



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-186

Appeal M-9200250

Municipality of Metropolitan Toronto



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ORDER

The Municipality of Metropolitan Toronto (the Municipality) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for a copy of a landfill gas utilization proposal submitted to the Municipality in January of 1989 by a named company.

The Municipality gave notice of the request to the named company under section 21 of the Act, and after receiving its representations decided to disclose parts of the record to the requester. The Municipality provided the named company with a copy of the severed record which it proposed to disclose to the requester. The named company objected to the disclosure of any parts of the record and appealed the Municipality's decision on the basis that the unsevered parts of the record were exempt under section 10(1)(a) of the Act.

Mediation of the appeal was not successful, and notice that an inquiry was being conducted to review the Municipality's decision was sent to the named company (the appellant), the original requester and the Municipality. Representations were received from the appellant only.

The record is entitled "Keele Valley Landfill Gas Utilization Proposal", dated January 20, 1989, and was submitted by the appellant in response to the Municipality's call for proposals by developers to utilize the landfill gas from the landfill site. A very large portion of the record has been severed by the Municipality under the authority of section 10 of the Act. The information that remains at issue is contained in the unsevered parts of the record which the Municipality has decided does not fall within any of the exemptions in the Act.

The sole issue in this appeal is whether the mandatory exemption provided by section 10(1)(a) applies to the portion of the record which the Municipality proposes to disclose to the original requester.

Section 10(1)(a) states:

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, if the disclosure could reasonably be expected to,
prejudice significantly the competitive position or interfere significantly with
the contractual or other negotiations of a person, group of persons, or
organization;

The burden of proving the applicability of the section 10 exemption lies on the party resisting disclosure of the record (Orders 42, 101, P-228, M-10 and M-29). In the circumstances of this appeal, the Municipality has decided to disclose the information at issue, and the appellant is the only party resisting its disclosure. Therefore, the responsibility to establish that the information is exempt under section 10 of the Act rests with the appellant.

In order for the information at issue in this appeal to be exempt from disclosure under section 10(1)(a) of
[IPC Order M-186/September 16, 1993]

the Act, the appellant must satisfy each of the following three-part test:

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 section 10(1)(a) will occur.

[Orders 36 and M-10]

Part One

The appellant states that the parts of the record which the Municipality has decided to disclose "still reveals sufficient commercial information" which falls under the section 10(1)(a) exemption. The appellant does not identify any specific information in the parts of the record at issue which reveals commercial information; rather its position seems to be that the record should be withheld in its entirety as disclosure of any of its parts could reveal the format and structure of the record, which it considers could be prejudicial to its competitive position.

It has been established in a number of previous orders that the term commercial information relates solely to the buying, selling or exchange of merchandise and services (Orders 47 and M-29). In my view, information does not qualify as commercial information under section 10 of the Act merely because it is contained in a business/commercial proposal. In considering whether a record such as the one at issue in this appeal should be disclosed, the Municipality is obliged to review the entire record and disclose as much of the information in the record as can reasonably be severed, without disclosing the exempt information (section 4(2) of the Act). In the circumstances of this appeal, the Municipality has severed from the record considerable information on the basis that it qualifies for exemption under section 10 of the Act. This information will not be released to the original requester.

Having reviewed the entire record and the representations of the appellant, in my view, disclosure of the information remaining at issue would not reveal commercial information or any of the types of information listed in section 10(1). Therefore, I find that part one of the test for exemption under section 10(1) of the Act has not been met.

As stated above, failure to satisfy any one of the three parts of the test renders the section 10 exemption claim invalid. Accordingly, I find that the information at issue is not exempt under section 10(1) of the Act and should be disclosed to the requester.

ORDER:

1. I uphold the Municipality's decision.
2. I order the Municipality to disclose to the original requester the parts of the record at issue within 35 days of the date of this Order and **not** earlier than the thirtieth (30th) day following the date of this Order.
3. In order to verify compliance with the provisions of this Order, I order the Municipality to provide me with a copy of the record which is disclosed to the original requester pursuant to Provision 1, **only** upon request.

Original signed by: _____
Asfaw Seife
Inquiry Officer

_____ September 16, 1993