



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-238**

**Appeal M-9300105**

**City of Toronto**



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# ORDER

## BACKGROUND:

The City of Toronto (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records which mentioned the requester, located in certain identified departments of the City.

After clarifying the request with the requester, the City granted access to a number of records in total, and denied access to other records, in whole or in part, claiming the exemptions in sections 12 and 38(a) of the Act.

The City also informed the requester that, as disclosure of four of the records might affect the interests of two third parties, these parties were being notified pursuant to section 21 of the Act. These parties had been dealing with the City concerning the sale of certain property. One third party did not respond; the other, a company, objected to the disclosure of two records which might affect its interests.

The City subsequently issued a decision granting access to all four records which had been the subject of the section 21 notification. The company which had initially objected to the disclosure of the two records which might affect its interests appealed.

Mediation of this appeal was not successful, and notice that an inquiry was being conducted to review the decision of the City was sent to the company that appealed (the appellant), the City and the requester. Representations were received from the City only.

The records at issue in this appeal are:

- (1) A letter dated September 13, 1990 from the appellant to the City Solicitor
- (2) A letter dated February 6, 1989 from the appellant to a solicitor

## PRELIMINARY ISSUES:

In a letter to the City, in response to the City's decision to disclose the records at issue, counsel for the appellant stated:

Please be advised that my client will not object to the grant of access to the letters of February 6, 1989 and September 13, 1990 if you will agree to expunge [certain words in] the letter of February 6, 1989, prior to the disclosure of that letter.

Counsel's letter of appeal to the Commissioner's office stated that:

... I request that the City Clerk's decision of February 16, 1993 in the above-noted matter be reviewed.

Accordingly, I will address the City's decision to disclose the two records at issue **in their entirety** in this order. I would also note that, in my view, the words in the February 6, 1989 letter which the appellant did not want disclosed, constitute the personal information of the requester as defined in section 2(1)(g) of the Act, as follows:

"personal information" means recorded information about an identifiable individual, including,

the views or opinions of another individual about the individual

### **SUBMISSIONS/CONCLUSIONS:**

The sole issue in this appeal is whether the mandatory exemptions provided by sections 10(1)(a), (b) and/or (c) of the Act apply to the records which the City has decided to disclose to the requester.

Sections 10(1)(a), (b) and (c) state:

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,

- (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;

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 City has decided to disclose the records at issue and the appellant is the party resisting disclosure. Therefore, the responsibility to establish that the records are exempt under section 10 of the Act rests with the appellant.

In order for the information at issue to be exempt from disclosure under sections 10(1)(a), (b) and/or (c) of the Act, the appellant must satisfy each part 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 sections 10(1)(a), (b) and/or (c) will occur.

Failure to satisfy the requirements of any part of this test will render the section 10(1) claim invalid.

[Orders 36 and M-10]

I will turn directly to part three of the test.

In order to satisfy the third part of the test, the appellant must show that the prospect of disclosure of the record must give rise to a reasonable expectation that one of the types of harm specified in sections 10(1)(a), (b) and/or (c) will occur. The appellant has provided no submissions to support its claim.

In its representations, the City states that it cannot comment on whether the third part of the test has been met. The City does, however, indicate that due to the nature of the information contained in the records, the requester could reasonably be expected to know the information contained in the documents.

Having reviewed the contents of the records and the representations of the City, and in the absence of evidence to support the conclusion that the disclosure of the records could give rise to a reasonable expectation that one of the types of harm specified in sections 10(1)(a), (b) and/or (c) will occur, I find that part three of the test has not been satisfied.

As stated previously, failure to satisfy any one of the three parts of the test renders the section 10 exemption claim invalid. Accordingly, I find that the records are not exempt under sections 10(1)(a), (b) and/or (c) of the Act and should be disclosed to the requester.

**ORDER:**

[IPC Order M-238/December 8,1993]

1. I uphold the City's decision.
2. I order the City to disclose the records to the requester 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 City to provide me with a copy of the records which are disclosed to the requester pursuant to Provision 2, **only** upon request.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ December 8, 1993