



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-680

Appeal M_9500597

City of Toronto



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The City of Toronto (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of the 1985 and 1995 contracts between the City and the Toronto Humane Society (the Society).

The City denied access to the records pursuant to sections 10(1)(a) and (c) of the Act, and the requester (now the appellant) appealed this decision.

During the course of mediation the City determined that a draft copy of the 1985 contract was contained in a public record held by the City, and notified the Society accordingly.

Mediation was not successful, and a Notice of Inquiry was sent to the appellant, the City and the Society. Representations were received from the appellant and the Society, but not from the City.

DISCUSSION:

THIRD PARTY INFORMATION

The sole issue in this appeal is whether the two responsive records qualify for exemption under sections 10(1)(a) and/or (c) of the Act, which read as follows:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency;

For a record to qualify for exemption under section 10(1)(a) or (c), the City and/or the Society must satisfy each part of the following three-part test:

1. the record must recorded 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) or (c) of section 10(1) will occur.

Part One

I have reviewed the records which are commercial agreements between the City and the Society for the provision of animal sheltering services. The records also contain details of annual and monthly payments made to the Society by the City. Accordingly, I find that the records contain commercial and financial information within the meaning of section 10(1), and the first part of the test has been satisfied.

Part Two

The second part of the test has two elements. First, the information must be **supplied** to the City by the Society and secondly, it must be supplied **in confidence**, either implicitly or explicitly.

As noted above, the City declined to provide representations in this appeal, so I am reliant on the submissions of the Society to establish the requirements of part two.

The records at issue in this appeal are agreements negotiated between the City and the Society for animal sheltering services. 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 (Orders 36, 87, M-335, P-385, P710, P-807). Only those parts of an agreement which would reveal information actually supplied to an institution could meet the first requirement of the part two test.

The representations provided by the Society regarding part two acknowledge that the contracts were negotiated. Further, copies of minutes of City council committee meetings attached to the Society's representations characterize the discussions leading to the finalization of the records as negotiations, and even describe one set of negotiations as "prolonged". Having reviewed the records, it is clear to me that they are negotiated agreements and, applying the reasoning in previous orders, only portions which would reveal information actually supplied to the institution during these negotiations may be properly characterized as "supplied".

I have carefully reviewed the contents of both contracts and, in my view, they contain the type of information normally associated with an agreement for the provision of defined services, including definitions, services provided by the Society, hours of operation,

indemnities, insurance coverage, fees, termination and renewal clauses, and regular contract boilerplate. The 1985 contract contains two schedules, and the 1995 contract one schedule, none of which contain the type of information which would appear to have been supplied in this form by the Society.

The Society's representations on the part two test focus primarily on the issue of confidentiality rather than the "supplied" aspect of the test. In referring to the 1995 contract, the representations state "... during the negotiation of the Agreement all documents, other than routine notes confirming meeting dates, times and the like, were labelled by the Society as CONFIDENTIAL". While I can accept that certain information may have been supplied by the Society in confidence for the purpose of negotiation discussions, I have not been provided with sufficient evidence to establish that any of this type of information found its way into the final agreement.

Having independently reviewed the contracts, I find that they contain information which was the subject of negotiations between the City and the Society, and was not "supplied" by the Society. Therefore, the second part of the section 10(1) test has not been established.

Because all three parts of the test must be established in order for the contracts to qualify for exemption under section 10(1), I find that these records do not qualify for exemption and should be disclosed to the appellant.

ORDER:

1. I order the City to disclose both contracts, in their entirety, to the appellant within thirty-five (35) days after the date of this order, but not earlier than the (30th) day after the date of this order.
2. In order to verify compliance with the terms of this order, I reserve the right to require the City to provide me with a copy of the records which have been disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner/Access

_____ December 29, 1995