



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

# **ORDER M-928**

**Appeal M\_9700011**

**City of Etobicoke Public Library Board**



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## **NATURE OF THE APPEAL:**

The City of Etobicoke received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for copies of portions of the tender proposals received by the City of Etobicoke Public Library Board (the Board) in response to a Request for Quotations for the supply of shelving for one of the Board's libraries. The requester sought access to the information contained in specified pages from each of six tender proposals received by the Board. Because the Board appeared to have a greater interest in the records, the City transferred the request to it, pursuant to section 18(3) of the Act.

The Board identified 54 pages of records as responsive to the request and notified the six companies which had submitted the tender proposals (the affected parties). One of the affected parties consented to the disclosure of its tender information and the Board disclosed this information to the requester. The other five affected parties declined to give their consent. The Board then denied the requester access to their tender documents, claiming the application of section 10 of the Act (third party information).

The requester, now the appellant, appealed the Board's decision. A Notice of Inquiry was provided to the appellant, the Board and to the five affected parties. Representations were received from the Board, the appellant and three of the affected parties.

The records at issue in this appeal are portions of the tender documents submitted by each of the five affected parties. These records are comprised of a one-page covering document containing the total quotation price and the amount of the bid deposit (the cover page), a five-page "Specification Response Form" (Pages 34 to 38), a two-page "Price Detail Sheet" (Pages 39 and 40) and a one-page "Statement of Canadian Content" (Page 42).

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

For a record to qualify for exemption under sections 10(1)(a), (b) or (c) the parties resisting disclosure, in this case the Board and/or the affected parties, 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 Board 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.

## **Type of Information**

The Board and the affected parties submit that the tender documents contain commercial information within the meaning of section 10. Specifically, they argue that the unit prices for the provision of shelving which are listed on Pages 39 and 40 qualify as “commercial information”. I agree that this portion of the records qualifies as commercial information within the meaning of section 10, as the information pertains to the buying and selling of goods and services.

Similarly, I find that the information quoted in the cover sheet and the Statement of Canadian Content at Page 42 which pertains to the total quotation price and the amount of the bid deposit qualifies as commercial information within the meaning of section 10.

With respect to the information in Pages 34 to 38, I find that it cannot properly be characterized as commercial information. These portions of the records simply acknowledge that each tenderer is addressing the specifications contained in the Request for Quotation issued by the Board. In my view, information of this sort does not qualify either as “commercial information”, or as any of the other types of information listed in part one of the section 10 test. As all three parts of the test must be satisfied in order for a record to qualify for exemption under section 10, I find that Pages 34 to 38 in each of the five tender documents is not exempt under this section.

## **Supplied In Confidence**

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

As noted above, the information which qualified under part one of the test consists of the unit prices, the total contract price and the amount of the bid deposit contained in Pages 39, 40, 42 and the cover page of each tender. I am satisfied that this information was supplied to the Board by the affected parties.

I will now consider whether this information was supplied to the Board in confidence, either implicitly or explicitly.

In this regard, it is not sufficient that the affected party had an expectation of confidentiality with respect to the information supplied to the institution. Such an expectation must have been reasonable, and must have an objective basis (Order M-169).

The Board submits that Article 16 at Page 5 of the Request for Quotation specified that “All proposals will be opened and read publicly”. In addition, this clause goes on to state that “Proprietary information from competing bidders shall not be disclosed to the public or to competitors”. The affected parties who have submitted representations maintain that each bidder understood that their unit pricing information, as well as the suppliers of the materials referred to in the tender documents, would be treated confidentially by the Board.

I am satisfied that the affected parties had a reasonably-held expectation that the unit price information which they supplied to the Board on Pages 39 and 40 of the tender documents would be treated in a confidential manner by the Board. In addition, I find that the affected parties’ expectation of confidentiality regarding the information contained in the Statement of Canadian

Content was also reasonably-held. Accordingly, part two of the section 10 test has been satisfied with respect to this information.

I cannot agree, however, that the amounts listed on the cover page of the tender documents as “total quotation price” and “bid deposit” were intended to be treated with confidence by the Board. The Request for Quotation clearly indicates that such information will be made public when the bids are opened. I find that any expectation of confidentiality with respect to this information was not reasonably held and this information is not, therefore, exempt under section 10 of the Act.

### **Harms**

The affected parties submit that significant prejudice to their competitive position will result from the disclosure of the unit price information contained in Pages 39 and 40 of the records, as well as the Statement of Canadian Content. They argue that the disclosure of the unit pricing information will adversely effect their competitive position by disclosing to their competitors their best negotiated price for the supply of certain materials. The Board also submits that the unit prices submitted by bidders in response to any of its Requests for Quotation are not made public.

I have reviewed the submissions of the affected parties, the Board and the appellant with regard to the application of section 10 to the information contained in Pages 39 and 40 of the records, along with the Statement of Canadian Content at Page 42. I find that the disclosure of this information could reasonably be expected to prejudice significantly the competitive position of the affected parties. These portions of the records describe in detail the nature of the work to be performed and materials supplied, as well as their costs. For this reason, I find that the information contained in Pages 39, 40 and 42 of each of the records is properly exempt from disclosure under section 10.

### **ORDER:**

1. I uphold the Board’s decision not to disclose Pages 39, 40 and 42 of each of the records.
2. I order the Board to disclose Pages 34-38 and the cover pages of each of the records to the appellant by sending him a copy by **May 21, 1997** but not before **May 16, 1997**.
3. 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 records which I have ordered disclosed under Provision 2.

Original signed by: \_\_\_\_\_

April 16, 1997

Donald Hale  
Inquiry Officer