



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

# **ORDER P-1553**

**Appeal P-9700370**

**Liquor Control Board of Ontario**



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 appellant made a request to the Liquor Control Board of Ontario (the LCBO) under the Freedom of Information and Protection of Privacy Act (the Act). The request was for all records relating to the LCBO decision concerning a “Request for Proposals” (the RFP) for the provision of carrier services from the Thunder Bay LCBO warehouse to retail stores. The appellant represents a company which submitted a proposal for the provision of carrier services and was unsuccessful. Specifically, the appellant asked for the scores, scoring systems, and any information regarding the application of criteria for the evaluation of the proposals. The LCBO provided access to all information in the records pertaining to the appellant’s company and denied access in part to the balance of the responsive records based on the exemption in section 17(1) (third party information) of the Act. The appellant appealed the denial of access.

This office provided a Notice of Inquiry to the appellant, the LCBO and five companies which also submitted bids in response to the RFP (the affected parties). Representations were received from the LCBO and three affected parties.

## **RECORD:**

The record at issue in this appeal consists of the severed portions of a 10-page document entitled “LCBO RFP Evaluation, RFP #97-25, RFP Name: Carrier Service from Thunder Bay Warehouse to Stores”. The LCBO has withheld information pertaining to the affected parties on pages 3 - 10 of the record.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

For a record to qualify for exemption under section 17(1)(a), (b) or (c), the LCBO 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 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 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**

The withheld portions of the record describe the score results, the pricing summary, and analysis of the bids submitted to the LCBO in response to the RFP. I find that this information is related to the buying and selling of goods and services and therefore qualifies as commercial information. Accordingly, the first part of the test has been met.

### **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 LCBO 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.

The affected parties all submit that the information submitted by them in their bids was supplied to the LCBO in confidence. They rely on the wording of paragraph 14 of Part VI of the RFP which explicitly provides that the LCBO would consider all proposals as confidential subject to the disclosure requirements of the Act. The LCBO submits that it is reasonable for the affected parties to expect that the information provided by them was done so in confidence.

The LCBO recognizes that the actual information at issue was not provided by the affected parties but argues that its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied.

In this regard, the LCBO indicates that pages 3 - 6 (the scoring sheets) contain the evaluation scores for each company as determined by four different evaluators. The LCBO argues that the appellant could reasonably be expected to draw an accurate inference concerning the information supplied by the other bidders by comparing their scores to its score.

I do not agree. This information consists of numerical values given to each relevant component of the bids by the evaluators. It does not relate in any way to information provided by the bidders respecting their bids but is an assessment of the bids based on established criteria. As such, I find that the information contained in pages 3 - 6 was not supplied to the LCBO but was generated by the LCBO. Further, disclosure of this information would not reveal any information provided by the affected parties in their bids, nor could its disclosure reasonably be expected to permit the drawing of accurate inferences as to the information actually supplied. As all three parts of the section 17(1) test must be met in order for a record or part of a record to qualify for exemption, I find that the withheld information in pages 3 - 6 does not qualify for exemption and should be disclosed to the appellant.

The LCBO submits that the pricing summary (pages 7 - 10) contains explicit cost calculations based upon the rates supplied by each bidder. I am satisfied that disclosure of this information would reveal information which was supplied by the affected parties in their bids or would permit the drawing of accurate inferences with respect to this information. I am also satisfied that the affected parties had a reasonably held expectation that their bids were being submitted in confidence. Accordingly, I find that the second part of the section 17 test has been met for pages 7 - 10.

## Harms

The LCBO and the affected parties all submit that disclosure of bidding information to the appellant could reasonably be expected to prejudice significantly the competitive position of the bidders. One affected party states that if a competitor was to receive this information it would be able to calculate very easily its pricing structure into various parts of Ontario. In this regard, the affected party stresses that it quotes freight rates for contracts on a daily basis in competition with other transportation companies and submits that it would be at a disadvantage on all contracts if its competitors knew its pricing policies.

I am satisfied, based on the submissions of the parties that disclosure of the details of their pricing structures could reasonably be expected to prejudice significantly the competitive position of the affected parties. Accordingly, pages 7 - 10 are exempt under section 17(1).

## ORDER:

1. I order the LCBO to provide the appellant with a copy of pages 3 - 6 of the record by sending it a copy by **May 6, 1998** but not earlier than **May 1, 1998**.
2. I uphold the decision of the LCBO to withhold the remaining information from disclosure.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the LCBO to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

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

\_\_\_\_\_ April 1, 1998