



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-326**

**Appeal M-9300296**

**City of Etobicoke**



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# ORDER

The City of Etobicoke (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act), for access to a list of the names and addresses of businesses that received bulk waste removal services provided by the City. Access to the record was denied on the basis of the exemptions provided by sections 11(a) and (c) of the Act. The requester appealed the decision of the City to deny access.

Mediation was not successful and notice that an inquiry was being conducted to review the decision of the City was sent to the City and the appellant. Representations were received only from the City.

The record at issue in this appeal is a computer printout which lists the names and addresses of businesses and non-residential entities to whom the City provided bulk waste removal services until July, 1993, when the service was terminated. The record was created and maintained by the Works Department of the City for the purpose of providing this service.

The sole issue in this appeal is whether the discretionary exemptions provided by sections 11(a) and/or (c) of the Act apply to the record.

Sections 11(a) and (c) state 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 an institution and has monetary value or potential monetary value;
- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

## **Section 11(a)**

Previous orders issued under the provincial Freedom of Information and Protection of Privacy Act have set out what an institution must establish in order for a record to be exempt under section 18(1)(a) of the provincial Act, which is similar to section 11(a) of the Act. I agree with that approach and adopt it below for the purpose of this appeal.

In order for a record to qualify for exemption under section 11(a) of the Act, the City must establish that the information in the record:

1. is a trade secret, or financial, commercial, scientific or technical
- [IPC Order M-326/June 2,1994]**

information; **and**

2. belongs to an institution; **and**
3. has monetary value or potential monetary value.

As I have indicated, the record consists of the names and addresses of various businesses and other non-residential entities which received services from the Works Department of the City. On this basis, I find that the information in the record is commercial information and that it belongs to the City.

I will now consider whether the information in the record has monetary value or potential monetary value. The use of the term "monetary value" has been interpreted, in previous orders, to mean that the information in the record must have an intrinsic value and further, that the information in the record must be such that disclosure would deprive the institution of the monetary value of that information. I agree with that interpretation and adopt it for the purpose of this appeal.

In its representations, the City states that its decision to terminate this service resulted in significant savings to the City. The City submits that it could sell the list of business names and addresses to private waste removal companies and, therefore, the information in the record has potential monetary value. I have been provided with no evidence in support of the assertion that the City has any intention of selling this information or that the sale could result in monetary benefit to the City. On the contrary, the representations of the City indicate that upon termination of the waste collection service, the City provided the recipients listed in the record with an information package and a list of approved waste removal contractors, to assist them in the selection of a waste removal contractor.

I have carefully reviewed the record and the representations of the City. I am not satisfied that the information in the record has monetary value or potential monetary value. I find, therefore, that the record does not qualify for exemption under section 11(a) of the Act.

### **Section 11(c)**

To qualify for exemption under section 11(c) of the Act, the City must successfully demonstrate a reasonable expectation of harm to its economic interests or its competitive position, should the information in the record be disclosed. Descriptions of possible harm, even in substantial detail, are insufficient in themselves. At the least, there must be a clear and direct linkage between the disclosure of the specific information and the harm alleged (Order M-273).

In its representations, the City submits that its decision to terminate the waste removal service caused distress to some of the recipients of the service and that disclosure of the information in the record may exacerbate those negative reactions. In my view, the evidence provided by the City is not sufficiently

detailed and convincing to establish a clear and direct linkage between disclosure of the information in the record and the suggested harm. The City has failed to show how disclosure of the information contained in the record could reasonably be expected to prejudice its economic interests or its competitive position. I find that the exemption provided by section 11(c) of the Act does not apply to the record.

**ORDER:**

1. I order the City to disclose the record to the appellant within fifteen (15) days of the date of this order.
2. In order to verify compliance with this order, I order the City to provide me with a copy of the record disclosed to the appellant pursuant to Provision 1, **only** upon request.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ June 2, 1994