



Information and Privacy  
Commissioner/Ontario

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

## **ORDER M-572**

Appeal M\_9500163

Richmond Hill Public Library



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## **NATURE OF THE APPEAL:**

The Richmond Hill Public Library (the Library) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all information relating to the award of a contract for the operation of a coffee facility in the Library building. The Library located records responsive to the request and denied access to them, claiming the application of the following exemption under the Act:

- third party information - section 10(1).

The requester appealed the Library's decision. A Notice of Inquiry was sent to the Library, the appellant and to the firm which submitted the successful proposal (the affected party). Representations were received from all three parties. During the course of mediation, the appellant agreed to limit the scope of her appeal to those records referred to in the Notice of Inquiry as Records 1 and 2. Record 1 is the affected party's 26-page proposal for the operation of a coffee cart. Record 2 is a two-page supplement to the proposal.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

For a record to qualify for exemption under sections 10(1)(a), (b) or (c), the Library or the affected party 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 10(1) will occur.

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

I have reviewed each of the records at issue and find that they contain commercial and financial information within the meaning of section 10(1). The first part of the test has, accordingly, been satisfied.

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

In order to satisfy part two of the test, the affected party and the Library must show that the information was supplied to the Library and that it was supplied in confidence, either explicitly

or implicitly. To satisfy the "in confidence" element of the test, there must be a reasonable expectation on the part of the supplier of the information that it will be held in confidence.

The Library describes in detail the process whereby the Request for Quotations (RFQ) for the operation of a coffee facility was initiated. It submits that the procedure was not a public tender, rather it was an invitation to interested parties to submit ideas for the creation of a coffee facility within the Library building. The specific requirements of the operation were not spelled out in any great detail in the Request for Quotations.

I find that the information contained in Records 1 and 2 was supplied by the affected party to the Library in response to the RFQ. These records set out in detail the nature of the affected party's business experience and its specific proposal for the operation of the Richmond Hill Library coffee cart.

The affected party submits that its proposal was intended to be treated in a confidential fashion by the Library. Although not explicitly marked as "confidential", I find that the information contained in the records was supplied to the Library implicitly in confidence. Further, in my view, it was reasonable for the affected party to expect that its submissions would be treated confidentially. The second part of the test has, accordingly, been met.

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

In order to satisfy part three of the test, the Library or the affected party must present evidence which describes a set of fact and circumstances which would lead to a reasonable expectation that one or more of the harms described in sections 10(1)(a), (b) or (c) would probably occur if the information contained in the records was disclosed.

The affected party and the Library have made extensive representations on the issue of harm to the competitive position of the affected party which, they submit, would follow the disclosure of the information contained in the records. Essentially, the affected party argues that the records contain a detailed plan for the operation of a coffee facility. It indicates that the disclosure of this information would significantly prejudice its position in what is a very competitive business.

The Library submits that the disclosure of the records would disadvantage the affected party in the following ways:

- competitors could use the information to develop a strategy to use against the affected party in future competitive bidding situations;
- competitors could use the Proposal to enhance or design their own proposals, bypassing the considerable expense of research and development;
- competitors could utilize any customer information contained in the Proposal for their own sales activities;
- prospective lessors of premises to the affected party could insist on receiving the same terms as those provided to the Library, thereby placing the affected party in a poor bargaining position in its lease negotiations.

I am satisfied that I have been provided with sufficient evidence to conclude that the disclosure of the records could reasonably be expected to significantly prejudice the competitive position of the affected party. I find, therefore, that the third part of the test has been satisfied.

Accordingly, I find that Records 1 and 2 are exempt from disclosure under section 10(1)(a) of the Act.

**ORDER:**

I uphold the Library's decision.

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

\_\_\_\_\_  
July 21, 1995