



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1503**

**Appeal P-9700276**

**Ministry of the Solicitor General and Correctional Services**



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## **BACKGROUND:**

The appellant submitted a bid in response to a request for proposals (the RFP) for the supply of certain telecommunications consulting services issued by the Ministry of the Attorney General (the MAG). The appellant's bid in this matter was not successful.

Around the time of the MAG's RFP, a series of integrations took place between the Ministry of the Solicitor General and Correctional Services (the Ministry) and the MAG. The Ministry assumed and retains responsibility for the records in question.

## **NATURE OF THE APPEAL:**

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry for information regarding the RFP. Specifically, the request was for:

1. A list of the names of all bidders;
2. A complete copy of the proposals and any other documents submitted to the MAG by each of the bidders, excluding the proposal prepared by the appellant;
3. All documents and correspondence between the MAG and each of the bidders (excluding the appellant) from June, 1996 to the present;
4. All documents, including but not limited to, reports of the MAG, or the Computer and Telecommunications Services Branch analysing any or all of the proposals submitted by the bidders;
5. The reasons for the MAG's final decision, order or ruling awarding the contract to the successful bidder. Also, any internal memorandum containing the Ministry's reasons for its awarding of the contract to the successful bidder.

The Ministry identified the responsive records and granted partial access to them. The Ministry denied access to the remainder based on the exemptions found in sections 17(1)(a), (b) and (c) (third party information) and 21(1) (invasion of privacy) of the Act.

This office originally provided a Notice of Inquiry to the appellant, the Ministry and the successful bidder. Representations were received from all three parties. During the Inquiry stage it was determined that the interests of a number of other companies might be affected by disclosure of the records. Accordingly, these companies were also sent a Notice of Inquiry. No representations were received from these companies.

In its representations, the appellant indicates that it is not requesting disclosure of any information which has been denied pursuant to section 21 of the Act. Accordingly, the portions of the records which the Ministry has identified as falling under section 21(1) are not at issue in this appeal and I will not consider this information further. In this regard, the only information withheld from page 23 consists of information to which section 21(1) has been applied, and this page will, therefore, not be discussed further. The information to which section 21(1) has been applied should not be disclosed to the appellant.

## **RECORDS:**

The records remaining at issue contain the successful bidder's response to the RFP, handwritten notes, correspondence between the MAG and the successful bidder, a Professional Services Proposal submitted by the successful bidder, an agreement between the Ministry and the successful bidder, reference checks for the appellant and the successful bidder, the Ministry evaluation of the successful bidder and one sentence from the Ministry's evaluation of the appellant. I note that pages 50, 52, 53 and 55 are blank pages. As these pages do not contain any information I will not refer to them further in this order.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

For a record to qualify for exemption under section 17(1)(a), (b) or (c), the Ministry and/or the successful bidder 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 (b) of section 17(1) will occur.

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All three parts of the test must be satisfied in order for the exemption to apply.

### **Type of Information**

I have reviewed the records and find that they all relate to the buying and selling of telecommunications consulting services in response to the RFP and as such, constitute commercial information.

### **Supplied in Confidence**

In order for this part of the section 17(1) test to be met, the information must have been supplied to the Ministry in confidence, either implicitly or explicitly. The information will also be considered to have been supplied if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the institution.

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 have been the same as that 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 purpose of section 10(1) of the Act.

In its representations, the successful bidder states simply that "[o]ur proposal was issued to the Ministry of The Attorney General, and to this body only, in confidence". The Ministry indicates that:

This information was supplied in confidence to the Ministry by the [successful bidder] in response to the RFP. As noted in the letter dated October 9, 1997, the [successful bidder] was of the view that their response to the RFP was submitted in confidence to the Ministry.

The Ministry is referring to a letter sent to it by the successful bidder during the mediation stage of this inquiry in which the successful bidder essentially reiterates the position taken in its representations.

I have considered the representations of the parties and have carefully reviewed each record. I am satisfied that Pages 5 - 18 and 29 - 38 were supplied to the Ministry by the successful bidder implicitly in confidence. These pages consist of the proposal submitted by the successful bidder in response to the RFP, as well as a copy of a similarly constructed proposal which was submitted to another Ministry of the Government of Ontario. Pages 19 and 20 contain notes made by Ministry staff regarding the successful bidder's proposal and, in my view, would reveal information provided by the successful bidder implicitly in confidence.

Pages 39 - 49, 51 and 54 consist of the contractual agreement between the Ministry and the successful bidder. In my view, there is insufficient evidence to establish that this agreement was anything but a negotiated document. Consistent with previous decisions of this office, I find that this information does not qualify as having been originally "supplied" by the successful bidder.

Pages 25 and 28 consist of correspondence to the Ministry from the successful bidder. However, there is nothing on the face of these letters to indicate that they were submitted to the Ministry in confidence. Both the Ministry's and the successful bidder's representations generally address the issue of confidentiality as noted above, however, in my view, these representations are more concerned with the contents of the proposal. In my view, neither the Ministry nor the successful bidder has provided sufficient evidence to show that the correspondence submitted by the successful bidder was done so with a reasonably held expectation of confidentiality.

Page 24 is a letter from the Ministry to the successful bidder and was, therefore, not supplied by the successful bidder. Moreover, the contents of this letter would not reveal information supplied by the successful bidder.

Pages 83 - 94 consist of reference checks for the successful bidder. Pages 96 - 98 and 100 - 102 are reference checks for the appellant. None of the information on these pages was supplied by the successful bidder, nor would disclosure of this information reveal information supplied by it. Although the information in these pages was clearly supplied by other companies, I have received no representations from them to indicate that the information was supplied with any expectation of confidentiality. Further, the Ministry does not specifically address these pages in its representations. Accordingly, I find that there is insufficient evidence before me to conclude that the information was supplied in confidence.

Pages 107 - 115 contain three vendor proposal evaluation summaries with respect to the successful bidder. Page 124 is one page of the evaluation summary of the appellant's proposal. These evaluations were conducted by Ministry staff and were, therefore, not supplied to the Ministry. In my view, disclosure of these records would not reveal information provided to the Ministry by the successful bidder.

In summary, only pages 5 - 20 and 29 - 38 meet the second part of the section 17(1) test. As all three parts of the test must be met for a record to qualify for exemption under this section, the remaining pages are not exempt and must be disclosed to the appellant.

### **Harms**

In its representations, the successful bidder states:

The contents of our proposal to the Attorney General are proprietary and contains industry trade secrets specific to our defined, formulated and specified audit process.

Furthermore, release of this information would adversely affect [our] future financial opportunities and relief in the court of law would be sought for such damage or potential damage.

The Ministry submits that:

[P]roviding the appellant with access to detailed information about [the successful bidder's] bid and evaluation would severely affect the competitive position of the [successful bidder] with respect to any future RFP's. If such a circumstance were to occur, the [successful bidder] would not likely consider responding to any future RFP's which would not be in the public interest. Release of the information at issue would also result in undue financial loss to the [successful bidder] through the loss of future contracts for services.

The appellant acknowledges that certain portions of the records would likely contain information that might be subject to section 17(1), such as the successful bidder's work plan and timetable

for the proposed work, but argues that the remaining portions of the records should not attract the protection of this section.

I have considered the representations on this part of the test and have reviewed the portions of the records remaining at issue. I find that pages 5 - 8 contain general information pertaining to the successful bidder's proposal, such as a cover page, table of contents and general executive summary of the proposal. Pages 29 - 31 are similarly constructed. I find that disclosure of these pages could not reasonably be expected to result in any of the harms described in section 17(1).

With respect to the remaining information in the proposals, however, I am satisfied that they contain details of the successful bidder's proposal which is unique to this party. Moreover, I am satisfied that disclosure of the information in this proposal could reasonably be expected to result in harm to the successful bidder's competitive position and future contractual relations. Accordingly, I find that the successful bidder and the Ministry have provided sufficient evidence to establish that the harm contemplated by section 17(1)(a) could reasonably be expected to occur should pages 9 - 17 and 32 - 38 be disclosed.

### **ORDER:**

1. I uphold the Ministry's decision to withhold pages 9 - 20 and 32 - 38 of the records.
2. I order the Ministry to disclose the remaining pages to the appellant (with the exception of the personal information contained in these pages which has already been identified by the Ministry), by sending the appellant a copy of these pages by **January 20, 1997** but not earlier than **January 15, 1997**.
3. In order to verify compliance with the terms of this order, I reserve the right to require the Ministry to provide me with a copy of the records that are disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ December 16, 1997