract price.

Subsection 18(1) of the Act is a discretionary exemption. It is my responsibility to ensure that the head of an institution has properly exercised his or her discretion when deciding not to grant access to a record. In the circumstances of this appeal, I find nothing improper in the manner in which the head has exercised his discretion and would not alter it on appeal.

I now turn to the application of subsections 18(1)(a) and (e) of the Act to Record 1. As noted above, these subsections exempt classes or types of records based on their content, as opposed

to the adverse consequences to the institution if the records were released.

Subsection 18(1)(a) was cited by the institution to exempt almost all of Record 1. Subsection 18(1)(a) of the Act reads as follows:

> A head may refuse to disclose a record that contains,
>
> (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
>
> ...

On page 9 of this Order I found that portions of Record 1 qualify for exemption under subsections 18(1)(c) and (d) of the Act. In my opinion, the portions of Record 1 which have not qualified for exemption under these subsections do contain financial, technical
or commercial information belonging to the institution. I have not been provided with any evidence from the institution or Sony to support the position that Record 1 contains trade secrets.

The portions of Record 1 which remain at issue contain what can best be described as standard contractual terms, contractual terms specific to the JumboTron and the SkyDome as well as graphics such as charts, drawings or diagrams. Based upon the representations of the institution and Sony, I am unable to conclude that the financial, commercial or technical information in Record 1 has "monetary or potential monetary value". Therefore, I find that the remaining portions of Record 1 do not qualify for exemption under subsection 18(1)(a) of the Act.

Subsection 18(1)(e) of the Act was also cited by the institution as a basis for withholding Record 1 from disclosure. Subsection 18(1)(e) of the Act reads as follows:

> A head may refuse to disclose a record that contains,
>
> (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;

Commissioner Linden stated that the test for exemption under subsection 18(1)(e) is as follows:

1. the record contains positions, plans, procedures, criteria or instructions; and

2. this record is intended to be applied to negotiations; and

3. these negotiations are being carried on or will be carried on in the future; and

4. these negotiations are being conducted by or on behalf of an institution or the Government of Ontario.

Because subsection 18(1)(e) contemplates ongoing or future events, Commissioner Linden found that a record containing information about a past event such as a "failed negotiation" could not possibly qualify for exemption under this provision. [See Order 87 (Appeal Number 880082), dated August 24, 1989.] I accept Commissioner Linden's view and adopt it for the purposes of this appeal.

I find that the portions of Record 1 which remain at issue do consist of criteria that were applied to the negotiations conducted on behalf of the institution. However, as these

negotiations were completed before the head's decision regarding access to the requested record, they do not qualify for exemption under subsection 18(1)(e) of the Act.

ISSUE B: Whether any part of the record falls within the discretionary exemption contained in subsection 22(a) of the Act.

Subsection 22(a) of the Act reads as follows:

> A head may refuse to disclose a record where,
>
> (a) the record or the information contained in the record has been published or is currently available to the public;

The institution has relied on this discretionary exemption to withhold the portion of Record 1 that consists of advertising brochures from Sony and White Way. The advertising is about the JumboTron and Scoreboard controller.

I agree with Commissioner Linden that subsection 22(a) gives the head of an institution the discretion to refuse to disclose information that has been published or is currently available in another form. [See Order 42 (Appeal Number 880052), dated March 2, 1989.] I also share Commissioner Linden's belief that when an institution relies on subsection 22(a), the head has a duty to inform the requester of the specific location of the records or information in question. [See Order 124 (Appeal Number 880124), dated November 24, 1989.] It is my view that the head

has a duty to identify or provide the requester with a description of the records or information in question. [See Order 191 (Appeal Number 890212), dated August 16, 1990.]

In support of its reliance on subsection 22(a) of the Act, the institution stated that the advertising "can be obtained by the public from Sony and White Way Sign." I am not satisfied that this particular advertising remains currently available within the meaning of the subsection or that it can be obtained simply by asking for it from these companies. These companies are not public bodies that have a mandate to provide their advertising copy to the public nor is it something that they are in the business of selling to the public. It is logical to assume that advertising such as brochures, by its very nature, is something which is publicly available. However, the brochures at issue in this appeal contain advertising for scoreboard equipment which would only be of interest to a very small percentage of the public who would be in a position to purchase such equipment.

I note the definition of "published" in Black's Law Dictionary, 5th ed., which reads, in part:

> to make known to people in general...An advising of the public or making known of something to the public for a purpose.

In Black's Law Dictionary, "public" is variously defined as:

> The whole body politic, or the aggregate of the citizens of a state, county, or community... In one sense, everybody, and accordingly the body of the people at large; the community at large, without reference to the geographical limits of any corporation like a city, town, or county; the people. In another sense the word does not mean all the people, nor most of the people, nor very many of the

> people of a place, but so many of them as contra-distinguishes them from a few. Accordingly, it has been defined or employed as meaning the inhabitants of a particular place; all the inhabitants of a particular place; the people of the neighborhood. Also, a part of the inhabitants of a community.

In my view, a purposive approach to subsection 22(a) of the Act dictates an acceptance of a more expansive definition of "public" tending toward what is set out in the first portion of the dictionary definition. In other words, if the advertising in Record 1 was only available to the sector of the public engaged in the entertainment business, then I do not accept that it is "available to the public" within the meaning of the subsection. Furthermore, in the circumstances of this appeal, I am not satisfied that it is currently available. In light of the foregoing, I find that the brochures contained within Record 1 do not qualify for exemption under subsection 22(a) of the Act.

ISSUE C: Whether any part of the record falls within the discretionary exemption contained in subsection 13(1) of the Act.

Of the portions of the record which remain in issue, subsection 13(1) of the Act was claimed for withholding the following:

> Pages 84_86, 100_104 and 107: Portions of "Technical Specification Video Display and Scoreboard System", prepared by Imagineering Limited ("Imagineering").
>
> Pages 108_114, 123 and 125_131: Portions of the "Proposal Submitted by Sony", dated August 11, 1987 and Request for Proposal, prepared by Imagineering Limited.

Section 13(1) of the Act reads as follows:

> A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

The general purpose of the section 13 exemption has been discussed in Order 94 (Appeal Number 890137), dated September 22, 1989. At page 5 of that Order Commissioner Sidney B. Linden stated:

> ...in my view, section 13 was not intended to exempt all communications between public servants despite the fact that many can be viewed, broadly speaking, as advice or recommendations. As noted above, section 1 of the Act stipulates that exemptions from the right of access should be limited and specific. Accordingly, I have taken a purposive approach to the interpretation of subsection 13(1) of the Act. In my opinion, this exemption purports to protect the free flow of advice and recommendations within the deliberative process of government decision_making and policy_making.

Commissioner Linden addressed the term "advice" in Order 118 (Appeal Number 890172), dated November 15, 1989. At page 4 of that Order he stated:

> In my view, "advice" pursuant to subsection 13(1) of the Act, must contain more than mere information. Generally speaking, advice pertains to the submission of a suggested course of action which will ultimately be accepted or rejected by its recipient during the deliberative process.

I agree with the views of Commissioner Linden with respect to the operation of section 13 of the Act and adopt them for the purposes of this appeal.

The institution stated that the information revealed by the portion of Record 1 which was prepared by the institution's consultant, Imagineering Limited ("Imagineering"), in consultation with Sony,
contains recommendations as to the technical specifications necessary to build a scoreboard that meets the institution's needs. In my view, this is not the type of advice or recommendations that subsection 13(1) is directed toward. The disclosure of this type of information could not reasonably be expected to inhibit the free flow of information to decision_makers within the institution.

ISSUE D: Whether any part of the record falls within the mandatory exemption contained in subsection 17 of the Act.

Of the portions of Record 1 remaining at issue in this appeal, the institution and/or the affected party claimed subsection 17(1) of the Act as a basis for withholding the following pages from disclosure:

Pages: 1_7, 8 (*), 9-10, 12 (**), 13, 18-64, 65 (*), 66_86, 100_104, 107_114, 123, 125_131, 177_179, 181, 201_204, 223_226, 227 (*) and 228-229.

(*) Except for the percentage mark-up.

(**) Only the total contract price.

Subsection 17(1) of the Act reads as follows:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
>
> (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency;
>
> ...

In Order 36 (Appeal Number 880030), dated December 28, 1988, Commissioner Linden outlined the three part test which must be satisfied in order for a record to be exempt under the mandatory provisions of subsection 17(1) of the Act.

> 1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
>
> 2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
>
> 3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the types of harm specified in (a), (b) or (c) of subsection 17(1) will occur.

Failure to satisfy the requirements of each part of this test will render the subsection 17(1) of the Act exemption claim invalid.

I concur with the subsection 17(1) test defined by Commissioner Linden and adopt it for the purposes of this appeal.

In determining whether the first part of the test has been satisfied, I must consider whether disclosure of Record 1 would "reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information".

In its representations, the institution claims that portions of Record 1 contain technical information, trade secrets and commercial information. Sony submits that the relevant portions contain technical and financial information. I find that the

information contained in the portions of Record 1 constitutes commercial, financial and/or technical information and therefore the first part of the section 17 test is established with respect to this record.

The second part of the section 17 test raises the question of whether the information was "supplied in confidence implicitly or explicitly".

The institution has submitted that some of the information in this record was supplied by the affected party, Sony, and that some of it, specifically, the Form of Agreement, the General Conditions of Contract, the General Requirements of the Contract, The General Site Regulations for Contractors, the Contractor's Proposal Documents and the contract change orders were supplied in whole or in part by one of either of the institution's consultants, R.P.A. Consultants ("R.P.A.") or

Imagineering. The institution has submitted that the information contained in pages 1_13, 18_83, 84_85, 100_104 and 107-114 was supplied in confidence. It is further submitted that disclosure of this portion of Record 1 would prejudice the competitive position of Sony of Canada and result in undue gain to Sony's competitors (subsections 17(1)(a) and (c) of the Act). Disclosure would have the same result with respect to the two consultants, according to the institution.

Sony stated that its "expectation was that all detailed information supplied by Sony Canada Ltd. would be considered as private and confidential information and would not be subject to disclosure." In support of this argument Sony mentioned that there was a private invitation to tender and that "confidentiality was a paramount consideration on our part, when responding to the Request for Proposal."

I am prepared to accept that some of the information in this record was supplied, implicitly, in confidence by Sony; however, a great deal of the information in the contract was not supplied by third parties, but rather arrived at through negotiations between Sony and the institution. The structuring of the contract, which R.P.A. contributed to, and the technical knowledge provided by Imagineering were bought and paid for by the institution. In no way could these consultants, in the circumstances of this case, reasonably be of the view that such information was supplied by them in confidence.

The institution purchased the services of these consultants to help it deal with third party vendors of the desired products. In my view, Imagineering and R.P.A. are not even in the position of third parties in relation to the contents of Record 1, since

they were acting, in effect, as agents for the institution itself. It is not the interests of the consultants that could be affected by the release of this information, but simply those of the institution, which has paid for their services. Although I have concluded that the portions of this record which were supplied by R.P.A. and Imagineering, were not supplied in confidence, I will not base my decision on that alone, but will go on to consider part three of the section 17 test in relation to all of the information for which section 17 was cited and no other exemption has been found to apply.

To meet the requirements of the third part of the test, the institution and/or the affected party must successfully demonstrate that the prospect of disclosure could reasonably be expected to give rise to one of the types of harm specified in subparagraphs (a), (b) or (c) of subsection 17(1). Sony has submitted that disclosure of portions of the information in the record could significantly prejudice its competitive position and interfere significantly with its negotiations with other purchasers of the video display and scoreboard systems. Sony has also stated that

disclosure of portions of the record could permit its competitors to copy its methods and therefore could result in "undue losses" as set out in subsection 17(1)(c). The institution has also made representations regarding subsections 17(1)(a), (b) and (c).

Having reviewed the representations and the parts of Record 1 which remain in issue, I am not satisfied that their disclosure could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the

contractual or other negotiations of the third party as required by subsection 17(1)(a), or result in undue loss or gain to third parties as required by subsection 17(1)(c). With regard to subsection 17(1)(b), it is my view that information would continue to be so supplied regardless of whether it were to be disclosed or not, because there would continue to be a financial motivation to sell to the institution with the provision of such information remaining a necessary part of the process.

R E C O R D S 2 and 3

Record 2 is a one page record which contains information relating to a proposed company referred to as Scoreboard Productions Inc.

Record 3 is a three page record which contains a summary of the financing commitment of the Canadian Imperial Bank Of Commerce with respect to the Scoreboard Productions Inc. proposal.

The institution has cited subsections 18(1) (c), (d) and (g) as its grounds for withholding these records. Subsection 18(1)(c) of the Act, reads as follows:

> A head may refuse to disclose a record that contains,
>
> > (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

Having reviewed Records 2 and 3, I accept the institution's position that disclosure of these records could reasonably be

expected to prejudice the economic interests of the institution or its competitive position. Therefore, I find that Records 2 and 3 qualify for exemption under subsection 18(1)(c) of the Act. As a result of this finding, I need not deal with the application of the other subsections that were cited by the institution in regard to these records.

I find nothing improper in the way in which the head has exercised his discretion under subsection 18(1)(c) of the Act and would not alter it on appeal.

ORDER:

1. I uphold the head's decision to withhold Records 2 and 3 from disclosure.

2. I order the head to disclose the following pages of Record 1 to the appellant:

   Pages: 1-7, 8 (*), 9-10, 12(**), 13, 18-64, 65 (*), 66-86, 100-104, 107-114, 123, 125-131,177-179, 181, 191-213, 223-226, 227(*) and 228-229.

   (*) Except the percentage mark-up indicated.

   (**) Only the total contract price.

3. I also order that the institution not disclose the parts of Record 1 indicated in Item 2 above, until thirty (30) days following the date of the issuance of this Order. This

time delay is necessary in order to give any party to the appeal sufficient opportunity to apply for judicial review of my decision before the record is actually disclosed. Provided notice of an application for judicial review has not been served on the Information and Privacy Commissioner/Ontario and/or the institution within this thirty (30) day period, I order that this record be disclosed within thirty_five (35) days of the date of this Order. The institution is further ordered to advise me in writing within five (5) days of the date on which disclosure was made.

The said notice should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.

Original signed by: November 19, 1990
Tom A. Wright Date
Assistant Commissioner