ORDER MO-1769

Appeal MA-030083-1

City of Toronto

BACKGROUND:

This is an appeal of a decision made by the City of Toronto (the City) in response to a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

The City provides the following background to this appeal:

> In December 2000, the [federal government's Supporting Communities Partnership Initiative (SCPI)] funding program was announced to address homelessness. At the federal government's request, the City took a lead role in administering SCPI. In September of 2003, the program was extended.
>
> Under the first SCPI program, the City was to receive a total of 53 million dollars over three fiscal years, from 2000 [to] 2003. The purpose of SCPI is to add to existing funding for homeless programs and services. SCPI can also provide funding to community-based agencies, such as the applicant, to make building and equipment improvements.
>
> Under SCPI, the City earmarked funds for "designated" emergency shelter programs and "new" projects. The City is responsible for selecting projects for SCPI funding. Except for a limited number of projects, this was done through an RFP process. Funds allocated under the first SCPI program are to be spent no later than March 31, 2004.
>
> The second SCPI program again focused on the alleviation and prevention of homelessness. This program will continue for an additional three years starting in April 2004.
>
> The two records at issue both related to a Transitional Housing Proposal Call under the first SCPI program. The first record is an application for funding [made jointly by two non-profit organizations (the affected parties)]. The second record is entitled Selection Process and sets out the timelines, steps and criteria in the review process.
>
> Since the application for funds was made this project, and the issue of shelters generally, has become contentious. The project was approved and the City issued a building permit. After approvals were given for the project proposed in the records, the City passed a by-law regulating the building of shelters throughout the city. The project proposed in the record was specifically identified as an exemption to the by-law, within the by-law itself.
>
> The exception and the by-law were challenged by way of applications to the Ontario Municipal Board. The by-law, itself, was challenged on constitutional grounds. The challenge to the exception is on hold until a determination is made as to whether the by-law is in violation of the [*Canadian Charter of Rights and Freedoms*]. The by-law challenge will be heard on December 5, 2003. In

> addition, there has also been a judicial review launched with respect to the issuance by the City of a building permit for the project proposed in the record. The judicial review will be heard in Divisional Court on December 18, 2003.

The judicial review application the City refers to is, in fact, a set of two appeals under the *Building Code Act*, launched by a neighbouring property owner. The appellant sought a court order revoking or staying two building permits issued by the City to one of the affected parties that proposed to build and operate the shelter. The appeals were dismissed on February 10, 2004 as reported in *Hastings Corp. v. Toronto (City) Chief Building Official*, [2004] O.J. No. 521 (Div. Ct.).

Also, the Ontario Municipal Board hearing into this matter is now set to commence on March 23, 2004.

NATURE OF THE APPEAL:

The appellant made a request to the City under the *Act* for records relating to an application made by a specified corporation to the City for funding for an emergency shelter under the SCPI.

The City identified a number of responsive records and responded to the appellant as follows:

> Access is granted in full to the Council Report of July 2001 related to the Allocations for Transitional Housing.
>
> Access is denied in full to the Selection Process information and to the [affected party's] Application for Funding pursuant to [the exemptions at] sections 10 [third party commercial information] and 11 [economic interests of the City] of the *Act*. At this time it is our position that the release of the requested information could harm the competitive, economic or other interests of the institution.

The appellant appealed this decision.

Mediation did not resolve all of the issues so the appeal was streamed to me for adjudication.

I first sent a Notice of Inquiry setting out the issues in the appeal to the City and the two affected parties. Only the City provided representations in response. I then sent the Notice, together with a copy of the City's representations, to the appellant, who in turn provided representations.

RECORDS:

The main record at issue is entitled "Application for SCPI Funding by a partnership of [two named companies]", dated April 23, 2001. The application includes a proposal summary sheet, a summary of the project proposal, an organizational overview, financial management information, project operations information, budget and construction information, maps and diagrams,

corporate registration information, a "brochure" describing the applicant, and financial and audit statements.

The second record at issue is a four-page "selection process" record issued by the City that describes the steps in the selection process, and contains suggestions and guidelines for evaluating and reviewing the proposals.

DISCUSSION:

THIRD PARTY INFORMATION

Introduction

The City relies on section 10 to withhold the application. (The City no longer relies on section 10 to withhold the selection process record.) Section 10 reads, in part:

> 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, where 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;

Section 10(1) recognizes that in the course of carrying out public responsibilities, government agencies often receive information about the activities of private businesses. Section 10(1) is designed to protect the "informational assets" of businesses or other organizations that provide information to the government [Order PO-1805].

Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of information which, while held by government, constitutes confidential information of third parties which could be exploited by a competitor in the marketplace.

For a record to qualify for exemption under sections 10(1)(a), (b) or (c), the institution 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 10(1) will occur.

Part 1: type of information

The City submits that the application contains commercial information, financial information and trade secrets. These terms have been discussed in prior orders as follows:

> *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
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> (i) is, or may be used in a trade or business,
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> (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 PO-2010].
>
> *Commercial information* is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises [Order PO-2010]. The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information [P-1621].
>
> *Financial information* refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs [Order PO-2010].

The City states:

> . . . The application is for funding for transitional housing and support services for refugee claimants. A number of IPC orders have found that information about not-for-profit organizations can be considered commercial. The venture outlined in the application meets this definition. In addition to the services to be provided by the agency, the application sets out a proposed commercial relationship between two organizations, one, a small non-profit agency and the other a larger organization who will be partners on the project for which funding is sought. The application also sets out the details of the potential relationship between the agency, working in the proposed partnership, and the City, with respect to the provision of services to be funded by the City and operated by the agency.
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> . . . . .
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> . . .[T]he application contains financial information, including pricing and budget information, projected calculations of revenues and the costs of the proposed development of land owned by the City on which the organization intends to build a shelter [and] new premises for its agency.
>
> . . . [T]he application as a whole represents a trade secret as it contains compilation, programs, methods, technique and processes that have economic value from not being generally known, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. This is discussed further under supplied in confidence.

The appellant makes no submissions on this point.

I agree with the City that the several portions of the application consist of either commercial or financial information. However, I do not accept the City's assertion that any of the application constitutes a trade secret, particularly in the absence of any evidence from the affected parties to substantiate this claim. For example, while it is clear that the record contains a compilation of information, I do not have evidence before me, from the parties that would have knowledge of these issues, that any portion of the record is not generally known in the trade or business, that it has economic value from not being generally known, or that it is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Part 2: supplied in confidence

Supplied

The requirement that it be shown that the information was "supplied" to the institution reflects the purpose in section 10(1) of protecting the informational assets of third parties [Order MO-1706].

The City submits that "the application was supplied to the City in response to an RFP . . ."

The appellant makes no submissions on this point.

I agree with the City, and it is clear from the circumstances, that the affected parties supplied the application to the City.

In confidence

In order to satisfy the "in confidence" component of part two, the parties resisting disclosure must establish that the supplier had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis [PO-2020].

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

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential
- 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
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure [PO-2043]

The City submits:

> . . . [T]he information was provided with a reasonably-held expectation that it would be treated confidentially.
>
> . . . . .
>
> . . . 38 proposals were received in response to the RFP. The total requests for funding surpassed the available funding by 35.5 million dollars. Competition for these and other program funds is always intense. The first SCPI program is limited to three years and, as part of the application process, the applicants for funding must demonstrate their sustainability after the SCPI funding ends.
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> Because of the competition for funds, the applications for funding are traditionally kept confidential. This practice is well known in and supported by the social services agencies that apply for funding. Confidentiality is maintained in order to prevent unfair loss of competitive position because of disclosure of information that may fall into the hands of a competitor and in order to avoid market forces

> driving costs upward in anticipation of city-funded development or spending in a particular geographic or service area.
>
> . . . [O]rganizations carefully guard the content and manner of presentation of a proposal. Because of this, applications are consistently treated in a manner that protects their contents from disclosure. Agencies want to have the content of their proposals protected as they are aware that a proposal featuring a well-integrated combination of narrative, hard data, effective advocacy and vision can distinguish itself among many other worthy applications for funding. The manner in which a proposal is drafted is considered to be an important element in having an agency's application for funding seriously considered.
>
> In addition, and equally important, the proposals contain confidential information about proposed partnerships, projected operating budget and future and current sources of revenues.
>
> . . . [C]onfidentiality was an implicit part of the process on the part of the City and the applicants. All applications were assessed against an objective set of criteria. Detailed information, such as that contained in the application will not be shared without specific consent.

The appellant submits:

> The Developer has previously made public financial information. In connection with the . . .project, the Developer registered on title the SCPI Funding agreement, which includes as a schedule a detailed "Capital Cost Budget and Cash Flow Plan" (copy attached).
>
> . . . . .
>
> The standard form RFP that the City issued for the SCPI funding states at page 32 paragraph 4.15 that all submissions may be subject to release to the public (copy of excerpt enclosed). The Developer was warned in advance that submissions could be made public.

The RFP excerpt that the appellant refers to reads:

> All submissions are subject to the [*Act*], and may be subject to release pursuant to this Act, notwithstanding the request of those responding to keep their submissions confidential. In addition, as part of the selection of the successful Respondents, summaries of all submissions received, and details of any Agreements to be entered into between the City and the successful proponents may constitute part of a public report to City Council and its committees.

In my view, there is certain information in the application that the affected parties clearly could not have reasonably expected would be treated by the City as confidential. This information is either of a very generalized nature, or is information that is available to the public, and includes:

- the proposal summary sheet identifying the affected parties
- the proposal covering letter, which contains very generalized, introductory information about the proposal
- a map of the area surrounding the subject property showing the City zoning designations
- a list of the members of the board of directors of one of the affected parties
- a Ministry of Consumer and Commercial Relations business name registration form and application for incorporation form
- a "brochure" describing the applicant
- a letter from the Toronto Parking Authority acknowledging one of the affected party's interest in developing a property

In addition, I am not persuaded that the information about projected costs and budget for the project was supplied with a reasonably held expectation of confidentiality. As submitted by the appellant, a detailed "capital cost budget and cash flow plan" that contains information of a similar nature has been made public by way of a filing with the land registry office. In these circumstances and in the absence of representations from the affected parties, there can be no reasonable expectation of confidentiality.

Despite the above, I am persuaded that some information was supplied to the City with a reasonably held expectation that the City would treat it confidentially. This information includes narrative details about the project proposal and the affected parties' operations, Revenue Canada information about the affected parties, an auditors' report, and the affected parties' financial statements.

I am not persuaded by the appellant's submission that the RFP excerpt negates any reasonable expectation of confidentiality. In similar circumstances, in Order PO-1688, I stated:

> With respect to the *Act*, in my view, all third party business entities submitting information to government know or ought to know that the *Act* could apply and that the government may be compelled to disclose that information in response to a request under the *Act*. Where there is substantial evidence of a reasonable expectation of confidentiality, as in this case, the mere possibility that the *Act* could compel disclosure, in the event that the test for exemption under section 17 is not met, is insufficient to neutralize that reasonable expectation. If the opposite were true, it is arguable that the section 17 exemption could never apply, since the onus under part two of the test for exemption could never be met. Clearly, the Legislature could not have intended this result.

To conclude, I find that while all of the information in the application was "supplied", only some of it meets the "in confidence" test. I will consider below whether the information that was "supplied in confidence" meets the part three "harms" test.

Part 3: harms

General principles

To meet this part of the test, the City and/or the affected parties must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

The failure of a party resisting disclosure to provide detailed and convincing evidence will not necessarily defeat the claim for exemption where harm can be inferred from other circumstances [Order PO-2020].

Sections 10(1)(a) and (c): prejudice to competitive position/undue loss or gain

The City first submits that the affected parties will suffer competitive harm and/or undue loss if the application is disclosed.

More specifically, the City states:

> Although the [appellant] may not be in direct competition with the agency for funding dollars, it is a well-recognized principal that disclosure in response to a request for information under the *Act* is disclosure to the world.
>
> . . . . .
>
> . . . [R]elease of the application reports would prejudice significantly the competitive position and/or negotiations of the applicant agency.
>
> For the reasons outlined above, under Supplied in Confidence, disclosure of the agency's format, style and details of its application could result in reducing any competitive edge that it has by allowing other agencies to copy the format and detail contained therein.
>
> Disclosure of budget information could hamper negotiations with staff and other suppliers of services . . .
>
> . . . . .
>
> . . . [D]isclosure of the record could result in undue loss to the applicant and undue gain to other groups or agencies.

> The application contains details of its plans to purchase a City-owned property, the anticipated purchase price and the advantages of relocating the agency to this particular area of the city. The discussion also includes the projected time-lines for completing the agreement of purchase and sale as well as the time required to complete construction drawings and acquire the necessary permits. A projected operating budget covering a ten-year period is also included in the application. This information could be used to advantage in the hands of an agency competing for the same funding dollars.
>
> The application describes the development proposal for the site and sets out the proposal and design in detail as well as the agency's preferred method of dealing with the construction industry, including sub-trades. More detailed notes explain the project revenues and operating costs. The application also contains hand written notations that indicate what the reviewer has marked as a point of interest or an area requiring additional information.
>
> There is litigation pending with respect to the location of the project and the building. Therefore, although the project has been approved, the final outcome may be determined by the hearings that are about to take place. The applicant may find itself in a renewed search for property, a construction team, etc.
>
> Disclosure of the details of the application could have a negative impact on negotiations as outlined above and result in loss to the agency and potential gain to suppliers of services. Disclosure of the format of the application could result in loss of competitive edge to the applicant and undue gain to other agencies that would be able to copy the applicant agency's carefully developed plan.

The appellant submits:

> There is no harm to the Developer. It has bought the . . . site and has received funding approval for $3,000,000 in funds. Close to $2,000,000 has been advanced to date.
>
> There are no competitors who would gain an advantage if the records were released. The release of records will not affect the ability of the Developer to [compete] with other non-profit developers for SCPI funding.
>
> There is no harm to the City. The City has already approved the SCPI funds to the developer. There will be no additional costs to the Developer or the City should the records be released. The City defends the non-disclosure of the records to protect the "applicant agency's carefully developed format" . . . If the City is convinced that the format is of such value, it should encourage other agencies to use that format.

> . . . The City selection process should be made fully public.
>
> The fact that this proposal is funded by public money should require the process to be fully transparent.

In my view, most of the records that I found were supplied in confidence do not meet the "harms" test under either paragraph (a) or (c) of section 10(1). The material before me falls short of the kind of detailed and convincing evidence that is required to establish a reasonable expectation of harm.

The affected parties are in the best position to provide evidence and argument explaining why it is reasonable to expect that disclosure will result in prejudice to their competitive position, interfere significantly with their negotiations or cause undue loss. I find it significant that although notified of this inquiry, the affected parties chose not to submit representations. In my view, this seriously undermines the "harm" arguments of the City, although I do not take the absence of representations from the affected parties to constitute their consent to disclosure (see Order PO-1791). In the end, I am left with little if any guidance as to how the information in the records would be useful to a competitor or otherwise could reasonably be expected to cause section 10(1)(a) or (c) harm. Therefore, I conclude that the application, subject to the paragraph below, is not exempt under section 10(1)(a) or (c).

The City argues that the format of the application is itself information that, if disclosed, could be useful to a competitor and cause competitive harm. In my view, there is little if anything unusual about the presentation of the information in the application that could lead to such a conclusion. In similar circumstances, in Order PO-2005, I stated:

> . . . I am not persuaded that disclosure of these records, which recite information requested by the Ministry in a very basic and straightforward manner, would reveal information of a proprietary nature concerning the application structure, timing and presentation methods.

This is particularly so, given that I have no explanations from the affected parties as to how the format of the application could cause harm if disclosed.

As indicated above, the application contains financial statements and audit information of the affected parties. In my view, this type of information can be considered on its face to cause harm to the affected parties, despite the fact that I have no representations from them (see, for example, Orders P-1179, P-1360). In addition, I find that the Revenue Canada information relating to the affected parties also can reasonably be considered to cause competitive harm or undue loss, if disclosed.

To conclude, I find that the financial statements and audit information in the application qualifies for exemption under section 10(1)(a) and/or (c), while the remaining information does not so qualify for exemption.

Section 10(1)(b): similar information no longer supplied

The City argues that the application is exempt under section 10(1)(b):

> . . . [A]pplicants may no longer supply similar information to the City when it is in the public interest to do so.
>
> The information in the application is supplied to the City on the understanding that it will be kept confidential. Failure to maintain this expectation of confidentiality may have an impact on the frankness and detail of future applications.

The City has not persuaded me that the information I have found not to be exempt under section 10(1)(a) and/or (c) meets the test for exemption under section 10(1)(b). As indicated above, much of the remaining information either was not supplied with a reasonable expectation of confidentiality, or cannot reasonably be expected to cause competitive or similar harm under paragraphs (a) and/or (c) of section 10(1). In the circumstances, the City's position that similar information will no longer be supplied is simply not credible, once the financial statement information, audit information and Revenue Canada information is removed.

Conclusion

The financial statements and audit information in the application qualifies for exemption under section 10(1), while the remaining information is not exempt under section 10(1).

ECONOMIC AND OTHER INTERESTS

Introduction

The City takes the position that the application, as well as the four-page selection process record, are exempt under sections 11(c) and (d). Those sections read:

> A head may refuse to disclose a record that contains,
>
> (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
>
> (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;

The purpose of section 11 is to protect certain economic interests of institutions. The report titled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams

Commission Report) provides the following description of the rationale for including a "valuable government information" exemption in the *Act*:

> In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute . . . Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

For sections 11(c) or (d) to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

Section 11(c): prejudice to economic interests

The purpose of section 11(c) is to protect the ability of institutions to earn money in the marketplace. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions [Order P-1190].

The City submits:

> ***The Application***
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> As outlined under section 10 above, the application contains a detailed description of the agency's plans for land development and the reasons that it has chosen the particular area in which the land is situated. The application also includes detailed financial and other planning information. It is in the City's economic interests as a potential funder of the proposed project to keep the development and financial details of the proposed project confidential.
>
> Disclosure of the agency's intentions could cause costs for land and other services to rise. Should the anticipated purchase of city-owned property not occur, the details of the funds available and the agency's preference for a particular area of the city could result in inflated costs that may be passed on to the City.
>
> The application also contains hand written notations that indicate what the reviewer has marked as a point of interest or an area requiring additional information. Having this information generally known could have a prejudicial effect on the competition process and the economic interests of the City.

> As discussed below, revealing the details and presentation (i.e. the methodology) used in a successful proposal may restrict the [City's] ability to adequately assess the capabilities of future applicants who may merely copy the agency's presentation.
>
> Since the project was approved, the issue of the location of the shelter, the building permit and the project's exception under the shelter by-law have all become extremely contentious. There is litigation pending with respect to the location of the project and the building. Therefore, although the project has been approved, the final outcome may be determined by the hearings that are about to take place. The applicant may find itself in a renewed search for property, a construction team, etc. As a city-funded project, the economic and financial costs to the city could increase should the applicant's proposal be disclosed.
>
> ***The Memorandum***
>
> The memorandum consists of four pages. The first two pages outline the steps to be followed in the selection process. The last two pages provide criteria for evaluating the proposals.
>
> . . . [D]isclosure of the information set out in the memorandum could prejudice the economic interests of the City and or the City's competitive position as the memorandum outlines the process and criteria that the City is looking for in each application. Although applicants are given a general idea of the City's requirements to disclose the specific criteria used to judge the proposals would give potential applicants a distinct advantage and would remove the City's ability to draw accurate conclusions about the organization from the nature and organization of the application including the degree of detail used to support the application.
>
> Disclosure of the specifics of the criteria would be the equivalent of providing answers prior to an examination.

First, regarding the application, as I indicated above, I am not persuaded that there is anything within the format and presentation of the application that could reasonably be expected to cause competitive harm to the affected parties under section 10(1)(a) or (c) and, for similar reasons, I do not accept the City's submission that for this reason disclosure of the application could undermine the RFP process.

In addition, I note that the purchase of the property has already taken place (in February of 2003). Therefore, the City's concerns stemming from the possibility that the anticipated purchase of the property will not take place is without foundation.

As far as the detailed financial and other planning information is concerned, given that I found above the disclosure of this information could not reasonably be expected to cause harm under section 10(1), and that much of this information has been made public through land registry records, I am not persuaded that disclosure of this information could reasonably be expected to prejudice the economic interests or the competitive position of the City.

The evaluation process record contains generalized information about the timing and steps in the selection and evaluation process, and a discussion of the criteria to be used. Information of a very similar nature has been found not to be exempt under the economic interests exemption [see, for example, Order PO-1993, upheld on judicial review in *Ontario (Minister of Transportation) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 224 (Div. Ct.)]. I am not satisfied that this case is distinguishable.

In addition, I am not persuaded by the City's submission that disclosing the evaluation process record is "the equivalent of providing answers prior to an examination." This record does not contain information that is sufficiently specific to be considered analogous to test questions or answers. Moreover, much of the information is very similar in nature to the information that would have been contained in the RFP, in the sense that it explains that certain categories and types of information must be contained in the RFP submissions.

I find that the City has not established that disclosure of the four-page evaluation process record could reasonably be expected to cause economic or competitive harm under section 11(c).

Section 11(d): injury to financial interests

For essentially the same reasons as those outlined above under section 11(c), I find that the City has not established that disclosure of the records at issue could reasonably be expected to be injurious to the City's financial interests.

To conclude, I find that none of the records remaining at issue qualify for exemption under section 11(c) or (d).

ORDER:

1. I order the City, not later than **April 27, 2004**, but not earlier than **April 22, 2004**, to disclose to the appellant the application in accordance with the highlighted version of the record I have enclosed with the City's copy of this order. To be clear the City is *not* to disclose the highlighted portions.

2. I order the City, not later than **April 27, 2004**, but not earlier than **April 22, 2004**, to disclose to the appellant the four-page evaluation process record in its entirety.

3. In order to verify compliance with provisions 1 and 2, I reserve the right to require the City to provide me with copies of the material disclosed to the appellant.

Original signed by: March 23, 2004
David Goodis
Senior Adjudicator