



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2283

Appeal MA-060168-1

The Corporation of the City of Oshawa



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BACKGROUND:

Four companies collaborated together and submitted a bid to the City of Oshawa (City) for a sports and entertainment facility, which is now complete. Two of the companies were responsible for the design and construction of the facility. Another was responsible for managing the facility and event programming. Finally, the fourth company provided the required debt financing services to support the project. The companies refer to their collective participation in the joint venture as the "Oshawa Sports & Entertainment Consortium".

NATURE OF THE APPEAL:

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

The pre-qualifications, qualifications, and or proposal submitted by a [named company which is part of another named company] to the City of Oshawa with respect to the proposed Downtown Sports and Entertainment Facility being constructed in the City of Oshawa.

The City denied access to the responsive record under section 10(1)(a) of the *Act*. The requester (now the appellant) appealed the City's decision to this office.

During mediation, the mediator contacted one of the four companies who advised that it was not prepared to consent to the release of the responsive records. The appellant continued to seek to the responsive records and this matter was transferred to me for adjudication.

Initially, I decided to seek the representations of the City and the four companies. The City and three of the companies provided written representations in response to the Notice of Inquiry. The Notice of Inquiry sent to the fourth company was returned to this office unopened. This office subsequently contacted the contact person for the fourth company and was advised that the fourth company was now defunct. The contact person, however, advised that he objected to the release of any information relating to him contained in the records.

In its representations, the City advised this office that it had reconsidered its original decision and was prepared to release some of the information at issue. This office, in turn, directed the City to issue a revised decision letter to the appellant and notify the four companies of its revised decision.

The City's revised decision letter indicated that the third party information exemption applied to specific portions of the records and the personal privacy exemption found at section 14 of the *Act* also applied to the names and contact information of individuals contained in the records. The three companies who submitted representations to this office provided additional representations in response to the City's notification letter. The fourth company did not provide a response to the City's revised decision. The City forwarded the third parties' second set of representations to this office and this office forwarded the non-confidential portions of the representations to the

appellant. The appellant was given an opportunity to consider these representations and make representations in reply. The appellant choose not to make representations but confirmed that he continued to seek access to the information at issue.

The City has not released any of the requested records to the appellant as one or more of the third parties object to the release of the information the City is prepared to release to the appellant. In this order, I will deal with the appellant's appeal of the denial of access, as well as the objections of the third parties.

RECORDS:

The responsive record is a bound volume entitled "Request for Expressions of Interest Oshawa Sports Entertainment Facility" dated March 12, 2004. The records are numbered from 3 to 221 and consist of:

1. Power point handouts, pages 4-13
2. Cover letter, dated March 12, 2004, page 14
3. Expression of Interest, dated March 12, 2004
 - a) Executive Summary, pages 15 and 19
 - b) Financial Capacity, pages 20 and 24
 - c) Proponent Organization and Structure, pages 25 and 31
 - d) Demonstrated Experience, pages 32 and 39
 - e) Strategy and Vision for the Project, pages 39 to 47

Appendix I - Financial Statements, pages 48 to 161
Appendix II - Resumes of Key Team Members, pages 162 to 180
Appendix III - Corporate Information, pages 181 to 186
Appendix IV - Relevant Projects, pages 187 to 211
Appendix V - Reference Letters, pages 212 to 216
Appendix VI - Declaration Letters, pages 217 to 221

The only portions of the record the City and the third parties agree to disclose to the appellant are pages 14, 46, 47, 161, and 181 to 184. One or more of the parties object to the disclosure of the remaining information at issue.

DISCUSSION:

PERSONAL INFORMATION

The City relies on the personal privacy exemption in section 14(1) to deny access to portions of the record. This exemption can only apply to records containing "personal information". This

term is defined in section 2(1) of the *Act*, in part, to mean “recorded information about an identifiable individual”, followed by a non-exhaustive list of examples of personal information.

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].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The third parties and the City submit that the names, contact information and educational and employment history contained in the records qualifies as personal information under section 2(1) of the *Act*. In particular, the following information has been identified:

- The names, addresses, telephone numbers, email addresses, education, employment and personal interest information contained on the resumes;
- The names, addresses and telephone numbers of individuals identified as potential referees;
- The names, addresses and telephone numbers of individuals providing reference letters;
- The names of individuals identified within the consortium as key team members/contact persons and/or having specific experience and qualifications; and
- The names and address of individuals listed on the declaration letters.

As noted above, the section 14(1) personal privacy exemption claimed by the City applies only to information that qualifies as personal information. Accordingly, I must decide whether the information identified by the City and the third parties constitutes personal information under section 2(1) of the *Act*.

Effective April 1, 2007, the *Act* was amended by adding sections 2(3) and 2(4). These amendments apply only to appeals involving requests that were received by institutions after that date. Section 2(3) modifies the definition of the term “personal information” by excluding an individual’s name, title, contact information or designation which identifies that individual in a “business, professional or official capacity”. Section 2(4) further clarifies that contact

information about an individual who carries out business, professional or official responsibilities from their dwelling does not qualify as “personal information” for the purposes of the definition in section 2(1).

The request related to this appeal is dated March 22, 2006. Accordingly, the above-noted amendments do not apply to the circumstances of this appeal. It is my view, however, that the amendments reinforce the line of decisions from this office that consistently hold that information which relates to an individual in a professional, official or business capacity does not constitute personal information, unless the information reveals something of a personal nature about the individual.

In Order PO-2225, Former Assistant Commissioner Tom Mitchinson addressed the question of whether information relating to an individual in an employment context represents that person’s personal information within the meaning of section 2(1). He held that, based on the principles expressed in Orders M-118, M-454, P-710 and P-729:

...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?

Following the analysis set forth in Order PO-2225 the first question I must ask is: *“in what context do the names of the individuals appear?”* The City and the third parties submit that the names, contact information, educational qualifications and work experience of individuals named in the proposal was provided to the City to demonstrate the consortium’s collective experience. Having regard to the above, I am satisfied that the information relating to named individuals appears in the proposal in a business or professional context.

The second question I must 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? I am of the view that disclosure of information relating to the employment or educational history of the individuals named in the records would reveal information of a personal nature about those individuals. In particular, disclosure of the information contained in the resumes and professional profiles, would reveal information relating to the individual’s education and employment history [as defined in 2(1)(b) of the *Act*]. In some cases, disclosure of the information contained in the resumes and professional profiles, could also potentially reveal the race, national or ethnic origin, colour, religion, age, sex, sexual

orientation or marital or family status of the individual, as defined in section 2(1)(a) of the *Act* as a result of disclosure of:

- the photographs featured in the professional profile;
- information relating to where an individual obtained their educational credentials;
and
- information relating to past or present associations with committees and boards.

In making my decision, I also took into account that the resumes and professional profiles contained in the record contain information about the named individual's educational and employment achievements for a time period that predates their employment with one of the companies forming the consortium. As a result, the historic nature of the information contained in the resumes and professional profiles differs substantially from the information contained in the records which identify key members having specific qualifications and experience relevant to the proposed project. Though this latter category of information identifies the names of fourteen individuals, the information relating to their titles and business contact information does not reveal something that is inherently personal.

I have adopted the same reasoning with respect to the individuals named as potential referees and providing the four reference letters contained on pages 212 to 216 of the records. Having reviewed the four reference letters, I am satisfied that the identification of the individuals named in these records relates solely to their business capacity. With respect to the individuals identified as willing to provide references to the City, I am also satisfied that the identification of these individuals relates solely to their business capacity.

Accordingly, I find that disclosure of the names of the individuals along with their title and business contact information would not reveal anything of a personal nature about the individuals. In making my decision, I also took into account that the individuals identified hold executive and management positions in the business community and as such, in many cases, the names, title and business contact information of the individuals in question are already publicly available by conducting a search of the companies' website directory. I find that this information is about individuals in a business rather than personal capacity and does not qualify as "personal information" within the meaning of section 2(1) of the *Act*. As a result, it can not qualify for exemption under section 14(1) of the *Act*.

However, I am satisfied that the information relating to the employment and educational history contained in the resumes and professional profiles of thirteen individuals constitutes "personal information" as defined by the *Act*. I am also satisfied that the paragraphs summarizing the employment history of two individuals on pages 32, 33 and 186 is information about the individuals in their personal capacity. Accordingly, I will go on to consider whether disclosure of this information qualifies for exemption under section 14(1) of the *Act*.

PERSONAL PRIVACY

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. In the circumstances of this appeal, it appears that the only exception that could apply is paragraph (f), which provides that exception to the section 14(1) exemption “if the disclosure does not constitute an unjustified invasion of personal privacy.”

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 14(1)(f). Sections 14(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Section 14(2) lists some criteria for the City to consider in making this determination and section 14(3) identifies certain types of information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. As well, section 14(4) identifies information whose disclosure is not an unjustified invasion of personal privacy. Section 14(4) does not apply in this case.

As stated above, one of the affected parties raised the possible application of the presumption found at section 14(3)(d) of the *Act*, which provides that a disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information “relates to employment or educational history.”

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 section 14(2). A section 14(3) presumption can be overcome, however, if the personal information at issue is caught by section 14(4) or if the “compelling public interest” override at section 16 applies. (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767). Information contained in resumes [Orders M-7, M-319, M-1084] and work histories [Orders M- 1084, MO-1257] falls within the scope of section 14(3)(d).

I am of the view that the resumes and professional profiles appended to the Expression of Interest as well as the employment summary of two individuals found on pages 32, 33 and 186 falls within the scope of section 14(3)(d) of the *Act*. In making my decision, I took into account that the resumes, professional profiles and summaries contain information in addition to the individual’s name and professional title. [Order P-216]

Disclosure of the personal information relating to the educational and employment of individuals, therefore, is presumed to constitute an unjustified invasion of privacy under section 14(3)(d) of the *Act*. As the appellant has not submitted representations nor raised the possible application of the public interest override in section 16 of the *Act*, I conclude that the personal information relating to the educational and employment information of individuals contained on pages 32, 33, 162 to 180 and 186 is exempt under section 14(1) of the *Act*.

THIRD PARTY INFORMATION

One or more of the parties have claimed the application of section 10(1)(a), (b) and (c) to the information remaining at issue. The relevant portions of section 10(1) 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, 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;

...

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, MO-1706].

For section 10(1) to apply, the institution and/or the third 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), (b), (c) and/or (d) of section 10(1) will occur.

Part 1: type of information

The City and the third parties submit that the information at issue contains commercial and financial information. This type of information has been described in prior orders as:

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].

I have considered the representations of the City and affected party, along with the records themselves, and find that the information at issue contains commercial and financial information. Accordingly, part one of the test has been met.

Part 2: supplied in confidence

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].

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].

I am satisfied that the information in the record has, in fact, been supplied to the City by the third parties.

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 [Order 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 [Order PO-2043]

The City submits that the information at issue was directly supplied by the third parties during a tendering process. The City advises that the Request for Expressions of Interest states:

The City is subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*. As a result, the City cannot guarantee that any information forwarded to the City can be held in confidence.

Proponents must identify in their Submission any information which they feel is confidential and which should remain confidential. Proponents must specify their reasons and those sections of the Act which support the confidentiality.

Confidential information must be included in a separate section of the Submission. This will facilitate the ability to make other parts of the Submission available to the public.

In all circumstances the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* will prevail.

The City advises that the consortium did not request that their submission be held in confidence, nor were any materials marked or submitted separately. The City, nonetheless, submits that the nature of some information contained in the Expression of Interest suggests that it was supplied in confidence.

The third parties submit that at the time they submitted the Expression of Interest, there was a reasonable expectation of confidentiality. The representations of one of the third parties state:

Much of the information contained in the Proposal is information which is not otherwise available to the public. For the most part, the Proposal contains information relating to the financial abilities of the Consortium, the Consortium's organization and structure and its experience. Accordingly, the proposal was supplied "in confidence".

Having reviewed the information at issue, along with the submissions of the parties, I am satisfied that the City has properly characterized the level of confidentiality that the third parties should reasonably have expected. The third parties cannot simply ignore the provision of the Request for Expressions of Interest quoted above. It clearly notifies third parties that any material provided by them to the City is subject to the provisions of the *Act* and that, as such, the

City could not guarantee its confidentiality. The parties were directed to identify those portions of their submission that should remain confidential. They chose not to follow this direction. I am therefore satisfied that the third parties cannot now claim to have a reasonable expectation that the entire submission was being supplied in confidence. However, I agree with the City that the third parties had a reasonable expectation that the City would not disclose financial information contained in the proposal that is not otherwise available to the public. Accordingly, part two of the test has been met for limited portions of the record.

Part 3: harms

To meet this part of the test, the institution and/or the third party 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. However, only in exceptional circumstances would such a determination be made on the basis of anything other than the records at issue and the evidence provided by a party in discharging its onus [Order PO-2020].

The third parties are not in agreement as to which portions of the remaining information at issue, if disclosed, would attract one of the harms contemplated in sections 10(1)(a), 10(1)(b) and 10(1)(c) of the *Act*. The third parties claim that disclosure of the information at issue could reasonably result in the harms set out in sections 10(1)(a) and 10(1)(c) of the *Act*. The City claims that section 10(1)(b) of the *Act* applies to the information at issue.

Representations of the parties

Section 10(1)(b)

The representations of the City state:

The City takes the position that significant harm would be caused to the public construction process if the information were no longer supplied. Specifically, staff and Council alike rely on the detailed financial information, personal references and other personal information contained in responses to [Requests for Expressions of Interest] RFEOIs and requests for proposals (RFPs), to evaluate expressions of interest and proposals. These details often form key components of the project being bid upon, and so the City must have this information available in order to make informed, fair evaluations in the public interest.

The third parties did not provide representations regarding the possible application of section 10(1)(b) of the *Act*.

Sections 10(1)(a) and 10(1)(c)

Only one of the third parties provided specific arguments along with its submission that some of the information at issue is exempt under sections 10(1)(a) and 10(1)(c) of the *Act*. The remaining two third parties provided general representations. For example, one third party's representations state:

If the financial and commercial information referred to below is disclosed, the Consortium will be prejudiced in terms of its competitive position in the marketplace. As private companies, the members of the Consortium rely upon information about their sources of capital and debt financing being kept confidential. This is especially the case since, to the extent that their competitors are also private companies, they are able to maintain confidentiality over their own information.

More importantly, however, disclosure of the Proposal will prejudice the Consortium's ability to successfully bid on other projects. The Consortium was the winning proponent for the facility. It has also been the winning proponent for a number of other facilities – all of which are referred to in the Proposal. The Consortium's success is partly the result of the knowledge, skill and expertise it has developed over time in crafting successful proposals. This Proposal amounts to a "blueprint" for how to structure and present a winning proposal. The marketplace for the kind of projects envisioned by the Proposal is highly competitive. If the Proposal is disclosed, it will become available to the Consortium's competitors, and they will be able to appropriate the Consortium's skill in crafting winning proposals to their own competitive advantage. By definition, that would be to the Consortium's detriment and prejudice, and would constitute the kind of harm envisaged by section 10(1) of the *Act*.

Another third party's representations state:

The disclosure of the information requested will harm our organization as our business strategies and methods for winning projects will be revealed, resulting in improper benefit for a person, business or organization that would compete with our organization on future projects.

In my view, the above noted representations speculate as to possible harm, as opposed to providing "detailed and convincing" evidence to establish a "reasonable expectation of harm". In this regard, the parties have failed to establish how disclosure of information relating to the financial institutions and debt financing companies it relied on to complete the project in question could reasonably be expected to significantly prejudice its competitive position or cause undue harm. Further, the fact that the proposal was the "winning bid" is not sufficient, on its own, to conclude that the information contained in the bid amounts to a "blueprint" and that disclosure would automatically give rise to the harms contemplated in sections 10(1)(a) and 10(1)(c) of the *Act*.

The most persuasive of the representations provided by the third parties specifies the exact information it is concerned about disclosing (the company's operating line of credit and the extent it is utilized) and provides details of the anticipated harm under sections 10(1)(a) and 10(1)(c), as follows:

If the sentence of the TD Bank letter objected to by our client were to be disclosed, it would prejudice our client's competitive position. Our client is constantly engaged in negotiating with prospective customers, joint venture and financial partners/investors and suppliers. One key aspect of such negotiations is the financial need of our client for the particular transaction being negotiated. The more stretched the other party knows our client is, the harder the other party will bargain to its own advantage and our client's prejudice. For example, a financier will seek a higher return on the debt/equity it is offering if it knows our client is financially extended. Conversely, knowledge of our client's financial strength may have an adverse impact on negotiations.

Analysis and Findings

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

The City's representations submit that disclosure of the information at issue would result in "detailed financial information, personal references and other personal information" and similar information no longer being supplied to the City where it is in the public interest that such information continues to be supplied so that the City can "make informed, fair evaluations in the public interest". The representations of the City, however, fail to make specific references to the type of evaluations that could be reasonably be expected to be compromised as a result of disclosure of the information at issue. Rather, the City's representations are generalized and highly speculative and do not satisfy the "detailed and convincing" evidentiary standard accepted by the Court of Appeal in *Ontario (Workers' Compensation Board)* (cited above).

In effect, the City is taking the position that companies will no longer provide the type of information that is necessary in order for the City to evaluate expressions of interest and proposals. In other words, companies will consciously submit incomplete or inadequate bids if they believe that certain information in those bids could become public. In my view, this is an exaggerated and entirely hypothetical proposition. Given the scope of projects put up for public bid, and the value of those projects, detailed and convincing evidence is required that companies will withdraw from the bidding process. That has not been provided.

Accordingly, I find that this exemption has no application to the circumstances of this appeal.

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

I have carefully considered the representations of the parties and the records at issue in this appeal. In my view, but for information relating to one of the third party's operating line of credit contained in a letter found at page 48, the evidence presented by the City and third parties

is couched in generalities and therefore does not satisfy the “detailed and convincing” evidentiary standard accepted by the Court of Appeal. Although specific pieces of information have been referred to, no guidance has been provided as to why that information meets the harms test set out in section 10(1). As a result, and in the absence of this work being done by the City and the affected parties, I am left to wade through over 200 pages of records to determine whether the third party information exemption applies to the information remaining at issue.

Power Point Handouts, pages 4 to 13

The City’s position is that the power point slide handouts, but for page 13, can be released to the appellant. Two of the third parties claim that all of the information contained in the handouts is exempt under section 10(1) of the *Act* and one of the third parties consents to the release of this information to the appellant. The information contained in this section describes in general terms the vision and capabilities of the consortium. Leaving aside page 13, the affected parties have not presented any evidence that would support their claim that disclosure of the information could reasonably be expected to result in the harms set out in section 10(1). The information contained in the power point presentation is the type of “high-level” generalities that one might expect from slides of this nature. With the exception of page 13, the slides do not lay out with any specificity the details of the project, including financing.

With regard to page 13, the City’s Request for Proposal required bidders to address debt financing for the project over and above the amount the City had raised. Accordingly, the handouts prepared by the consortium contain information relating to the amount of debt financing the consortium proposes the fourth member of the consortium will raise. The numbers added together represent the consortium’s estimated total cost of the project. I am of the view that disclosure of the specific costing estimate, including the amount of private financing required, is significant in relation to the consortium’s competitive position and could reasonably be expected to result in the harms contemplated in section 10(1)(a) of the *Act*. I will therefore order very limited severances from page 13 to protect this information from disclosure.

The third parties also submit that the mere identification of the fourth member of the consortium could reasonably be expected to prejudice significantly the consortium’s competitive position or result in an undue loss. The third parties also seek to withhold the identity of the debt finance company prepared to provide funding to the fourth member of the consortium. I, however, was not provided with specific representations as to how identification of the fourth member of the consortium and the primary debt financing company could reasonably be expected to result in one of the harms contemplated in sections 10(1)(a) and 10(1)(c). Rather, I was only advised that the identification of the fourth member of the consortium and its source of investment capital was not publicly known.

In order for the third parties to establish that disclosure of this information could reasonably be expected to result in one of the harms contemplated by sections 10(1)(a) and 10(1)(c), they would have to establish that disclosure of the identity of the two subject debt finance companies translates into revealing financial and commercial information relating to the financial health of the companies forming the consortium. Taking into account that the Request for Proposals

required the bids to address the issue of debt financing, I am of the view that disclosure of information identifying the debt finance companies could not reasonably be expected to result in the harms contemplated in sections 10(1)(a) and 10(1)(c) of the *Act*. Accordingly, I find that the information contained in the power point slides, except for limited portions of page 13, is not exempt under section 10(1) of the *Act*.

Executive Summary Section of the Expression of Interest, pages 15 to 19

The City and one of the third parties are prepared to release the information in this section to the appellant. Of the remaining two third parties, one submits that the entire summary is exempt under section 10(1) and the other submits that the reference to the fourth member of the consortium is exempt under section 10(1) of the *Act*.

For the reasons already stated above, I find that disclosure of information relating to the identification of the fourth member of the consortium is not exempt under section 10(1) of the *Act*. With respect to the remaining information contained in this section, I am not satisfied that disclosure of summary information relating to the consortium's bid and information identifying the names of companies the consortium proposes to handle their real estate, accounting, construction and debt financing services qualifies for exemption under section 10(1) of the *Act*. I note that the executive summary does not provide any financial details of the project. It simply identifies the parties that will provide debt financing. No evidence has been provided to me as to how the disclosure of only the identities of the parties involved in debt financing will result in the harms set out in section 10(1) of the *Act*.

Financial Capabilities Section of the Expression of Interest, pages 20-24

The City and one of the third parties submit that the information under the heading "Financial Capabilities" at page 20 should be disclosed to the appellant and two of the third parties object to disclosure of some or all of the information contained in this section. The parties objecting to disclosure submit that information identifying the fourth member of the consortium and its source of investment income discloses financial information which if disclosed could reasonably be expected to result in the harms contemplated in section 10(1)(a) and 10(1)(c) of the *Act*. For the reasons already stated, I disagree and find that information identifying the fourth member of the consortium and the proposed primary debt financing company is not exempt under sections 10(1)(a) and 10(1)(c) of the *Act*.

The City and the third parties submit that the four letters found at pages 21 and 24 qualify for exemption under the third party information exemption under the *Act*. The first letter is from the fourth member of the consortium. The second letter is a letter from the primary debt financing company. The third and fourth letters are from financial institutions. All of the letters are conditional offers stating an interest to provide debt financing for the project. The letters do not contain financial information relating to the consortium. Rather, they are expressions of interest in funding the proposed project. I have reviewed the letters and am satisfied that they do not contain financial information about the individual companies. Again, for reasons I have already stated, I am not satisfied that identification of corporate parties prepared to conditionally offer

debt financing services could reasonably be expected to prejudice significantly the consortium's competitive position or result in an undue loss.

Proponent Organization and Structure Section of the Expression of Interest, pages 25 to 31

The City's position is that the information contained in this section should be released to the appellant. One of the third parties agrees with the City's position and another submits that disclosure of the identity of the debt financing company could reasonably be expected to result in the harms contemplated in sections 10(1)(a) and 10(1)(c) of the *Act*. The remaining third party's position is that all the information contained in this section qualifies for the third party information exemption. I have reviewed the information at issue in this section and find that it does not qualify for exemption under sections 10(1)(a) and 10(1)(c) having regard to my findings above. In making my decision, I note that the information at issue identifies the four companies comprising the consortium and explains their roles and responsibilities related to the project. Also included is the contact information for key members of each company as well as information identifying a number of companies the consortium proposes will provide its real estate, accounting and business advice, commercial banking and long term debt financing services.

Demonstrated Experience Section of the Expression of Interest, page 32 to top of page 39

As noted above, I have found that the paragraphs summarizing the employment history of two individuals on pages 32 and 33 are exempt under section 14(1) of the *Act*. The descriptions summarize the individual's employment history and directs readers to refer to their resumes for additional information.

The third parties support the City's position that the remaining information in this section qualifies for the third party information exemption. The information in this section outlines the specific experience each member of the consortium brings to the consortium and identifies their collaboration on similar projects. The parties have failed, however, to explain how disclosure of this information could reasonably be expected to result in one of the harms contemplated in sections 10(1) of the *Act*. Accordingly, but for the information I found exempt under section 14(1) of the *Act* the remaining information in this section should be disclosed to the appellant.

Strategy and Vision for the Project Section of the Expression of Interest, bottom of page 39 to page 47

The City and one of the third parties submit that the information relating to the consortium's capital financing strategy contained on pages 39 to 42 in this section should be withheld from the appellant. The remaining third parties submit that none of the information in this section should be provided to the appellant. The information contained in this section describes the proposed facility and the consortium's long term vision and strategy, including capital financing. In describing the capital financing strategy, the records outline estimated building costs, the City's financial contribution and the amount of secured debt and equity the consortium proposes it can raise. As previously stated, the combined total of these amounts represents the estimated total

cost of the project. The remaining information at issue provides general information about the location, parking, public transportation, labour, marketing and schedule issues related to the facility.

I have reviewed the information at issue and find that, similar to the information found on page 13, limited portions of the information found on page 42 relating to the estimated cost of the project and how much of that cost will be contributed by identified sources, qualify for exemption under section 10(1)(a) of the *Act*. I have highlighted the portions of page 42 that qualify for exemption and order the City to disclose the remaining information on pages 39 to 47.

Appendix I - Financial Statements, pages 48 to 161

The City and the third parties agree that the information appended as Appendix I qualifies for exemption under section 10(1) of the *Act*. The appendix consists of two one page letters from a financial institution relating to two of the companies forming the consortium. The letters describe each individual company's available operating line of credit. The remaining records in this section consist of audited financial statements of one of the companies forming the consortium and the primary debt financing company. I am of the view that disclosure of information relating to a company's available operating line of credit contained in the letters could reasonably be expected to significantly prejudice the competitive position or result in undue loss. In reaching this decision, I am persuaded by the representations of the third party who submitted specific evidence as to the harm that would result from disclosure. Following this reasoning, I am also satisfied that the audited financial statements qualifies for exemption under section 10(1)(a) and 10(1)(c) as the financial statements contain information describe the company's income, retained earnings and cash flows for the fiscal year end. I have highlighted the portions of pages 48 and 49 that qualify for exemption under sections 10(1)(a) and 10(1)(c) and order the City to disclose the remaining information in the letters to the appellant.

Appendix II - Resumes of Key Team Members, pages 162-180

I have found that this information is exempt under section 14(1) of the *Act*. Accordingly, it is not necessary for me to determine whether this information is exempt under section 10(1) of the *Act* as well.

Appendix III - Corporate Information, pages 181 to 186

One of the third parties submits that the third party information exemption applies to the corporate backgrounder located at page 185. The City and the remaining third parties, including the third party to whom the corporate backgrounder relates, submit that this information should be disclosed to the appellant. I agree and find that disclosure of the corporate backgrounder, which contains general and historic information about the company does not attract any of the harms contemplated in section 10(1)(a) and 10(1)(c) of the *Act*.

The parties all oppose the release of the corporate backgrounder located at page 186, which relates to the fourth member of the consortium and the primary debt financing company. For reasons already stated, I am of the view that information identifying debt finance companies are not exempt under sections 10(1)(a) and 10(1)(c) of the *Act*. I, however, note that the two paragraphs I found exempt on pages 32 and 33 which summarized the employment history of two individuals are duplicated on page 186. Accordingly, the duplicated information on page 186 also qualifies for exemption under section 14(1) of the *Act*.

Appendix IV - Relevant Projects, pages 187 to 211

The City's position is that the information contained in the Relevant Projects section of the Expression of Interest should be released to the appellant. One of the affected parties submits that any references relating to costs should be withheld from the appellant under sections 10(1)(a) and 10(1)(c) of the *Act*. I am of the view that disclosure of the cost information, which is the average total cost of each relevant project, all of which have been completed, could not reasonably be expected to significantly prejudice the competitive position or result in undue loss. Accordingly, I find that this information is not exempt under the *Act*.

Appendix V - Reference Letters, pages 212 to 216

As noted above, the parties submit that the information contained in the reference letters is exempt under the personal privacy provisions of the *Act*. However, I have found that this information was not exempt under section 14(1) of the *Act*. One of the third parties submits that the reference letter found at page 216 is also exempt under section 10(1) of the *Act*. I disagree on the basis that the reference does not reveal commercial or financial information that, if disclosed could reasonably be expected to result in one of the harms contemplated in sections 10(1)(a) and 10(1)(c) of the *Act*. Rather, the reference letter at issue provides a general description of a project successfully completed by one of the companies forming the consortium.

Appendix VI - Declaration Letters, pages 217 to 221

I have found that the names of the individuals listed in the declaration letters did not constitute "personal information" as defined in section 2(1) of the *Act*. None of the parties have claimed that the third party information exemption applies to this information. I find it is not exempt from disclosure.

ORDER:

1. I uphold the City's decision to withhold access to the portions of the records I found exempt under section 14(1) of the *Act* (portions of pages 32, 33, 186 and the resumes and professional profiles at pages 162 to 180). For the sake of clarity, I have highlighted the portions of the record the City is to withhold from the appellant on pages 32, 33 and 186.

2. I uphold the City's decision to withhold access to the portions of records I found exempt under sections 10(1)(a) and 10(1)(c) of the *Act* (portions of pages 13, 42, 48 and 49 and the financial statements at pages 50 to 160). For the sake of clarity, I have highlighted the portions of the record the City is to withhold from the appellant on pages 13, 42, 48 and 49.
3. I order the City to disclose the remaining information to the appellant no later than April 4, 2008 but not before March 31, 2008.
4. In order to verify compliance with this order I reserve the right to require the City to provide me with a copy of the record disclosed to the appellant pursuant to Provision 3 upon my request.

Original Signed by: _____
Brian Beamish
Assistant Commissioner

February 27, 2008 _____