



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-834

Appeal P-9400523

Management Board of Cabinet



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## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). Management Board of Cabinet (the Board) received a request for copies of existing contracts between the Government of Ontario and a named telecommunications company for the provision of telephone services. The Board located 15 contracts (the records) which were responsive to the request and notified the telecommunications company pursuant to section 28 of the Act, seeking its position on the disclosure of the contracts. The telecommunications company objected to the disclosure of portions of the contracts. Following receipt of the company's representations, the Board decided to disclose all 15 contracts to the requester in their entirety.

The telecommunications company appealed the decision to grant to the requester access to the contracts, claiming the application of the following exemption under the Act to portions of the responsive records:

- third party information - section 17(1)

A Notice of Inquiry was forwarded to the Board, the requester and the telecommunications company (the appellant). Representations were received from the appellant only.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

For a record to qualify for exemption under section 17(1)(a), (b) or (c) of the Act the party resisting disclosure, in this case 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 harms specified in (a), (b) or (c) of subsection 17(1) will occur.

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

Following my review of the records, I find that all of the information for which the appellant has claimed the application of the exemption may be categorized as technical, commercial or financial information within the meaning of section 17(1) of the Act. Accordingly, the first part of the test has been met.

## **Part Two of the Test**

To satisfy part two of the test, the appellant must establish that the information contained in the records was **supplied** to the Board and, secondly, that such information was supplied **in confidence**, either implicitly or explicitly.

Previous orders have addressed the question of whether the 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 or such as to permit the drawing of accurate inferences about the information originally provided by the third party. Since the information in an agreement is typically the product of a negotiation process between the institution and the third party, that information will not qualify as originally having been "supplied" for the purposes of section 17(1) of the Act.

The appellant submits that the information at issue in this appeal is the same as that which was supplied in its tender documents in response to various "Requests For Proposal" issued by the Government for the provision of telephone services. It argues that although the contracts were the subject of negotiation between it and the Government of Ontario, the information which it seeks to withhold from disclosure remains in the same form as in its original tender documents.

I have not been provided with any evidence to assist me in determining whether this is in fact the case. The appellant has not provided me with copies of the tender documents in order to compare them to the finalized contracts which are at issue in this appeal. Without such evidence, I am unable to determine whether the figures and other data contained in the contracts remained unchanged through the course of the negotiations with the Government.

In the absence of any evidence as to the nature of the information originally submitted by the appellant with its tender documents, I must find that the information was not "supplied" to the Board by the appellant within the meaning of section 17(1) of the Act.

As the second part of the test has not been satisfied, section 17(1) has no application to the records and all of the information contained in the contracts should be disclosed to the requester.

## **ORDER:**

1. I uphold the decision of the Board to disclose the 15 contracts in their entirety to the requester.
2. I order the Board to disclose to the requester the records described in Provision 1 within thirty-five (35) days of the date of this order, but not earlier than the thirtieth (30th) day following the date of this order.

3. In order to verify compliance with this order, I reserve the right to require the Board to provide me with a copy of the records disclosed to the requester pursuant to Provision 1.

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

\_\_\_\_\_ January 11, 1995