



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-335**

## **Appeal M-9400255**

### **Nipissing Board of Education**



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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 asked the Nipissing Board of Education (the Board) for a copy of a specific bus transportation contract for the 1993-1994 school year. The Board agreed to release the entire agreement with the exception of (1) the clause relating to the fees payable under the contract and (2) an attached schedule which itemizes the rates to be paid according to the individual bus routes. The Board's decision not to release this information was made under the following exemption of the Act:

- third party information - section 10

A Notice of Inquiry was provided to the appellant, the Board and the bus company which had been awarded the contract. Representations were received from the Board only.

The record at issue in this appeal is a document entitled "Agreement for Transportation" dated January 10, 1994, along with an attached schedule.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

For a record to qualify for exemption under section 10(1) of the Act, the Board 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 section 10(1)(a), (b) or (c) will occur.

I will begin my analysis by considering part 2 of the test. For this part of the test to apply, the Board must establish that the information contained in the agreement was supplied to the Board and secondly that such information was supplied in confidence either implicitly or explicitly.

A number of previous orders have addressed the question of whether information contained in an agreement entered into between an institution and a third party was supplied by the third party. In general, the conclusion reached in these orders is that, for such information to have been supplied to an institution, the information must be the same as that originally provided by the third party. Since the information contained in an agreement is typically the product of a negotiation process between the institution and a third party, that information will not qualify as originally having been "supplied" for the purposes of section 10(1) of the Act.

In the present case, the Board has confirmed that the contract rates for each route operated by the bus company were negotiated based on a formula approved by the Board. As indicated previously, the bus company chose not to make submissions to the Commissioner's office on this or any other aspect of the appeal.

On the basis that the record is a contract which contains information negotiated between the Board and the bus company, I am satisfied that the reasoning applied in the previous line of orders also applies to the present agreement. I conclude, therefore, that the information contained in this agreement was not "supplied" to the Board and, consequently, that the second part of the test for the application of section 10(1) of the Act has not been met.

The result is that the section 10(1) exemption does not apply and that the Board must disclose the agreement to the appellant.

Because of the finding which I have made, it is not necessary for me to consider the first or third parts of the section 10(1) test.

**ORDER:**

1. I order the Board to disclose the agreement to the requester within (thirty-five) 35 days of the date of this order and not earlier than the (thirtieth) 30th day following the date of this order.
2. In order to verify compliance with the provisions of this order, I reserve the right to require the Board to provide me with a copy of the record which is disclosed to the requester pursuant to Provision 1.

Original signed by: \_\_\_\_\_ June 22, 1994  
Irwin Glasberg

Assistant Commissioner