



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1609

Appeal MA-010368-2

The Corporation of the City of London



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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The City of London (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

1. Please provide copies of all records of any kind, such as correspondence, reports, notes, memoranda, e-mails, evaluation checklists, spreadsheets, charts and matrices relating to the Request for Proposals 01-08 Joint Board of Management for the Lake Huron and Elgin Area Water Systems (the "RFP") including records relating to
 - (i) any communications with proponents, including requests for clarification of proposals and responses from proponents;
 - (ii) any meetings, interviews and telephone calls with representatives of any proponent;
 - (iii) any presentations by proponents and site visits or reference checks of proponents;
 - (iv) the evaluation, scoring, ranking and comparison of proposals (i.e. the technical and financial proposals of base proposals and alternative proposals) of all proponents, including records held by or received from consultants and advisors such as [two named consulting firms] and [a specified law firm];
 - (v) deliberations and analysis of the qualifications of a proponent and whether to disqualify or not to disqualify a proponent from the RFP, including any legal opinions or other advice received from legal and other advisors;
 - (vi) reports to council of the City of London or the Joint Board respecting the evaluation of proposals and the qualifications of proponents; and
 - (vii) the files of any member of the evaluation committee, the Purchasing and Supply Department, such as [a named individual] and the Environmental Services/Water Engineering Department.
2. Please provide copies of the proposals submitted by respondents to the RFP, other than [the company represented by the requester].
3. Please provide a copy of any agreement (s) with [the named consultants and a specified law firm] concerning their roles in the RFP process."

Following the notification of several affected parties pursuant to section 21 of the *Act*, the City issued a decision letter disclosing a number of records. Access to other records was denied under the following exemptions contained in the *Act*:

- Advice or recommendations - section 7(1);
- Third party information – section 10(1);
- Solicitor-client privilege – section 12; and
- Invasion of privacy – section 14(1)

The requester, now the appellant, appealed the City's decision to deny access to the records and also took the position that additional records in the consultants' files had not been included in the search.

During the mediation stage of the appeal, the appellant clarified that he was not interested in draft RFPs, draft agreements, his client's proposal and any price information contained in the bidders' proposals. Accordingly, these records were removed from the scope of the appeal. The City reviewed the remaining records, and issued a new decision letter with a new index, citing sections 7(1), 10(1), 12 and 14(1) as the basis for denying access to some of the remaining records. The City also released a large number of additional records. In addition, the City described the scope of its efforts to locate responsive records to the appellant. However, the appellant was not satisfied that all responsive records had been identified.

As no further mediation was possible, the appeal was moved to the adjudication stage of the process. As the City and the affected parties bear the onus of establishing the application of the exemptions claimed to the records at issue, I decided to seek their representations, initially. I received representations from the City and from two of the three affected parties who were contacted. The City and one of the affected parties consented to the sharing of their representations, in full, with the appellant. One of the affected parties consented to the partial disclosure of its submissions. The appellant was provided with a Notice of Inquiry and indicated that he did not intend to make representations in response.

The records in this appeal consist of several thousand pages of documents including the proposals submitted by the affected parties to the City in response to the RFP, evaluation documents prepared by the City and various correspondence between the parties.

DISCUSSION:

REASONABLENESS OF SEARCH

In appeals involving a claim that further responsive records exist, as is the case in this appeal, the issue to be decided is whether the City has conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the City will be upheld. If I am not satisfied, further searches may be ordered.

Where a requester provides sufficient detail about the records which he/she is seeking and the City indicates that further records do not exist, it is my responsibility to ensure that the City has made a reasonable search to identify any records which are responsive to the request. The *Act* does not require the City to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the City must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in the City's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

At the mediation stage of the appeal, the appellant took the position that additional records beyond those identified by the City should exist in the files maintained by the consultants

retained by the City. In his letter of appeal, the appellant indicates that he is of the view that the City has not included "notes and e-mails of City staff relating to the RFP process and records of consultants over which the City has control" in the records which it has identified as responsive to the request.

The City has provided me with representations describing the efforts it has made to locate and identify records which are responsive to the appellant's request. It indicates that it conducted searches of its own record-holdings in the offices of the City Engineer and City Manager, as well as its Purchasing Division. In addition, the consulting firms retained by the City also provided all of the records in their possession relating to the RFP in question. The consultants provided a total of 9 bankers boxes of records.

I note that the appellant has not provided me with any reasonable basis for his belief that additional records exist, as he has not submitted representations in response to the Notice of Inquiry.

Based on my review of the records and the information provided to me by the City, I am satisfied that the City has conducted a reasonable search for records responsive to the request. The City has located and identified a large number of records which, in my view, represent all of the documents which are reasonably responsive to the request. I will, accordingly, dismiss this part of the appeal.

PERSONAL INFORMATION/INVASION OF PRIVACY

The section 14 personal privacy exemption applies only to information which qualifies as "personal information", as defined in section 2(1) of the *Act*. "Personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual [paragraph (c)] and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual [paragraph (h)].

Where a requester seeks personal information of another individual, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies. In the present appeal, it appears that only section 14(1)(f) may have any application. This section reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the institution to consider in making this determination. Section 14(3) lists the types of information the disclosure of which

is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

A section 14(3) presumption can be overcome if the personal information at issue falls under section 14(4) of the *Act* or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 14 exemption.[Order PO-1764]

If none of the presumptions in section 14(3) applies, the City must consider the application of the factors listed in section 14(2), as well as all other considerations that are relevant in the circumstances of the case.

The City submits that Record 1002, which consists of the resumes of staff persons employed by one of the affected parties, contains personal information as that term is defined in section 2(1) of the *Act*. The City has applied the mandatory exemption in section 14(1) to this information. In addition, the City submits that:

The request for proposal process as well as the evaluation process was termed a 'confidential' process so that there would not be any prejudice with the selection of a candidate. Therefore, the organizations were named 'A', 'B', 'C' and 'D'. The process was confidential as the Boards agreed that a 'team' be composed to complete the non-financial component of the evaluation. The members of the team did not share the results and therefore the initials that identify the evaluators should be kept confidential as this process was approved by the Joint Water Boards. The team members have other related duties and this was an extension of their normal duties. Therefore, I would like to submit that the information at issue does qualify as personal information as this information contains personal opinions or views of the evaluators of the proponents.

The City goes on to submit that the consideration listed in section 14(2)(h) applies to this information, which was withheld from Record 2023, as "the evaluators of the proposals were aware of the confidential process for the selection of an operator and therefore provided their opinion of the evaluation in confidence and knowing that their names and evaluations would not be disclosed." The City also relies on the presumption in section 14(3)(g) as this information consists of "personal recommendations or evaluations" made by the members of the selection team.

I find that the resumes which comprise Record 1002 contain the personal information of the individuals to whom they relate within the meaning of section 2(1). Record 1002 contains recorded information about identifiable individuals with respect to their employment history and educational backgrounds. I also find that the disclosure of this personal information would constitute a presumed invasion of personal privacy under section 14(3)(d) as the information "relates to employment and educational history" of the individuals employed by the proponent

company. In addition, section 14(4) has no application to this information and the appellant has not raised section 16 with respect to the contents of the resumes. As a result, I find that Record 1002 is exempt from disclosure under section 14(1).

I do not accept the City's arguments with regard to the application of section 14(1) to first initial and last name of the evaluators of the submissions which has been withheld from Record 2023. In my view, this information does not qualify as the personal information of these individuals. Rather, I find that in serving as evaluators of the RFP responses, these individuals were acting in their professional, and not personal, capacities. In addition, I find that the information does not consist of "personal recommendations or evaluations, character references or personnel evaluations" within the meaning of the presumption in section 14(3)(g). The inclusion of the evaluators' initials on the documents which describe the examination of the proponents' technical, non-financial proposals does not qualify as a "personal evaluation" as it does not relate to the suitability of an *individual*. Accordingly, I find that the undisclosed information contained in Record 2023 does not qualify as the personal information of the evaluators and it cannot, accordingly, be exempt from disclosure under section 14(1).

SOLICITOR-CLIENT PRIVILEGE

The City has applied the discretionary exemption in section 12 to Records 1015, 1016, 1017, 1018, 1020, 1024, 3114 and 3116. This section states:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

Section 12 encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. In order for section 12 to apply, the City must establish that one or the other, or both, of these heads of privilege apply to the records at issue. The City has not made any representations with respect to the application of the section 12 exemption.

Solicitor-client communication privilege

Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining professional legal advice. The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation [Order P-1551].

This privilege has been described by the Supreme Court of Canada as follows:

... all information which a person must provide in order to obtain legal advice and which is given in confidence for that purpose enjoys the privileges attaching to confidentiality. This confidentiality attaches to all communications made within the framework of the solicitor-client relationship ... [*Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 at 618, cited in Order P-1409]

The privilege has been found to apply to “a continuum of communications” between a solicitor and client:

. . . the test is whether the communication or document was made confidentially for the purposes of legal advice. Those purposes have to be construed broadly. Privilege obviously attaches to a document conveying legal advice from solicitor to client and to a specific request from the client for such advice. But it does not follow that all other communications between them lack privilege. In most solicitor and client relationships, especially where a transaction involves protracted dealings, advice may be required or appropriate on matters great or small at various stages. There will be a continuum of communications and meetings between the solicitor and client ... Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach. A letter from the client containing information may end with such words as “please advise me what I should do.” But, even if it does not, there will usually be implied in the relationship an overall expectation that the solicitor will at each stage, whether asked specifically or not, tender appropriate advice. Moreover, legal advice is not confined to telling the client the law; it must include advice as to what should prudently and sensibly be done in the relevant legal context [*Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.), cited in Order P-1409].

Solicitor-client communication privilege has been found to apply to the legal advisor’s working papers directly related to seeking, formulating or giving legal advice [*Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27, cited in Order M-729].

Records 1015, 1016, 1017 (which is duplicated at Record 3114), 1018, 1020 (which is duplicated at Records 2014 and 3116) and 1024 are correspondence between the City and/or the consultants which it engaged to assist in the evaluation of the responses from the project bidders and its legal counsel. I find that these records are exempt from disclosure under the solicitor-client communication privilege component of section 12. Each of these records represents a confidential communication between a solicitor and his or her client made for the purpose of obtaining or giving legal advice. Each of these records is, accordingly, exempt from disclosure under section 12.

ADVICE OR RECOMMENDATIONS

The City has claimed the application of the discretionary exemption in section 7(1) of the *Act* to Records 1019, 2012, 2022, 3031, 4095 and 4105. This section states:

A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

In Order 94, former Commissioner Sidney B. Linden commented on the purpose and scope of this exemption. He stated that it "... purports to protect the free-flow of advice and recommendations within the deliberative process of government decision-making and policy-making". Put another way, the purpose of the exemption is to ensure that:

. . . persons employed in the public service are able to advise and make recommendations freely and frankly, and to preserve the head's ability to take actions and make decisions without unfair pressure [Orders 24, P-1363 and P-1690].

A number of previous orders have established that advice or recommendations for the purpose of section 7(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process [Orders 118, P-348, P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.); Order P-883, upheld on judicial review in *Ontario (Minister of Consumer and Commercial Relations) v. Ontario (Information and Privacy Commissioner)* (December 21, 1995), Toronto Doc. 220/95 (Ont. Div. Ct.), leave to appeal refused [1996] O.J. No. 1838 (C.A.)].

In Order P-434 Assistant Commissioner Tom Mitchinson made the following comments on the "deliberative process":

In my view, the deliberative process of government decision-making and policy-making referred to by Commissioner Linden in Order 94 does not extend to communications between public servants which relate exclusively to matters which have no relation to the actual business of the Ministry. The pages of the record which have been exempt[ed] by the Ministry under section 13(1) [of the provincial *Act*] in this appeal all deal with a human resource issue involving the appellant and, in my view, to find that this type of information is exemptible under section 13(1) of the *Act* would be to extend the exemption beyond its purpose and intent.

This approach has been applied in several subsequent orders of this office (Orders P-1147 and P-1299).

Information in records which would reveal the advice or recommendations is also exempt from disclosure under section 7(1) of the *Act*. [Orders 94, P-233, M-847, P-1709]

Record 1019 (which is duplicated at Record 4105) is a memorandum from a representative of one of the consultants retained by the City to an engineer employed by the City recommending a specific course of action with respect to a presentation to be made to the Joint Boards. I find that this information qualifies for exemption under section 7(1) as it sets out "a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process".

Record 2012 is a letter dated August 24, 2001 from the City's consultant to a City engineer setting out in detail its reasons for recommending a particular course of action with respect to the drafting of certain Service Agreements. The letter includes a recommended course of action and the risks associated with various options. I find that the disclosure of the contents of Record 2012 would reveal advice or recommendations of the City's consultant with respect to a course of action during the deliberative process. As a result, I find that Record 2012 is exempt from disclosure under section 7(1).

The undisclosed information in Record 2022 consists of the recommendation of the evaluation team with respect to the award of the contract which was the subject of the RFP. I find that this information qualifies for exemption under section 7(1) as it refers to a recommended course of action to be either accepted or rejected by the Joint Boards during the deliberative process. Similarly, pages 25 to 29 of Record 3031 also contain the recommendations of the evaluation team to the Joint Boards respecting the award of the contract. I find that this information also qualifies for exemption under section 7(1).

Record 4095 is a memorandum to file dated September 6, 2001 from the City's consultant describing in detail the advice which he provided to a City engineer with respect to certain aspects of the Service Agreements. I find that the disclosure of Record 4095 would reveal advice provided by the consultant to the City regarding a specific course of action which was intended to be accepted or rejected during the deliberative process. Accordingly, Record 4095 qualifies for exemption under section 7(1).

I have also reviewed the records with a view to determining if any of them contain information which falls within the mandatory exceptions to the section 7(1) exemption set out in section 7(2). I find that none of the exceptions apply to the information which I have found to be exempt under section 7(1).

THIRD PARTY INFORMATION

The City and the affected parties object to the disclosure of the remaining records on the basis that they are exempt under the mandatory exemption in section 10(1), which reads:

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;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

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

[Orders 36, P-373, M-29 and M-37]

The Court of Appeal for Ontario, in upholding Assistant Commissioner Tom Mitchinson's Order P-373 stated:

With respect to Part 1 of the test for exemption, the Commissioner adopted a meaning of the terms which is consistent with his previous orders, previous court decisions and dictionary meaning. His interpretation cannot be said to be unreasonable. With respect to Part 2, the records themselves do not reveal any information supplied by the employers on the various forms provided to the WCB. The records had been generated by the WCB based on data supplied by the employers. The Commissioner acted reasonably and in accordance with the language of the statute in determining that disclosure of the records would not reveal information supplied in confidence to the WCB by the employers. Lastly, as to Part 3, the use of the words "**detailed and convincing**" do not modify the interpretation of the exemption or change the standard of proof. These words simply describe the quality and cogency of the evidence required to satisfy the onus of establishing reasonable expectation of harm. Similar expressions have been used by the Supreme Court of Canada to describe the quality of evidence required to satisfy the burden of proof in civil cases. If the evidence lacks detail and is unconvincing, it fails to satisfy the onus and the information would have to be disclosed. It was the Commissioner's function to weigh the material. Again it cannot be said that the Commissioner acted unreasonably. Nor was it

unreasonable for him to conclude that the submissions amounted, at most, to speculation of possible harm. [emphasis added]

[*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 (Div. Ct.)]

Part 1: Type of Information

The City and the affected parties take the position that the information contained in the records qualifies as trade secrets and/or scientific, technical, commercial, financial or labour relations information within the meaning of section 10(1). These terms have been defined in past orders of the Commissioner's office as follows:

Trade Secret

"Trade secret" means information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which

- (i) is, or may be used in a trade or business,
- (ii) is not generally known in that trade or business,
- (iii) has economic value from not being generally known, and
- (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

[Order M-29]

Scientific Information

Scientific information is information belonging to an organized field of knowledge in either the natural, biological or social sciences or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of specific hypothesis or conclusions and be undertaken by an expert in the field. Finally, scientific information must be given a meaning separate from technical information which also appears in section 10(1)(a) of the *Act*. [Order P-454]

Technical Information

Technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture,

engineering or electronics. While, admittedly, it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information which also appears in section 10(1)(a) of the *Act*. [Order P-454]

Commercial Information

Commercial information is information which relates solely to the buying, selling or exchange of merchandise or services. The term "commercial" information can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises. [Order P-493]

Financial Information

The term refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples include cost accounting method, pricing practices, profit and loss data, overhead and operating costs. [Orders P-47, P-87, P-113, P-228, P-295 and P-394]

Labour Relations Information

“Labour relations information” is information concerning the **collective** relationship between an employer and its employees. [Order P-653]

Representations of the City

The City submits that the records contain information which qualifies as “technical information” for the purposes of section 10(1). It indicates that the proposals submitted by the affected parties “discussed in detail some of their ‘technical’ approach to municipal water systems i.e. chemicals used, and related amounts to treat water, the engineering work involved in the operating and maintenance of a water system”.

The City also argues that the affected parties “provided very detailed financial information within their proposals” including information related to “salaries and benefits of staff, insurance, taxes, audit and legal fees, consultant fees, chemical costs, utilities, laboratory fees, solid waste disposal, equipment maintenance, building and structural maintenance, proposed operating budget that covers several years for both systems.”

In addition, the City takes the position that the proposals include information relating to labour relations addressing issues such as “staffing complement, labour matters, health and safety policies and practices, management style, staff training, etc.”

Representations of the Affected Parties

First Affected Party

The first affected party agreed to the disclosure of portions of its proposal, but objected to the release of information not already in the public domain. With respect to the remaining information, this affected party indicates that its proposal includes certain information relating to its “methods, techniques, processes or information that would enable [it] to operate the water facility”. It acknowledges that while some of this information may be common to all proponents, “there may be certain techniques or processes that each company utilizes which are generally not known in the trade or business”. This affected party submits that such information falls within the ambit of the term “trade secret” for the purposes of section 10(1) and that this information has value, as is demonstrated by the fact that it was the successful bidder on this project.

The first affected party also submits that its proposal contains information that is technical, commercial and financial in nature. It states that the proposal was prepared by a number of individuals within the company, including “engineering professionals and operators in the field, who provided an assessment of the facility and our intended method of operation of the facility.” It further indicates that “[C]ommercial information was provided in respect of subcontractors we intend to use and suppliers we intend to purchase from in performing these services” and that “[O]ur Financial Offer provide[d] as part of the proposal submission clearly falls within the realm of financial information, as it contains data relating to our costing of the project, overhead and operating costs.”

The first affected party concludes this portion of its representations by indicating that:

[T]he proposal itself, in terms of its presentation, is of a commercial nature. Although each bid proponent is required to meet certain conditions for the submission of the proposal, the presentation of a company’s proposal can amount to a grade in assessing the success of a bid. We believe that the disclosure of our proposal, would give our competitors an opportunity to see what makes a successful bid and use that to their economic advantage. Our proposals have often [been] praised by our clients for its presentation, which a competitor may attempt to use in order to win future bids.

The Second Affected Party

I have received extremely detailed and precise representations from this affected party describing its position with respect to the application of section 10(1) to its proposal documents and to the evaluation records which include information culled from its proposal. The proposal presented by this affected party took the form of six binders, referred to as Record 4108 in the index provided to the appellant. The affected party has provided me with detailed submissions regarding its views on the nature of the information contained in the proposal and how this information fits within the categories of information set forth in section 10(1). These submissions were extremely helpful in assisting me in determining whether the first part of the section 10(1) test has been satisfied with regard to these records.

The representations of the second affected party were not shared in their entirety with the appellant, as both I and the company had concerns about their confidentiality. As a result, I am unable to set forth with any degree of specificity the very detailed representations which I received from this party. Generally, the second affected party submits that Binder 1 of its proposal “contains all of the commercial and financial costs that [it] presented to the [City]”. It indicates that it has no objection to the disclosure of the information contained in Appendix A to Binder 1, which consists of its audited Financial Statements for the year ending December 31, 2000 and its Annual Report for the year 2000.

The second affected party submits that “[U]pon a plain review of the information contained in record #4108, it contains detailed information about the proposal submitted by [it], including detailed pricing information relating to the work to be performed, the services being proposed, technical details related to the operation and maintenance of the water systems, proprietary software and [its] ability to manage the contract”.

The second affected party specifically argues that information contained in its proposal with respect to its maintenance software programs qualify as “trade secrets” for the purpose of section 10(1) as it describes the manner in which it intends to carry on a discrete aspect of its business. It indicates that details related to this program are not publicly available and have consistently been treated as confidential and of commercial value.

I have also been provided with very detailed representations from the second affected party in support of its position that the records relating to its proposal contain information which meets the definitions of “scientific”, “technical”, “commercial” and “financial” information referred to above. It submits that the proposal “describes in detail the operation of various processes, equipment maintenance and technical training.” The second affected party goes on to add that the proposal “incorporates the results of technical study by [its] staff who are experts in the field of water and sewage treatment facilities/systems.” It also notes that the proposal consists of approximately 2500 pages and describes in great detail every aspect of running a water treatment system. The second affected party’s representations go on to describe the actual information contained in the proposal which it views to be technical information and why this is so.

In support of its argument that the proposal records contain information which qualifies as “commercial” information, the second affected party succinctly states that:

[The City] made a decision to solicit proposals from various companies to deliver its water treatment systems. It issued RFP 01-08 with the intention of buying the services of the successful bidder. In our view, the records were prepared by [the second affected party] for the sole purpose of entering into a commercial venture with [the City] and satisfy the definition of ‘commercial information’. The bid summarizes in extremely minute detail every aspect of the service [the second affected party] was prepared to offer to [the City] in exchange for an annual fee for each of the 10 years of the contract.

...

All of binders 1 to 6 reflect [the second affected party's] services, associated costs and future cost savings. In isolation, certain facts may be known to the general public or within the industry; however, when combined into a proposal it represents [the second affected party's] unique approach to operating the Lake Huron and Elgin Area water systems and has commercial value.

The second affected party adds that in Order M-192, the names of commercial partners and sub-contractors and their financial contributions were found to constitute commercial information for the purposes of section 10(1). Detailed submissions concerning the treatment to be afforded other information contained in the Financial Plan aspect of its proposal were also provided to me.

The second affected party also takes the position that much of the information contained in its proposal documents and those records which evaluate the bid qualify as "financial information" for the purposes of section 10(1). It submits that its proposal, particular Binder #1 "includes various financial aspects of operating and maintaining the water systems, the issue of liabilities/risks associated with the terms of the proposed contract, how it will operate, proposed revenues, costs and expenses, as well as energy cost comparisons/savings and a financial plan." In addition, it indicates that Appendix B to Binder 1 also contains information relating to budgets, operating costs and financial accounting data and that all of this information qualifies as "financial" information under section 10(1).

Finally, the second affected party states that the unit pricing information included throughout the Financial Plan in Binder 1 also qualifies as financial information. I note, however, that the appellant has indicated he is not seeking access to this information.

Findings with respect to Part One of the Section 10(1) Test

I have reviewed all of the records remaining at issue in this appeal and find that, with few exceptions, they contain information which qualifies as "technical", "scientific", "financial" or "commercial" information within the meaning of section 10(1). Specifically, I find that Records 1003, 1004 and 1005 contain highly technical information relating to the operation and maintenance of the water systems managed by the first affected party. Record 1006 (which is the same as Records 1022 and 3022) contains its detailed financial offer for the contract to operate and maintain the water systems which were the subject of the RFP, as do Records 1021 (which is duplicated at Record 3026) and 1023 from the second affected party and another proponent respectively. Each of these records contain information which qualifies as "financial information" for the purposes of section 10(1).

Records 1025 (which is the same as Record 1028 and pages 2 to 8 of Record 3002) and 1026 represent evaluations performed by the evaluation team of the organizational structures of each of the proponents, as well as a summary of the financial bids which they submitted. I find that each of these documents contain information which qualifies as "commercial" and "financial" information.

Record 1027 is an excerpt from one of the proposals setting out the letters of credit issued by one of the proponents. I find that this information is commercial and financial in nature.

Record 1029 (which is duplicated at Record 3012) is the complete proposal made by the successful bidder on the RFP. I find that, by its very nature, this is a record containing commercial information. In addition, I find that it also contains references to information which qualifies as financial, technical and scientific information for the purposes of section 10(1).

Record 2005 (which is duplicated at Records 2025 and 3065) is the technical evaluation performed on those portions of the proponents' submissions by the Joint Board's evaluation team. This record includes information which is of a technical or scientific nature which was provided in each proponents' submission. I find that this record contains information which meets the definition of scientific and technical information under section 10(1).

Records 2009 and 2011 are similar evaluations performed on the financial aspects of each of the bids. Similarly, I find that these records contain information provided by the proponents which may properly be described as commercial or financial in nature, within the meaning of section 10(1).

Records 2015 (duplicated at Record 3118), 2017 (duplicated at Records 3020 and 3117) and 2018 are letters from the City's consultants to its legal counsel seeking advice on matters relating to the proponents' submissions. While this correspondence may qualify for exemption under section 12, the City has chosen not to claim this discretionary exemption for these records. However, I find that they contain information which qualifies as financial and commercial information as contemplated by section 10(1).

Record 2029 is a letter from the appellant's client to the City while Record 2031 is an attachment to the appellant's client's submissions.

Record 2034 comprises the covering letters from the second affected party to its technical and financial proposals. I find that the documents which comprise Record 2034 do not contain any information which qualifies as one of the enumerated heads of information contained in section 10(1). As a result, Record 2034 does not qualify for exemption under that section. As no other mandatory exemptions apply to it, I will order that it be disclosed to the appellant.

Records 2035 and 2036 are the covering letters and tables of contents to the detailed proposals submitted by two of the affected parties in response to the RFP. Based on my review of these records, I find that they contain information which qualifies as commercial information for the purposes of section 10(1).

Record 2043 is an e-mail from the City's consultant to an official with the City's Purchasing Department setting out a series of questions to be posed to each of the proponents following the submission of their proposals. The information relating to the appellant's client was disclosed to him. I find that the remaining information qualifies as either technical, commercial or financial information within the meaning of section 10(1). The e-mail was designed to form the basis for formal letters of clarification that were sent to the affected parties seeking additional information

beyond that contained in their proposals. Record 2046 is an initial draft of the clarification points to be raised with one of the affected parties. I find that this record also contains financial, commercial and technical information.

Records 2044, 2045, 2047, 2049 and 2050 are responses provided by one of the affected parties to the clarification requests referred to in my discussion of Record 2043. I find that these records also contain financial and commercial information.

Similarly, Records 2051 and 3005 set out in point form a draft letter describing a number of issues to be clarified with the affected parties regarding their proposals. For the reasons described in my discussion of Record 2043, I find that Records 2051 and 3005 also contain financial, commercial and technical information for the purposes of section 10(1).

Records 2067 to 2089 and 2091 to 2093 are correspondence between the City's Purchasing Department staff and representatives of one of the affected parties. These letters represent requests for clarification of the information contained in the proposals from the City and the responses by the affected party. I find that these records contain information which qualifies as commercial or financial information within the meaning of section 10(1). Record 3014 contains duplicates of many of these records as well. Record 3087 is a duplicate of Record 2085.

Records 2094 to 2108 and Record 3018 represent a similar exchange of correspondence between the City and another of the affected parties. Again, I find that this information qualifies as commercial, financial and technical information for the purposes of determining whether part 1 of the section 10(1) test has been satisfied. Record 2096 is duplicated at Record 3023. Record 2094 is duplicated at Record 3097. Record 3024 contains a similar set of concerns raised by the City with respect to the proposal of one of the affected parties. It too contains commercial, financial and technical information.

Page 1 of Record 3002 is a diagram setting out the organizational structure of one of the affected party corporations. I have already determined that pages 2 to 8 of this document contains commercial and financial information in my discussion of Record 1025. Pages 9, 10 and 11 of Record 3002 contain information relating only to the appellant's client. Pages 12, 13 and 14 of Record 3002 relate to the financial proposal of one of the other affected parties. I find that Page 1 and Pages 12, 13 and 14 of Record 3002 contain information which qualifies as commercial and financial information within the meaning of section 10(1).

Record 3003 is a letter from the City's consultants to its legal counsel seeking his opinion on certain terms contained in one of the affected party's proposal. The City has chosen not to claim the application of the discretionary solicitor-client exemption in section 12 to this record. Nevertheless, I find that it contains certain financial information belonging to the affected party and the first part of the test under section 10(1) has been met.

Record 3004 is a schedule to the proposal of one of the affected parties setting out a number of "negative covenants" relating to it. I find that this information is commercial or financial information for the purposes of section 10(1).

Record 3006 is a document entitled "Revised Service Fee and Financial Offer Explanation" from one of the affected parties responding to certain questions posed by the City. I find that it contains commercial and financial information.

Record 3019 is a letter received by the City from the appellant's client.

Record 3025 (duplicated at Record 3147) is a portion of the revised financial information provided to the City by one of the affected parties in response to certain queries from the City. I find that this record also contains information which qualifies as commercial and financial information for the purposes of section 10(1).

Records 3033, 3034 and 3036 are letters to the affected parties setting out a number of clarifications sought by the City following the submission of the affected parties' financial information. I find that each of these records contain information which qualifies as financial and commercial information within the meaning of section 10(1).

Record 3081 is a spreadsheet indicating water quality and chemical data and the use of electricity by the Joint Boards during 1999 and 2000. The City disclosed the figures relating to hydro usage but did not release the data relating to water quality and chemical use. I find that this information qualifies as technical, scientific or commercial information under section 10(1). The information relates to the Joint Boards, however, and not the affected parties. For this reason, I find that section 10(1) has no application to it and ought to be disclosed to the appellant.

Records 3083 and 3084 are very detailed breakdowns of the financial submissions of each of the affected parties along with the ranking of them prepared by the City's consultants. Pages 1, 2, 3 and 4 of Record 3083 and page 1 of Record 3084 were disclosed to the appellant. I find that the remaining information contained in these records qualifies as financial and commercial information for the purposes of section 10(1).

Records 3085, 3086, 3095 and 3096 are the financial bids submitted by three of the affected parties. I find that these records contain financial and commercial information within the meaning of section 10(1).

Record 3098 is a set of spreadsheets submitted along with the proposal from the appellant's client.

Record 3115 is a letter to the City from one of the affected parties in which it provides certain information about the staffing complement of the Joint Boards. I find that this information relates to the financial and commercial components of the affected party's proposal. As such, I find that this record contains information which may properly be characterized as commercial and financial information for the purposes of section 10(1).

Records 3125, 3128, 3130, 3131, 3132, 3133 and 3134 are excerpts taken from the proposal of one of the affected parties, along with various evaluations performed by members of the City's evaluation team of different aspects of the proposal. I find that this information qualifies as commercial and financial information.

Record 3135 is an evaluation performed by the City's evaluation team of the financial information provided by one of the affected parties in its proposal. Record 3144 is a similar document relating to another affected party. Clearly, this information qualifies as financial information for the purposes of section 10(1).

Records 3136 to 3138 are excerpts taken from one of the affected party's proposal and contain both commercial and financial information.

Records 3145, 3146 and 3147 (duplicated at Record 3025) are further requests for clarification from the City and the responses generated by one of the affected parties. I find that these records contain information which qualifies as commercial and financial information.

Records 3167, 3168 and 3169 and Records 3170, 3171, 3173, 3174, 3176 to 3180 are similar records relating to two other affected parties. These records also contain commercial and financial information. Records 3183 to 3191, 3194, 3195 and 3196 are records relating to the seeking of clarification from yet another affected party. These records also contain commercial and financial information for the purposes of section 10(1).

Records 3199, 3202, 3204, 3205, 3206, 3207 and 3208 are the questions posed by the City to yet another unsuccessful bidder on the Joint Boards project. The information contained in these records qualifies as commercial information for the purposes of section 10(1). Records 3209 and 3210 consist of additional responses from another unsuccessful bidder in the competition. I find that these records qualify as commercial and financial information.

Record 4001 (duplicated at Record 4109) is the entire non-financial proposal delivered by one of the affected parties to the City in response to the RFP on June 27, 2001. This record, representing several hundred pages, contains financial, commercial, scientific and technical information within the meaning of section 10(1).

Similarly, Records 4070 to 4077 (duplicated at Record 4110), Record 4079, Records 4083 and 4084 and Record 4110, each of which are hundreds of pages long, consist of the non-financial aspects of the proposal submitted by three of the affected parties. I have no difficulty in finding that these records also contain information which meets the definitions of commercial, financial, technical and scientific information for the purposes of section 10(1).

Records 4081 and 4082 and Records 4085 and 4086 are questions to be posed by the City in response to certain commercial aspects of two of the proposals. I find that this information also consists of commercial and financial information.

By way of summary, I find that all of the records, except as noted below, contain information which qualifies as either financial, commercial, technical or scientific information for the purposes of section 10(1). Records 2029, 2031, pages 9, 10 and 11 of Record 3002, 3019, and 3098 contain information which originated with the appellant's client. While this information may fall within the listed types of information in section 10(1), their disclosure could not reasonably be expected to give rise to the harms contemplated by that section. I will,

accordingly, order that they be disclosed to the appellant. Records 2034 and 3081 do not contain information which meets the criteria for section 10(1). As no other exemptions have been applied to these documents and no mandatory exemptions apply to them, I will also order that they be disclosed to the appellant.

Part II: Supplied in Confidence

In regards to whether the information was supplied in confidence, part two of the test for exemption under section 10(1) requires the demonstration of a reasonable expectation of confidentiality on the part of the supplier at the time the information was provided. It is not sufficient that the business organization 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. The expectation of confidentiality may have arisen implicitly or explicitly. [Order M-169]

In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was:

- (1) Communicated to the institution on the basis that it was confidential and that it was to be kept confidential.
- (2) Treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization.
- (3) Not otherwise disclosed or available from sources to which the public has access.
- (4) Prepared for a purpose which would not entail disclosure.

[Order P-561]

The Representations of the City and the Affected Parties

With respect to Part II of the section 10(1) test, the City submits that:

The information in the proposals was supplied to the institution (i.e. the City) for the reason of a request for proposal competition. The Joint Water Boards agreed that there would be a single point of contact for the companies and that this single point of contact would be the Purchasing Department of the City of London. The proposals were received by the City and there was constant communication between the City and the companies with respect to the clarification of the information within the proposals. The proposals were supplied in confidence by the proponents.

The information supplied to the City was supplied explicitly in confidence.

Attached please find excerpt named 'Communication Protocol' of the Confidential Report to the Joint Water Boards for the Lake Huron and Elgin Area Water Systems, RFP Evaluation Framework – Selection of an O & M Contractor.

In the protocol, it notes that only the project manager, the evaluation team members and their staff and advisors and others as approved by the Project Manager, may have access to the proposals – Each person with access to the proposals must ensure that proposals are kept secure and that the information contained in the proposals is kept confidential.

Also, the proposals contained confidentiality statements indicating that the proposal information is proprietary and confidential. An excerpt of this kind of statement is attached.

All proponents were aware of the confidentiality of the process and were conveyed via the attached correspondence. I am not aware of any time limit that was placed on the confidentiality.

One of the affected parties submits that:

The final submission of our proposal was not something that was subject to negotiation. A deadline was set for the submission of proposals, with which we complied. Each aspect of the proposal submission was provided to [a named official with] the City of London by [the affected party's representative] on June 27, 2001. Where the City of London, as part of its assessment process, had questions about our proposal, we submitted correspondence to [the City's contact person] setting out various clarifications. Notwithstanding that such clarification may have been in a form different from that originally provided in the proposal, it may have contained the type of information set out above, which was confidential to our company.

Although in submitting our proposal, we did not explicitly note that it was prepared and provided in confidence, there was a reasonable expectation of all proponents that the material would be treated in such a way by the City of London. At section 9.2 of its Request for Proposal 01-08, it expressly stated that 'The Joint Boards will consider each proposal as confidential, subject to the provisions and the disclosure requirements of the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and to any other disclosure requirements imposed by law.' Any disclosure of the proposal was for purposes of internal review within the City of London, for staff, advisors and representatives of the Joint Boards and such parties as they deemed fit to review the proposals. No time limits were placed on the confidentiality.

Based on this provision of the Request for Proposals, we believed that the confidentiality of our proposal would be protected while it continued to remain in

the possession of the City. As the contract we negotiated with the City is for a term of 10 years, at the very least, we had an expectation that it would remain confidential for this period and until any other bid process had been completed by the City for a new operator.

The other affected party who made submissions states that its proposal was supplied to the City with a reasonably-held expectation that it would be treated confidentially. It further indicates that it included a confidentiality clause on the cover page of its proposal and on the first page of each of the six binders which contained the proposal. It further submits that the information contained in the proposal is treated confidentially within its own organization and is shared only on a "need to know" basis. The affected party also relies on the confidentiality clause referred to in section 9.2 of the Request for Proposals referred to above.

Findings with respect to Part II of the section 10(1) Test

I have no difficulty in finding that the information contained in the proposals and the responses to the City's questions were supplied to the City by the affected parties for the purposes of section 10(1). I further find that the evaluation documents and queries posed by the City's staff about the proposals also contain information which was supplied by the affected parties to the City.

Based on the representations of the parties and my review of the records and the original Request for Proposals, I am satisfied that the information contained in the records was supplied with a reasonably-held expectation that it would be treated confidentially by the City. In my view, the affected parties' assumption that the information they provided to the City in their initial proposals and in clarifying the information in the proposals would be treated confidentially was reasonable in the circumstances. I find that the confidentiality clause contained in section 9.2 of the Request for Proposals provided the affected parties with a reasonable basis for assuming that their submissions would be treated confidentially by the City.

As a result, I find that Part II of the section 10(1) test has been satisfied with respect to the information contained in those records which I found above to fall within the ambit of the listed categories of information in section 10(1).

Part III – Harms

To discharge the burden of proof under the third part of the test, the parties opposing disclosure (in this case the City and the affected parties) must present evidence that is detailed and convincing, and must describe a set of facts and circumstances that could lead to a reasonable expectation that one or more of the harms described in section 10(1) would occur if the information was disclosed. [Order P-373]

The words "could reasonably be expected to" appear in the preamble of section 10(1), as well as in several other exemptions under the *Act* dealing with a wide variety of anticipated "harms". In the case of most of these exemptions, in order to establish that the particular harm in question "could reasonably be expected" to result from disclosure of a record, the party with the burden of

proof must provide “detailed and convincing” evidence to establish a “reasonable expectation of probable harm” [see Order P-373, two court decisions on judicial review of that order in *Ontario (Workers Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 at 40 (Div. Ct.), and *Ontario (Minister of Labour) v. Big Canoe*, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)]. [Orders PO-1745 and PO-1747]

The City’s Representations

The City submits that:

The disclosure of the record could be expected to prejudice the competitive position of the organization. This request for proposals process is a very competitive process and factors aside from the price could very well decide if one company should be selected over another. A lot of work and research goes into these proposals and the disclosure of this information may mean another company can take this material and perhaps adjust it a bit in order to be in a more competitive position for the next request for proposals. Despite our disclaimer for a confidential process, the proponents themselves had confidential disclaimers on their material as well.

The disclosure of the information could be expected to result in similar information no longer being supplied to the institution. Why would any company want to be involved in a competitive bid ever again? As a result, we may not be able to attract top quality bidders if we release all of the proponent’s information when it was received in confidence.

The disclosure of the information could be expected to result in undue loss or gain. Although loss or gain is difficult to quantify, it may be a gain for other companies seeking a competitive advantage while at the same time representing a loss to the company that had to release their information and which contained countless numbers of research time.

Representations of the Affected Parties

One of the affected parties takes the position that it will suffer harm to its competitive position should the information contained in its proposal and clarifying information be disclosed to the appellant. It states that:

As part of the bid process, proponents are asked to provide information regarding methods, techniques, processes or information that would enable them to operate the water facility. Each company who submits a bid for the opportunity may have their own methods, techniques, processes or information in operating a water facility, which separates it from its competitors. Although the provision of services and how they are performed may overlap from company to company, there may be certain techniques or processes that each company utilizes which are

generally not known in the trade or business. It is these trade secrets that [the affected party] engages in operating water treatment facilities that sets us apart from our competitors and has economic value. The value is derived from our ability to be the successful proponent in many bid opportunities, as was the case for the City of London project. Our concern entails the ability of competitors to use our trade secrets in developing their own proposals for future bids in which we compete. The value of our trade secrets would be used by our competitors to be successful in other bids.

...

... disclosure could result in undue loss to our company and gain to the party seeking this information. The loss is in the possibility of our company losing future bids, with the gain to the information seeking party, in applying or using our information in their own bids in order to be successful.

The other affected party takes a similar position. It indicates that the creation of its proposal involved the investment of a significant amount of staff time, money and research. It also suggests that its competitors “would find it extremely useful in order to structure their future proposals related to Lake Huron and Elgin Area as well as any of the other approximately 500 water treatment facilities throughout Ontario.” This affected party submits that if its proposal were to be disclosed, “it would lead to a breakdown of the competitive process.” and goes on to state that while each operation plan is customized for the facility, its plan was unique. The disclosure of this part of its proposal would “compromise its ability to compete in future proposals”. This affected party also indicates that the disclosure of the specific components of its proposal would enable a competitor to improve their own methodologies to its ultimate disadvantage.

This affected party also submits that if the proposal as submitted were disclosed, it would be forced to revamp its future submissions, at great expense. It adds that:

The capital expenditure on technology to operate and maintain a water treatment facility must be accomplished secure in the knowledge that the investment will not be for the benefit of competitors who do not have to incur the same investment in research and development costs. Disclosure would permit the appellant to adjust its future proposals in order to increase market share or overall profitability. Detailed knowledge by a competitor of technological advancement is sensitive information that would assist a competitor in predicting [its] profitability and thereby assist the appellant’s ability to make strategic decisions which may, directly or indirectly, confound the business plans of [the affected party].

Findings with respect to Part III of the Section 10(1) Test

I have reviewed the extensive submissions of the affected parties as well as the records themselves, which total several thousand pages. I find that the disclosure of the proposals

themselves, the evaluation materials prepared by the City and its consultants and the clarification correspondence could reasonably be expected to prejudice significantly the competitive position of the affected parties. I specifically find that in this highly competitive field, advantage would be obtained should one industry player obtain access to the types of information contained in the proposals submitted by the affected parties. If the proposals, and the information contained in them were to become public, the affected parties' ability to pursue contracts for the operation of water treatment facilities in Ontario and elsewhere would be substantially impaired. In my view, significant prejudice to the competitive position of the affected parties could reasonably be expected to follow the disclosure of this information, within the meaning of section 10(1)(a).

The affected parties have clearly gone to enormous expense in time and money to prepare the very detailed proposals which form much of the records at issue in this appeal. Disclosure of this information to a competitor could reasonably be expected to result in a significant advantage to the appellant, to the detriment of the affected parties. Accordingly, I find that the affected parties have met their evidentiary burden and have established a reasonable basis for their belief that disclosure could give rise to the harms contemplated by section 10(1)(c).

As a result, I find that the City and the affected parties have provide me with sufficient evidence to make a determination that those records containing technical, scientific, commercial, financial and labour relations information, as set forth in my discussion of Part I of the section 10(1) test, are properly exempt under section 10(1)(a) and (c).

ORDER:

1. I order the City to disclose Records 2023, 2029, 2031, 2034, pages 9, 10 and 11 of Record 3002, and Records 3019, 3081, 3098 by providing him with copies by **March 7, 2003** but not before **March 3, 2003**.
2. I uphold the City's decision to deny access to the remaining records.
3. In order to verify compliance with Provision 1, I reserve the right to require the City to provide me with copies of the records which are disclosed to the appellant.

Original signed by: _____
Donald Hale
Adjudicator

January 31, 2003
