



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2078

Appeal MA-050289-1

City of Toronto



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NATURE OF THE APPEAL:

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the successful proposal, and related documents, pertaining to an identified Request for Proposal (RFP). The RFP related to restoration work on a historic railway station building. The initial request was for:

The proposal documents and any subsequent amendments thereto from the successful proponent including all ancillary documents as required in the “Notice to Potential Proponents” [which is found in] appendix ‘B’ [of the] City of Toronto purchasing policies.

After notifying the successful proponent of the request, and receiving its position on disclosure, the City advised the requester that it was relying on section 10(1) of the *Act* (third party information) to deny access in full to the successful proposal.

The requester then filed a second request. It had a more limited scope. The successful proposal was requested, but access was no longer being sought to the successful proponent’s “confidential financial information.” This is addressed in the discussion on the scope of the appeal, below.

The City issued a subsequent decision letter. In the letter, the City referred to its earlier decision denying access, and stated that the same decision would apply to the modified request.

At mediation, the appellant advised that it was no longer seeking access to the portions of the successful proposal that could be found on the successful proponent’s website. In addition, the City advised that it would be relying on the mandatory exemption in section 14(1) of the *Act* (personal privacy) to deny access to any personal information in the successful proposal. In response, the appellant advised that access was not being sought to any personal information in the proposal.

No further issues could be resolved at mediation and the matter was referred to the adjudication stage.

I sent a Notice of Inquiry to the City and the successful proponent (the affected party), initially. The City and the affected party filed representations in response. They both asked that portions of their representations be withheld due to their confidentiality concerns.

A Notice of Inquiry along with the non-confidential representations of the City and the affected party were then sent to the appellant. The appellant also provided representations in response to the Notice of Inquiry. Due to its confidentiality concerns the appellant asked that if its representations were to be shared, certain portions be withheld. As the appellant’s representations raised issues to which I determined the City and the affected party should be given an opportunity to reply, I sent the appellant’s non-confidential representations to them, inviting their reply representations. Both the City and the affected party filed reply representations.

RECORD

Subject to the discussion on the scope of the appeal below, the record at issue is the successful proposal submitted by the affected party. Appendices to the proposal contain letters of support and commitments to provide volunteer services and support to the restoration project. They also contain various notices and an excerpt from a website. In the decision that follows, unless otherwise stated, I will be referring to the portions of the proposal and the appendices that fall within the scope of this appeal, collectively as “the proposal”.

DISCUSSION:

SCOPE OF THE APPEAL

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and

.

- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester’s favour [Orders P-134, P-880].

As noted above, the appellant stated at mediation that the appellant is not interested in access to any personal information in the record. This was confirmed in the Mediator’s report in this matter. The appellant also advises, in its representations, that the appellant is not interested in the companies and individuals identified in the proposal as potential suppliers of support and services. The appellant also submits that since access is not being sought to letters of support for the proposal submitted by identifiable individuals, the City is not entitled to claim the application of the section 14(1) exemption.

In somewhat contradictory fashion, however, the appellant also refers to the appellant's failure to understand how the proposal could contain such things as correspondence "of a private or confidential nature" or personal information, since this was a project awarded to an "unincorporated private group". Furthermore, the appellant submits that the appellant does not believe that subjecting the activities of the City to public scrutiny requires disclosure of any personal information, unless it has been "*incorrectly included in the proposal*".

What is clear, however, is that the appellant does not seek access to letters of support from identifiable individuals or to information about companies and individuals identified in the proposal as potential suppliers of support and services. This information can be readily identified, and it appears at pages 11, 24, 25, 33, 47, 49-56, 58, 59-61, 66, 83-90, 93-94 and 105-113 of the proposal. Those pages (or portions thereof) are therefore excluded from the scope of this appeal. I will consider whether the remainder of the proposal contains any personal information in my discussion of that issue, below.

The appellant's second request also indicated that access was not being sought to the proponent's "confidential financial information." In my view, however, this does not mean that all financial information is removed from the scope of the request and this appeal. Rather, I interpret this to mean that I must determine whether any financial information that remains in the proposal (after removing the pages (or portions) excluded above), qualifies as confidential, as a condition precedent to its removal. As I conclude in my analysis of section 10(1), below, the record does not include any "confidential financial information", and accordingly, nothing is excluded from the scope of the appeal on that basis.

Finally, I have reviewed the proposal to determine if it contains information available from the successful proponent's website. The City has indicated that this information appears on pages 4, 5, 6, 17, 18, 30, 102, 103 and 104 of the proposal. While there are excerpts from a website in the appendices, the information that is alleged to be from the successful proponent's website, does not appear to be reproduced in the same way. The proposal appears to have modified some of that information and contains a greater level of detail. For the sake of completeness, although the fact that the information is available from a publicly accessible source is a consideration in the discussion on part 2 of the section 10(1) test, at this stage I will not remove those pages from consideration.

THIRD PARTY INFORMATION

In its representations, the City specified that it was relying on sections 10(1)(a) and (c) of the *Act* to deny access to the record.

Sections 10(1)(a) and (c) of the *Act* state:

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;

...

(c) result in undue loss or gain to any person, group, committee or financial institution or agency.

Section 10(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions [*Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.)]. 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 confidential information of third parties that could be exploited by a competitor in the marketplace [Orders PO-1805, PO-2018, PO-2184, PO-2371, PO-2384, MO-1706].

For section 10(1) to apply, the institution and/or the affected party 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 paragraph (a) and/or (c) of section 10(1) will occur.

Part 1: Type of Information

Previous orders have defined “technical information”, “commercial information” and “financial information” as follows:

Technical information is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. While 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 [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 claims that the record contains “commercial information”, including proposed costs of memberships in the restoration effort, sources of funds and voluntary donations to supply support and services to the successful proponent, if the contract is awarded. In addition, there is information regarding what private use is to be made of the building, the timelines for the restoration and how the site is to be managed when it is completed.

The City also submits that the record contains details of how the restoration will take place, including changes that are envisioned by the architect and drawings of existing floor plans, including internal space plans. The City submits that this qualifies as “technical information”.

The affected party did not make detailed submissions on this issue. Instead, it attached to its representations pages of the proposal that it specifically did not want released. The affected party objected in particular to the release of the financial information of a not for profit organization involved in the proposal. The affected party states that this is not information that the organization typically releases to the public.

The appellant submits that describing the information in the proposal as “technical” or “commercial”, “absolves the City and the [successful proponent] of any responsibility normally expected of a beneficiary of a public benefit”.

Based on the representations and my review of the records, I am satisfied that the proposal contains information that is “financial” and/or “commercial” information. I am also satisfied that some of the information in the proposal qualifies as “technical information”.

Because all of the withheld information in the proposal could qualify as “financial”, “commercial” and/or “technical information” I find that the requirements of part 1 of the section 10(1) test have been met.

Part 2: supplied in confidence

In order to satisfy part 2 of the test, the institution and/or the affected party must establish that the information was "supplied" to the institution "in confidence", either implicitly or explicitly.

Supplied

The requirement that information be supplied to an institution reflects the purpose in section 10(1) of protecting the informational assets of third parties [Order MO-1706]. Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party [Orders PO-2020, PO-2043].

The contents of a contract involving an institution and a third party will not normally qualify as having been "supplied" for the purpose of section 10(1). The provisions of a contract, in general, have been treated as mutually generated, rather than "supplied" by a third party, even where the contract substantially reflects terms proposed by a third party and where the contract is preceded by little or no negotiation [Orders PO-2018, MO-1706, PO-2371]. Except in unusual circumstances, agreed upon essential terms of a contract are considered to be the product of a negotiation process and therefore are not considered to be "supplied" [Orders MO-1706, PO-2371 and PO-2384].

This approach has recently been upheld by the Divisional Court in *Boeing v. Ontario (Ministry of Economic Development and Trade)* [2005] O.J. No. 2851 (Reasons on costs at [2005] O.J. No. 4153) (Div. Ct.); motion for leave to appeal dismissed, Doc. M32858 (C.A.).

In Order PO-2384, I addressed this aspect of 17(1) of the Provincial *Freedom of Information and Protection of Privacy Act (FIPPA)*, which is the equivalent provision to section 10(1) of the *Act*:

If the terms of a contract are developed through a process of negotiation, a long line of orders from this office has held that this generally means that those terms have not been "supplied" for the purposes of this part of the test. As explained by Adjudicator DeVries in Order MO-1735, Adjudicator Morrow in Order MO-1706 identified that, except in unusual circumstances, agreed upon terms of a contract are not qualitatively different, whether they are the product of a lengthy exchange of offers and counter-offers or preceded by little or no negotiation. In either case, except in unusual circumstances, they are considered to be the product of a negotiation process and therefore not "supplied".

As discussed in Order PO-2371, one of the factors to consider in deciding whether information is supplied is whether the information can be considered relatively "immutable" or not susceptible of change. For example, if a third party has certain fixed costs (such as overhead or labour costs already set out in a collective agreement) that determine a floor for a financial term in the contract, the

information setting out the overhead cost may be found to be "supplied" within the meaning of section 17(1). Another example may be a third party producing its financial statements to the institution. It is also important to consider the context within which the disputed information is exchanged between the parties. A bid proposal may be "supplied" by the third party during the tendering process. However, if it is successful and is incorporated into or becomes the contract, it may become "negotiated" information, since its presence in the contract signifies that the other party agreed to it. The intention of section 17(1) is to protect information of the third party that is not susceptible of change in the negotiation process, not information that was susceptible to change but was not, in fact, changed.

In Order PO-2435, Assistant Commissioner Beamish rejected the position of the Ministry of Health and Long-Term Care that proposals submitted by potential vendors in response to government RFPs, including per diem rates, are not negotiated because the government either accepts or rejects the proposal in its entirety. Assistant Commissioner Beamish observed that the exercise of the government's option in accepting or rejecting a consultant's bid is a "form of negotiation". He wrote:

The Ministry's position suggests that the Government has no control over the per diem rate paid to consultants. In other words, simply because a consultant submitted a particular per diem in response to the RFP released by [Management Board Secretariat (MBS)], the Government is bound to accept that per diem. This is obviously not the case. If a bid submitted by a consultant contains a per diem that is judged to be too high, or otherwise unacceptable, the Government has the option of not selecting that bid and not entering into a [Vendor of Record] agreement with that consultant. To claim that this does not amount to negotiation is, in my view, incorrect. The acceptance or rejection of a consultant's bid in response to the RFP released by MBS is a form of negotiation. In addition, the fact that the negotiation of an acceptable per diem may have taken place as part of the MBS process cannot then be relied upon by the Ministry, or [Shared Systems for Health], to claim that the per diem amount was simply submitted and was not subject to negotiation.

All parties acknowledge that the proposal was supplied to the City in the context of a bid process. That being said, in accordance with the authorities referenced above, the nature of the bid changed when it was accepted.

However, because of my determination on the "in confidence" component of part 2 of the section 10(1) test, it is not necessary to consider whether any of the information in the proposal was "supplied", or whether it falls under one of the exceptions to the normal treatment of contract information because it is "immutable", or because disclosure "would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party".

In Confidence

In order to satisfy the “in confidence” component of part 2, the parties resisting disclosure, must establish that the supplier of the information had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis [Order PO-2043].

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 party prior to being communicated to the institution;
- not otherwise disclosed or available from sources to which the public has access;
- prepared for a purpose that would not entail disclosure [PO-2043].

In its representations, the City submitted that financial information appears on pages 16, 24-25, part of 26, 64, 65, 66, 70, 72, 73, 74, 79, 91, 92, 95, 96, 97(incorrectly numbered as 97/98) and 99. The City took the position that pages 4, 5, 6, 17, 18, 30, 102, 103 and 104 of the proposal contains information that appears on the affected party’s website. The City further submitted that pages 11 and 33 in part and 57 contain personal information. In its representations the City advised that after a further review, it was prepared to release pages 1, 2, 3, 7, 8, 9, 20, 21, 23, 27, part of 35, 37, 38, 39, 41-46 and 75-78 of the proposal. Finally, in its reply representations, the City advises that after yet another review, it was prepared to disclose parts of pages 11, 28 and 33 and pages 10, 12, 13, 14, 15, 19, 22, 29, 31, 32, 34, 36, 62, 63, 67 and 71.

The City had originally submitted that, except for the pages that contain the affected party’s website information, the balance of the proposal contains information that is not routinely disclosed nor is available from publicly accessible sources.

In addition, the City states that all its RFP call documents advise that the proposals are subject to the *Act* and that a proponent should identify any information it wishes to be kept confidential. After consulting its purchasing division, the City reports that the affected party did not specifically address this matter in response to the RFP. However, the City submits that based on the affected party’s objection to the release of specific information in the proposal, and its statement that certain information of the not for profit organization is not information that the organization typically releases to the public, it is reasonable to assume that the affected party intended for the information to remain confidential.

In representations filed on Appeal MA-050390-1, which relates to a request for the same record by another appellant (addressed in Order MO-2080, which is being released concurrently with this order), the appellant in that appeal referred specifically to section 8.2 of the RFP call document which states, in part:

Because of [the *Act*], Proponents are advised to identify in their proposal material any scientific, technical, commercial, proprietary or similar confidential information, the disclosure of which could cause them injury.

Any information in the Proponents' submission that is not specifically identified as confidential will be treated as public information.

...

There is no notation of confidentiality on any of the pages of the proposal.

Analysis

Having carefully reviewed the record at issue and the representations of the City and the affected party, I am not satisfied that any part of the proposal was supplied "in confidence" by the affected party to the City.

Neither the City nor the affected party have provided sufficient evidence that would reasonably lead the affected party to consider that the information was provided in confidence, either implicitly or explicitly. In its representations the affected party identifies certain information of a not for profit organization that it says is *typically* not released to the public. The City points to this statement as establishing a reasonable expectation of confidentiality. However, this statement does not indicate that this information is always kept confidential, or never released. More importantly, although invited to do so in the Notice of Inquiry, the affected party provides no explanation of how an implicit or explicit expectation of confidentiality arose in the context of submitting its proposal. Furthermore, no notation of confidentiality was made on the proposal, although the failure to specifically identify confidential information was expressly stated to result in the City treating it as public information. Finally, the proposal itself contains website materials as well as information that is similar or virtually identical to information that appears on the successful proponent's website.

Accordingly, I am not satisfied that the information that is sought to be withheld under section 10(1) of the *Act* was supplied by the affected party in confidence, either explicitly or implicitly within the meaning of section 10(1). I find, therefore, that the City and the affected party have not satisfied the requirements of part 2 of the test for any of the information sought to be withheld from the proposal under section 10(1). Based on this conclusion, I find that none of the financial information qualifies as confidential.

As all three parts of the test under section 10(1) must be met with respect to information that qualifies as “commercial” or “technical”, or for that matter “financial”, I find that section 10(1) does not apply to any of the information sought to be withheld from the proposal under section 10(1). It is therefore unnecessary to address the submissions on the harms component of the test under section 10(1) of the *Act*.

As a consequence of my conclusion here, none of the information at issue qualifies as “confidential financial information”, which the appellant identified as information to which the appellant does not seek access. Accordingly, as noted above under “Scope of the Appeal”, no remaining information will be removed from the scope of the appeal on that basis.

PERSONAL INFORMATION

The City is seeking to rely on section 14(1) of the *Act* to sever any personal information from the proposal. The City submits that this type of information is found at pages 11, 33 and 57.

In order for a record, or a portion of a record, to qualify for exemption under section 14(1), it must contain “personal information”, as defined in section 2(1) of the *Act*. Under this definition, “personal information” means recorded information about an identifiable individual including information relating to “the employment history of the individual or information relating to financial transactions in which the individual has been involved” (paragraph (b)), the “address [or] telephone number of the individual” (paragraph (d)), “the personal opinions or views of the individual except if they relate to another individual” (paragraph (e)) or 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)).

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225]. Previous decisions of this office have drawn a distinction between information relating to an individual in a *personal capacity* and information relating to an individual in a *professional or official government capacity*. As a general rule, information associated with a person in a professional or official government capacity will not be considered to be “about the individual” within the meaning of section 2(1) definition of “personal information” [Orders P-257, P-427, P-1412, P-1621].

As explained by Assistant Commissioner Brian Beamish in Order PO-2435:

... In determining whether information relating to a named individual is “personal information”, the appropriate approach is to look at the *capacity* in which the individual is acting and the *context* in which their name appears. This was enunciated in Order PO-2225 where former Assistant Commissioner Tom Mitchinson considered the definition of “personal information” and the distinction between information about an individual acting in a business capacity as opposed to a personal capacity. The Assistant Commissioner posed two questions that help to illuminate this distinction:

Based on the principles expressed in these [previously referenced] orders, the first question to ask in a case such as this is: “in what context do the names of the individuals appear”? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?

....

The analysis does not end here. I must go on to ask: “*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual?*” Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

Relying on the position of the appellant that personal information was not being sought, the City made no specific submissions on the issue in this appeal. In appeal MA-050390-1, however (which, as noted, is the subject of Order MO-2080, being issued concurrently with this order), the City takes the position that the names, telephone numbers, addresses and email addresses of individuals, including those who wish to provide volunteer services or support to the restoration project, the work history of some of these individuals and the views of individuals about the project, are personal information under paragraphs (b), (d), (e) and (h) of the definition.

Analysis

As section 14(1) is a mandatory exemption, I have examined the entire record for any information, in addition to the information identified by the City, which might qualify as personal information.

In my opinion, after excluding the pages (or portions of the pages) discussed under the Scope of the Appeal above, only pages 4 and 57 contain information which might qualify as personal information.

Page 4 contains information about an individual's employment history. The personal information on page 57 consists of an individual's home and email address.

PERSONAL PRIVACY

Where an appellant seeks the 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 my view, the only exception to the section 14(1) mandatory exemption which has potential application in the circumstances of this appeal is section 14(1)(f), which 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.

Because section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 14(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of the affected party's personal privacy.

In applying section 14(1)(f), the factors and presumptions in sections 14(2), (3) and (4) 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. The specific provisions of these sections that are relevant in the circumstances of this appeal provide, as follows:

- (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
 - (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
 - ...
 - (h) the personal information has been supplied by the individual to whom the information relates in confidence;
 - ...
- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

(d) relates to employment or educational history;

...

Section 14(2) provides some criteria for the institution to consider in making this determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure has been established under section 14(3), 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 (*John Doe*)] though it 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 exemption. [See Order PO-1764]

I have reviewed the information on page 4 and find that this information falls within the presumption in section 14(3)(d). Disclosure of this information is presumed to constitute an unjustified invasion of privacy. Section 14(4) does not apply to this information. Therefore subject to the possible application of section 16 (see below), this information is exempt under section 14(1).

The information on page 57 does not fall within any section 14(3) presumption.

All the Relevant Circumstances in Section 14(2)

In appeal MA-050390-1, (which, as noted, is the subject of Order MO-2080, being issued concurrently with this order) the City submits that the individuals provided their personal information for inclusion in the proposal with the expectation that this information would only be released with their consent. The City submits that as a result this information was provided in confidence and falls within section 14(2)(h) of the *Act*, a factor favouring non-disclosure.

The appellant's submissions raise the factor favouring disclosure in section 14(2)(a) of the *Act*. Much of this is found in its submissions on the application of the public interest override in section 16 of the *Act*.

Analysis and Findings

I find that section 14(2)(h) does not apply to the remaining information. This is because I am not satisfied that the City has established a reasonable expectation that this information would be kept confidential.

The appellant's submissions point to disclosure of the information being desirable for the purpose of subjecting the activities of the City to public scrutiny. The submissions also raise another circumstance which is not listed in the section but is often considered in balancing access and privacy interests under section 14(2) in matters of this nature i.e. that "the disclosure of the personal information could be desirable for ensuring public confidence in the integrity of the institution".

Based on the concerns expressed by the appellant about how the proposal was awarded and whether the bid requirements were met, section 14(2)(a) and the "public confidence in the integrity of the institution" might apply to certain kinds of information. In this appeal however, the type of information that I have found to be personal information, being an individual's home and email address, does not engage their application.

In my view there are no factors or circumstances in section 14(2) that favour disclosure of the individual's home and email address on page 57 of the proposal. In the absence of those factors or circumstances, I find that disclosure of the individual's home and email address would constitute an unjustified invasion of personal privacy. It is therefore exempt under section 14(1).

PUBLIC INTEREST OVERRIDE

General principles

The appellant has taken the position that there is a public interest in the disclosure of the proposal. Based on my findings set out above, I must therefore determine whether section 16 applies to the information that I have found to be exempt under section 14(1).

Section 16 of the *Act* provides as follows:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [Emphasis added]

The City submits that the information in the record does not qualify as information for which there exists a compelling interest in disclosure. The affected party expresses a concern that release of the information could allow the unsuccessful proponent to adversely affect the affected party's ability to proceed with the project. In its reply representations the affected party submits it took steps to ensure the transparency of its proposal and questions the motivation of the unsuccessful proponent as well as the timing of the access request. The affected party also explains the challenges it has faced in relation to the project.

The appellant submits that the public interest in the information is the "dominant issue" in this appeal. In this regard the appellant points to a radio interview emphasizing the need for openness of public institutions. The appellant also expresses concerns about the status of the

successful proponent, how the proposal was awarded, whether the bid requirements were met and the circumstances surrounding the project.

For section 16 to apply, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.)].

In Order P-984, Adjudicator Holly Big Canoe discussed the first requirement referred to above:

"Compelling" is defined as "rousing strong interest or attention" (Oxford). In my view, the public interest in disclosure of a record should be measured in terms of the relationship of the record to the *Act's* central purpose of shedding light on the operations of government. In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions which have been found to apply. Section 16 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information which has been requested. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption. [Order P-1398]

Section 14(1) is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified. In my view, where the issue of public interest is raised, one must necessarily weigh the costs and benefits of disclosure to the public. As part of this balancing, I must determine whether a compelling public interest exists which outweighs the purpose of the exemption. [Order PO-1705]

The appellant submits that the purpose of the request is to provide the public with information relating to whether the proposal was properly awarded and whether the bid requirements were met. The appellant takes the position that the disclosure of this information would provide the public with important information regarding the City's activities, the proposal and the project.

Although I accept the appellant's position that there is a public interest in some of the information contained in the records, in my view this interest will be satisfied by the level of disclosure required under this order. I find that there is no "compelling" public interest in disclosure of the remaining undisclosed personal information (which, as I have noted is the home and email address of an individual or relates to employment history), and section 16 therefore does not apply.

ORDER:

1. I order the City to disclose to the appellant the portions of the proposal that are responsive to the request or do not qualify as personal information by providing the appellant with those portions of the proposal by **October 2, 2006**, but not before **September 26, 2006**. I have highlighted the portions of pages 4, 11, 24, 25, 33, 57 and 66 that are non responsive or contain personal information on the copy of the proposal provided to the City along with this order. The highlighted information is **not** to be disclosed.
2. In order to verify compliance with the terms of this Order, I reserve the right to require the City to provide me with a copy of the proposal as disclosed to the appellant, upon request.

Original Signed By: _____

Steven Faughnan
Adjudicator

August 25, 2006 _____