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

ORDER M-678

Appeal M_9500607

City of Toronto

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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 the monthly water usage rates for high volume consumers for 1994.

The City denied access to all responsive records on the basis of the exemption contained in sections 10(1)(a) and (c) of the Act (third party information). The requester appealed the City's decision.

During the course of mediation, the City offered to create a new computerized record which would present the requested information in a more practical format, covering the "top 350" water consumers, and to disclose this new record to the appellant. The appellant agreed to this process and also agreed to pay the fee levied by the City for the computer program necessary to create this new record.

The record is a nine-page list of water consumers, identified by individual meter. Each entry lists the consumption in metric meters, account number, premises address and mailing address for each of the "top 350" meters. In cases where more than one meter is associated with the same premise, each meter is listed separately.

Before receiving the fee payment and prior to releasing this record to the appellant, the City became aware of the decision of the Ontario Court of Justice (General Division), Divisional Court, in *Re Workers' Compensation Board and Mitchinson, Assistant Information and Privacy Commissioner (Ontario)*, 23 O.R. (3rd) 31, dated May 10, 1995. In the City's view, this decision cast the interpretation of section 10(1) by the Commissioner's Office into doubt, and the City issued a revised decision letter reverting to the exemption claims identified in the original decision letter. The fee payment was received and deposited by the City prior to issuing this new decision letter.

A Notice of Inquiry was provided to the City and the appellant. Representations were received from the City only.

DISCUSSION:

The sole issue in this appeal is whether the new record created by the City qualifies for exemption under sections 10(1)(a) and/or (c) of the Act. These sections 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 either of these sections, the institution and/or any 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) or (c) of subsection 10(1) will occur.

Part 1

The City submits that the record would reveal the exact amount of water consumed at each meter registered with a named customer. According to the City, the customer's total water bill for 1994 could be calculated from the figures contained in the record, thereby revealing a part of the customer's overhead costs. In addition, the fact that a customer appears on the list of "very high consumers" indicates that they consume large volumes of water, which, in the City's view, would reveal commercial and potential financial information.

Having reviewed the City's representations. I am not convinced that the fact that various customers purchase water from the City is sufficient to bring this information within the category of commercial information under section 10(1). Many previous orders of the Commissioner's office have defined commercial information as 'information that relates to the buying, selling or exchange of merchandise or services". The mere fact that companies purchase water from the City is obvious, and, in my view, has insufficient bearing on the commercial interests of these companies to qualify as commercial information.

As far as financial information is concerned, it is not obvious from the face of the record that the actual charges paid for water consumption can be determined from the meter readings. However, I am prepared to accept the City's representations on this point, on the assumption that billing rates are publicly available and can be applied to the readings listed for each meter to determine the actual billed amounts.

Therefore, I find that the record contains financial information, and the first part of the test has been satisfied.

Part 2

In order to satisfy part two of the test, the Ministry and/or any affected party must show that the information was supplied to the Ministry, either implicitly or explicitly in confidence.

The City relies on Order P-531 to support its position that the information respecting water consumption is supplied by its customers.

In Order P-531, Inquiry Officer Anita Fineberg dealt with a request for access to the amount of electricity purchased by Ontario Hydro (Hydro) from a named company. The amount of electricity generated in that case was measured by meters located at the company's site. Hydro was able to obtain a reading of the amount of electricity produced at any given time by using a computer modem which telephoned the meter and electronically transmitted a reading back to Hydro. Inquiry Officer Fineberg found that the manner in which the information contained in the record was transported from the company to Hydro was not determinative of whether the information was "supplied" for the purposes of section 17(1). Rather, the issue was whether the information was communicated to Hydro by the company as opposed to being generated or created by Hydro itself. On the particular facts of that appeal, the Inquiry Officer found that the information at issue was supplied to Hydro by the company.

In my view, the circumstances of the present appeal are fundamentally different from those at issue in Order P-531. In Order P-531, the institution (Hydro) was the purchaser of electricity from the affected party and the affected party supplied the usage figure to Hydro as part of its billing process. In the appeal before me, the institution (the City) is the vendor of water which is purchased by various customers and the City supplies the usage figures to these customers as part of its billing process. The amount of water used by the various consumers is measured on meters which are regulated by the City and read by City employees. The City acknowledges in its representations that the Chief Water Inspector controls access to the keys to the restricted areas where these meters are located. Applying the reasoning articulated by Inquiry Officer Fineberg, I find that the information in the record was created by the City itself, not supplied by the various customers to the City, as was the case in Order P-531.

Therefore, I find that the second part of the test has not been satisfied, and the record does not qualify for exemption under section 10(1)(a) or (c) of the Act and should be disclosed to the appellant.

ORDER:

1. I order the City to disclose the record to the appellant within fifteen (15) days from the date of this order.

2. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: December 28, 1995
Tom Mitchinson
Assistant Commissioner/ Access