



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-342**

**Appeal M-9400092**

**City of Guelph**



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## **NATURE OF THE APPEAL:**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested copies of records from the City of Guelph (the City) relating to the construction of a storm sewer. The appellant served as a subcontractor to the primary contractor on the construction project and is now involved in litigation over the payment of certain additional fees for work performed.

The records at issue in this appeal consist of 48 documents which are described in Appendix "A" to this order. The City relies on the following exemptions to deny access to these records:

- advice or recommendations - section 7(1)
- third party information - section 10

A Notice of Inquiry was provided to the appellant, the City and 17 companies whose names appear in the responsive records relating to the construction project. Representations were received from the City only. Although correspondence was received from three of the affected persons, two indicated that they were declining to provide representations and the third simply provided copies of all of its correspondence with the City to this office.

## **DISCUSSION:**

### **ADVICE OR RECOMMENDATIONS**

Section 7(1) of the Act provides as follows:

A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

It has been established in a number of previous orders that advice and recommendations for the purpose of section 7(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action which will ultimately be accepted or rejected by its recipient during the deliberative process.

The City has claimed the application of the exemption provided by section 7(1) for all of the records at issue. I have reviewed the records and the representations submitted by the City and, in my view, Records 2, 5, 6, 7, 25, 26, 36, 41, 43, 44, 47 and 48 reveal a proposed course of action from a consultant retained by the City which could be accepted or rejected by its recipient (the City). These records are, therefore, exempt from disclosure in their entirety under this provision. I find, however, that section 7(1) does not apply to the remaining 36 records. Since no other exemptions have been claimed for Records 4, 8, 9, 11-14, 16-21, 24, 28, 29, 32-35, 38, 40, 42 and 46, these records should be disclosed to the appellant.

### **THIRD PARTY INFORMATION**

The City has claimed that section 10(1) of the Act applies to exempt Records 1, 3, 10, 15, 22, 23, 27, 30, 31, 37, 39 and 45 from disclosure.

For the record to qualify for exemption under sections 10(1)(a), (b) or (c) of the Act, the party resisting disclosure 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 harms specified in sections 10(1)(a), (b) or (c) will occur.

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

### **Part One of the Test**

The records contain detailed information about proposed and actual construction methods, pricing and quotes for work to be performed. In my opinion all of the information contained in these records qualifies as either technical, commercial or financial information and, accordingly, part one of the test has been satisfied.

### **Part Two of the Test**

The second part of the test has two elements. First, the party resisting disclosure must establish that the information was **supplied** to the City and second, that it was supplied **in confidence**, either implicitly or explicitly.

All of the records are either addressed to the City or have been copied to it. I am satisfied that they were supplied to the City by the affected persons.

I must now determine if this information was supplied to the City in confidence, either implicitly or explicitly.

In its representations, the City states only that the records were "supplied in confidence". However, there is nothing on the face of the records themselves which explicitly states that they were submitted in confidence, nor have I been provided with any evidence from the companies relating to the circumstances in which the information was supplied to the City. Accordingly, I find that part two of the test has not been met.

### **Part Three of the Test**

To satisfy part three of the test, detailed and convincing evidence must be adduced that describes a set of facts and circumstances which would lead to a reasonable expectation that the harms described in section

10(1) would occur if the information was disclosed.

I have not been provided with sufficient evidence to substantiate a clear and direct linkage between the disclosure of the records and the reasonable expectation of any of the harms listed in section 10(1) of the Act occurring.

Accordingly, I find that part three of the test has not been met and that Records 1, 3, 10, 15, 22, 23, 27, 30, 31, 37, 39 and 45 do not qualify for exemption under section 10. As no further exemptions have been claimed for these records, they should be disclosed to the appellant.

**ORDER:**

1. I uphold the City's decision to deny access to Records 2, 5, 6, 7, 25, 26, 36, 41, 43, 44, 47 and 48.
2. I order the City to disclose Records 1, 3, 4, 8-24, 27-35, 37-40, 42, 45 and 46 to the appellant within thirty-five (35) days after the date of this order but not earlier than the thirtieth (30th) day after the date of this order.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the City to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ July 8, 1994

**APPENDIX "A"**

INDEX OF RECORDS

<b>RECORD</b>	<b>NUMBER OF PAGES</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
1	9	Letter from [named consulting engineers] dated August 9, 1993 with attachment	Disclosed
2	1	Letter from [named consulting engineers] dated May 28, 1993	Not disclosed
3	1	Letter from [named consulting engineers] dated September 29, 1992	Disclosed
4	8	Letter from [named consulting engineers] dated August 21, 1992 with attachments and facsimile cover page	Disclosed
5	1	Duplicate of Record #2	Not disclosed
6	2	Duplicate of Record #2 and facsimile cover page	Not disclosed
7	2	Duplicate of Record #6	Not disclosed
8	7	Letter from [named consulting engineers] dated May 13, 1993 with attachments	Disclosed
9	6	Letter from [named consulting engineers] dated May 11, 1993 with attachments	Disclosed
10	8	Letter from [second named consulting engineers] dated February 4, 1993 with attachments	Disclosed
11	10	Letter from [named consulting engineers] dated April 23, 1993 with attachments	Disclosed
12	2	Letter from [second named consulting engineers] dated March 8, 1993	Disclosed
13	4	Letter from [second named consulting engineers] dated March 3, 1993 with attachments	Disclosed
14	6	Letter from [named consulting engineers] dated February 26, 1993 with attachments	Disclosed
15	2	Letter from [second named consulting engineers] dated February 1993	Disclosed
16	10	Letter from [second named consulting engineers] dated February 4, 1993 with attachments	Disclosed

<b>INDEX OF RECORDS</b>			
<b>RECORD</b>	<b>NUMBER OF PAGES</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
17	5	Progress Payment Certificate dated January 21, 1993 with attachments	Disclosed
18	2	Duplicate of 2 pages of Record #17	Disclosed
19	3	Letter from [named consulting engineers] dated December 22, 1992 with attachments	Disclosed
20	2	Letter from [named consulting engineers] November 30, 1992 with attachment	Disclosed
21	5	Letter from [named consulting engineers] October 16, 1992 with attachments	Disclosed
22	2	Letter from [second named consulting engineers] dated October 9, 1992	Disclosed
23	3	Letter from [second named consulting engineers] dated October 16, 1992	Disclosed
24	8	Duplicate of Record #21 and additional attachment	Disclosed
25	3	Letter from [named consulting engineers] dated September 11, 1992 with attachment	Not disclosed
26	4	Letter from [named consulting engineers] dated September 24, 1992 with attachments	Not disclosed
27	3	Letter from [named consulting engineers] dated September 29, 1992 with attachments	Disclosed
28	7	Letter from [named construction materials company] dated October 5, 1992 with attachment, facsimile from [named consulting engineers] dated September 24, 1992	Disclosed
29	4	Duplicate of letter in Record #4	Disclosed
30	1	Letter from [named drilling contractor and consultant] dated November 22, 1991; duplicate of attachment in Record #4	Disclosed

<b>INDEX OF RECORDS</b>			
<b>RECORD</b>	<b>NUMBER OF PAGES</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
31	1	Letter from [second named drilling contractor and consultant] dated August 18, 1992; duplicate of attachment in Record #4	Disclosed
32	1	Tender Results; duplicate of attachment in Record #4	Disclosed
33	1	Letter from [second named construction materials company] dated August 17, 1992	Disclosed
34	3	Letter from [named consulting engineers] dated November 18, 1993 with attachments	Disclosed
35	1	Duplicate of letter in Record #34	Disclosed
36	1	Facsimile from [named consulting engineers] dated August 12, 1993	Not disclosed
37	2	Letter from [second named consulting engineers] dated August 13, 1993	Disclosed
38	3	Letter from [named consulting engineers] dated August 4, 1993 with attachments	Disclosed
39	2	Duplicate of Record #37	Disclosed
40	3	Letter from [named consulting engineers] dated August 10, 1993 with attachments	Disclosed
41	2	Letter from [named consulting engineers] dated July 30, 1993	Not disclosed
42	4	Letter from [named consulting engineers] dated August 10, 1993 with attachments	Disclosed
43	1	Letter from [named consulting engineers] dated June 30, 1993	Not disclosed
44	1	Duplicate of Record #43	Not disclosed
45	2	Letter from [second named consulting engineers] dated June 24, 1993	Disclosed

<b>INDEX OF RECORDS</b>			
<b>RECORD</b>	<b>NUMBER OF PAGES</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
46	10	Letter from [named consulting engineers] dated May 13, 1993 with attachments	Disclosed
47	2	Letter from [named consulting engineers] dated June 1, 1993 with attachment	Not disclosed
48	2	Duplicate of Record #47	Not disclosed