



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-284

Appeal M-9300021

Regional Municipality of Ottawa-Carleton



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ORDER

The Regional Municipality of Ottawa-Carleton (the Region) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the budget files, including budget submissions and annual financial statements, for the years 1990, 1991 and 1992 for a named day care centre (the affected party).

The Region notified the affected party of the request pursuant to section 21 of the Act. The affected party consented to the disclosure of some of the records and objected to the disclosure of others, either in whole or in part. The Region then made a decision on access to the records, providing the requester with access to some in their entirety and denying access to others, either in whole or in part, claiming the exemptions provided by sections 10 and 14(1) of the Act. The requester appealed the decision of the Region only with respect to those records or portions of records withheld under section 10 of the Act.

During mediation the appellant withdrew her request for two of the records to which access had been denied under section 10 of the Act and confirmed that she was not interested in pursuing any information which would constitute personal information. Further mediation was not successful and notice that an inquiry was being conducted to review the decision of the Region was sent to the Region, the appellant and the affected party. Representations were received from all three parties.

The records at issue may be described as follows:

- Record 1: 1992 Budget information - handwritten notes (pages 6-7)
- Record 2: 1992 Budget presented for approval - "1992 Requested" column (pages 22-27)
- Record 3: Releve Recapitulif du budget traiments, salaires & avantages sociaux - entire pages except for the information under the heading "Depenses Totales Nettes" (pages 8-10)
- Record 4: RMOC purchase of daycare budget 1992 - per diem rate summary sheet - line E "Net Expenses Requested" (page 11)
- Record 5: Program budget summary sheets - 1992 Requested/Approved Figures (pages 20-21)
- Record 6: Salary benefits - 1992 projected benefit costs and 1992 Requested/Approved Figures (pages 12, 15 and 17)
- Record 7: Wage benefits - 1992 projected benefit costs and 1992 Requested/Approved Figures (pages 13, 14, 16, 18 and 19)

In its representations, the Region indicated that it is prepared to disclose the 1991 financial data which appears on pages 8, 9 and 10 of Record 3 but has not yet done so. Counsel for the affected party confirmed that it has no objection to the disclosure of this information. Accordingly, it should be disclosed to the appellant.

The sole issue arising in this appeal is whether the mandatory exemption provided by section 10(1)(a) of the Act applies to the records. Section 10(1)(a) of the Act 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;

For a record to qualify for exemption under section 10(1)(a) of the Act, the Region and/or the affected party must satisfy each part of the following 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 harms specified in (a) of section 10(1) will occur.

[Orders 36, M-29 and M-37]

If any part of the test is not satisfied, the exemption under section 10(1) will not apply to the records (Orders 36 and M-10).

The Region, in its representations, sets out the circumstances under which it obtains the records:

The Region requires the information contained in the records at issue from every day care facility in the Region in order to assess and approve government funding of subsidized day care spaces in these centres.

The budget approval process is a requirement of the Region and, ultimately, results in a Purchase of Service Agreement being entered into between the Region and the day care centre which wishes to receive subsidization for the children in its care. The Purchase of Service Agreement translates the amount of available subsidy for the specific day care centre into a per diem rate per child per program.

Part One

The Region submits that all of the records provide a detailed description of the financial affairs of the affected party and represent comprehensive reports and presentations of the financial commitments and

expenses of the affected party. I have reviewed the records and I am satisfied that they contain financial information of the affected party. Therefore, part one of the test has been met.

I will next address part three of the section 10 test.

Part Three

To satisfy part three of the test, the Region and/or the affected party must present evidence that is detailed and convincing, and which describes a set of facts and circumstances which would lead to a reasonable expectation that the harm described in section 10(1)(a) of the Act would occur if the information was disclosed (Order 36).

The Region submits that it is not in a position to determine whether or not the release of the financial data in the records would prejudice the competitive position of the affected party and makes no representations on this point. The Region does note that, at the time of the original request, the appellant and the affected party were in the process of negotiating a collective agreement and the Region concludes that the release of the financial data could reasonably be expected to interfere significantly with the contractual negotiations of the affected party.

The Region, however, presents no evidence in support of its conclusion nor does it describe a set of facts and circumstances which would reasonably lead one to expect that harm to occur.

To support its position that disclosure of Records 1 to 6 would significantly interfere with its contractual negotiations with the appellant, the affected party submits that:

... the disclosure of information to the [appellant] will significantly prejudice the [affected party's] position with respect to contract negotiations with the [appellant], particularly with respect to the negotiation of monetary items. The [affected party] submits that there is a reasonable expectation that the information contained in this record would be used by the [appellant] to interfere with the management of the [affected party] and to extract higher wage settlements.

I find that these representations do not present detailed and convincing evidence of a reasonable expectation that the affected party's contractual negotiations with the appellant will be significantly interfered with if the subject records are disclosed. A party must not just present evidence of the expectation of interference to satisfy the third part of the test; it must present evidence that disclosure could reasonably be expected to **significantly** interfere with contractual negotiations. In this appeal the affected party has not done so.

Both the appellant and the affected party state that their collective agreement negotiations came to an end when they entered into a collective agreement which took effect on March 31, 1993. In my opinion, the fact that the relevant negotiations are now at an end would make it even more difficult for the affected party to satisfy the third part of the section 10 test on the basis that disclosure of the records would significantly interfere with its contractual negotiations. To do so, the party claiming the section 10 exemption would have

to link, again with "detailed and convincing" evidence, some potential **future** negotiations to the specific information subject to disclosure. Given the current status of the appellant, it is possible that this argument is now moot.

With respect to Records 2, 3 and 4 the affected party further states that:

In particular the [appellant] may challenge individual line items in the [affected party's] budget request and demand that in the future, the [affected party] raise or lower specific amounts for individual line items in the budget.

The affected party does not provide any evidence of how, or in what context the appellant could "challenge" budget items and "demand" changes to them. No explanation has been provided by the affected party as to how its contractual negotiations with the appellant relate to the preparation of its line item budget presented to the Region. As such, I am not persuaded that in respect of these records the affected party has satisfied the third part of the test on the basis that their disclosure could be expected to significantly interfere with its contractual negotiations.

Apart from the possible interference with contractual negotiations, the affected party also submits that the disclosure of the records at issue could reasonably be expected to prejudice significantly its competitive position and, thus, on that basis, the records would satisfy the third part of the section 10(1) test.

The affected party alleges with respect to **all** the records that it can be reasonably expected that its competitive position would be prejudiced significantly if the records are disclosed and has stated in relation to all the records that:

... a substantial part of the information with respect to expenses and budgetary requests does not change a great deal from year to year. The [affected party's] competitors would therefore have access to information which is still highly relevant to the operation of the [affected party].

The affected party appears to be maintaining that competitors having access to information relevant to the affected party's operation is synonymous with significant prejudice to its competitive position. I cannot draw such an inference in the absence of detailed and convincing evidence of **how** that information could be used to compromise the affected party's competitive position, and, whether the degree of such compromise could represent **significant** prejudice to the affected party's competitive position. In the situation where the subject information is obtained for the purpose of distributing public funds among the providers of a particular service, as is the case in this appeal, the inference is even more difficult to draw and, therefore, the need for detailed evidence is greater.

The affected party has not provided any representations concerning the degree of competition in its business, who its competitors are or how the information in the records could be used by those competitors to significantly affect the affected party's operations.

The affected party's representations concerning specific records on this point are similarly limited and general in nature.

With respect to Record 1, the affected party submits:

If disclosed this information would allow the [affected party's] competitors access to the [affected party's] fixed and variable operating costs. The [affected party] would not be in possession of similar information regarding such costs for its competitors.

With respect to Record 5, the affected party states:

... there is a reasonable expectation that the information contained in this record would be used by the [appellant] to interfere with the management of the [affected party] and to extract higher wage settlements in contract negotiations. Such interference would in turn cause irreparable harm to the [affected party], as its competitive position would be undermined by the demands of the [appellant].

With respect to Record 6 the affected party submits:

If disclosed, competitors would become aware of a significant part of the cost of the affected party's benefits. The affected party would not be in possession of similar information regarding such costs for its competitors.

In my view, these representations are as general in nature as those related to the records as a whole. The only additional factor mentioned in respect of these specific records is the suggestion that the affected party would be at a disadvantage in relation to its competitors because it would not have the same knowledge of their operations. In the absence of evidence that there would be a disadvantage and that the disadvantage could be expected to result in significant prejudice, I find that the third part of the section 10(1)(a) test has not been satisfied in respect of these records either.

In summary, I find that none of the records qualify for exemption pursuant to section 10(1)(a) of the Act.

As the appellant has, in the course of mediation, withdrawn its request for any personal information contained in the records, I have reviewed the records and the representations of the Region and the affected party and have determined that Record 1 does contain some personal information. I have highlighted this personal information on the copy of Record 1 which is provided to the Freedom of Information and Protection of Privacy Co-ordinator of the Region. The highlighted portions of Record 1 should not be disclosed to the appellant.

ORDER:

1. I order the Region to disclose Records 2, 3, 4, 5, 6 and 7 to the appellant in their entirety.
2. I order the Region to disclose Record 1 to the appellant in accordance with the highlighted copy of the record which is being forwarded to the Freedom of Information and Protection of Privacy Coordinator of the Region with a copy of this order. The highlighted portions of Record 1 should **not** be disclosed.
3. The records ordered disclosed pursuant to Provisions 1 and 2 of this order should be disclosed to the appellant within thirty-five (35) days from the date of this order and **not** earlier than the thirtieth (30th) day following the date of this order.
4. I order the Region to provide me with a copy of the records disclosed to the appellant in accordance with Provisions 1 and 2 of this order, **only** upon request.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ March 11, 1994