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

ORDER MO-2591

Appeal MA09-322

City of Ottawa

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BACKGROUND

The City of Ottawa is designated as a delivery agent under the *Day Nurseries Act* as well as a Consolidated Municipal Service Manager responsible for planning and managing child care services at the local level. Annual budget submissions are required from all child care agencies holding a Purchase of Service (POS) Agreement and Service Contract for subsidized child care spaces with the City of Ottawa. The budget information is used to examine the child care agency's costs in providing care and determine the "per diem" rate paid to child care agencies for subsidized spaces for each of their programs.

NATURE OF THE APPEAL:

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

> All correspondence, letters and e-mails exchanged between [the City] (including Child Services Division) and [a named daycare] between June 25, 2008 and the present, including all documents submitted by [the named daycare] in support of their budget and the utilization of subsidies, and any legal agreements between [the City] and [the named daycare].

The City provided an estimated fee for access to the records in the sum of $145.00. The requester paid a deposit towards the estimated fee. The City then identified responsive records and notified a third party (affected party A) under section 21(1) of the *Act*, seeking its' position on disclosure. Upon receipt of affected party A's objection to the disclosure of any of its information, the City issued its access decision. Notwithstanding the objection of affected party A, the City decided to grant partial access to the responsive records. The City relied on sections 10(1)(a), (b) and (c) (third party information) and 14(1) (invasion of privacy) of the *Act* to deny access to the portion it withheld. The requester then paid the balance of the fee and the City provided the requester with the portions of the records it decided to disclose.

The requester (now the appellant) appealed the City's decision to deny access to the withheld portions of the responsive records.

At mediation, after receiving a copy of one of the records that the City had not initially located, the appellant advised that he is only seeking access to page 77 of the records, which was withheld in full, as well as the information severed from page 34. As a result, the application of section 14(1) is no longer at issue in the appeal. The appellant also took the position that disclosure of the withheld information he seeks is in the public interest, thereby raising the possible application of the public interest override at section 16 of the *Act*. Affected party A maintained its objection to the release of its information.

As the matter was not resolved at mediation, it was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

I commenced the inquiry by sending a Notice of Inquiry setting out the facts and issues in the appeal to the City, affected party A and another affected party whose interests may be affected by disclosure (affected party B). Only the City and affected party A provided representations in response to the Notice of Inquiry. I then sent a Notice of Inquiry to the appellant along with the non-confidential representations of the City and affected party A. The appellant provided representations in response. I determined that the appellant's representations raised issues to which the City and the affected parties should be given an opportunity to reply. Accordingly, I sent a letter to the City and the affected parties inviting reply representations. Only the City and affected party A provided reply representations.

RECORDS

Remaining at issue in this appeal is the information severed from page 34, which is a portion of a budget submission and all of page 77, being a Memorandum of Understanding (MOU).

DISCUSSION:

THIRD PARTY INFORMATION

The City and affected party A claim that the information severed from page 34 and all of page 77 qualify for exemption under the mandatory exemptions in sections 10(1)(a), (b) and (c) of the *Act*.

Sections 10(1)(a), (b) and (c) read:

> 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; or
>
> (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.)], leave to appeal dismissed, Doc. M32858 (C.A.)]. 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 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 or financial 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) and/or (c) of section 10(1) will occur.

Part 1: type of information

The types of information listed in section 10(1) have been discussed in prior orders:

> *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 reviewed the withheld information and I find that it qualifies as commercial and/or financial information for the purposes of section 10(1) of the *Act*. As a result, I find that the City and affected party A have satisfied Part 1 of the three part test for the application of the section 10(1) exemption.

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].

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 the third party, even where the contract is preceded by little or no negotiation or where the final agreement reflects information that originated from a single party. This approach was approved by the Divisional Court in *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, cited above. [See also Orders PO-2018, MO-1706, PO-2496, upheld in *Grant Forest Products Inc. v. Caddigan*, [2008] O.J. No. 2243 and PO-2497, upheld in *Canadian Medical Protective Association v. John Doe,* [2008] O.J. No. 3475 (Div. Ct.)].

There are two exceptions to this general rule which are described as the "inferred disclosure" and "immutability" exceptions. The "inferred disclosure" exception applies where disclosure of the information in a contract would permit accurate inferences to be made with respect to underlying non-negotiated confidential information supplied by the affected party to the institution. The "immutability" exception applies to information that is immutable or is not susceptible of change, such as the operating philosophy of a business, or a sample of its products. [Orders MO-1706, PO-2384, PO-2435, PO-2497 upheld in *Canadian Medical Protective Association v. John Doe*, (cited above)].

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 [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 [Orders PO-2043, PO-2371, PO-2497].

The City states that affected party A supplied the information to the City as part of the City's 2008 POS Budget Submission process. The City explains:

> The budget breakdown on page 34 of the responsive records was provided by [affected party A] to the City. "Approved" budgets are adjustments made by the City to the budget that was requested by [affected party A]. The City then uses the "approved" budget to calculate the per diem rate to be paid to [affected party A]. The City determines the reasonableness of the budget information so as to ensure that the agencies to which the City extends funds are held accountable. Page 77 of the responsive records was provided by [affected party A] to fulfill a City requirement that [affected party A] provide a copy of the most recent lease/mortgage as the monetary figure included supports the "occupancy cost" for 2008 line of the budget breakdown.

The City submits that the information at issue was supplied by affected party A to the City in confidence. The City submits that entities like affected party A would understand that the detailed financial and commercial information contained in these records was collected for the purposes of processing their application and managing the POS program. The City submits that in this context, affected party A reasonably contemplated that financial and commercial information would only be used for the calculation of the maximum day care funding to be provided by the City. The City submits that the records were clearly prepared for a purpose that would not involve disclosure.

The City further explains:

> Page 77 in particular serves the limited purpose of supporting the occupancy cost in the budget submission and the City was not involved in the production of this document nor does this document reference the City. The information has been treated consistently as confidential by the City. During the process child care specialists store the file in a secure area that is not accessible by the public, and after the process is complete the file is stored in a secure area accessible only by staff requiring access to the file.

Affected party A submits that the information at issue in the appeal was supplied to the City on the explicit and/or implicit understanding of confidentiality. In particular, it submits that the MOU set out at page 77 is a private contractual agreement which discloses matters that go beyond what was strictly required by the City. Similarly, it submits that the severed information in page 34 relates to detailed confidential expenditures of affected party A pertaining to the operation of a daycare, "which was supplied to the City of Ottawa with the expectation that confidentiality of the information would be respected."

The appellant takes the position that there is no evidence that affected party A had a reasonable expectation of confidentiality when the information at issue was provided. Furthermore, the appellant submits that the City did not treat this information as confidential when it was received. In support of this assertion the appellant submits that:

- the information was not identified as confidential when it was provided. While the City identifies confidential documents with a label "Confidential", none of the records at issue were labeled as "Confidential".

- affected party A is a not-for-profit corporation and its expenditures are consistently disclosed in a financial statement that is released publicly to its "membership".

- the information was prepared for the purpose of acquiring a subsidy funded by the taxpayer, "which would entail disclosure".

In reply, the City submits that the appellant's assertion that it identifies confidential documents with a label "Confidential" is a generalization that may apply to some but not all business processes at the City. The City submits that during the 2008 POS Budget Submission process:

> … [i]t did not have a practice or procedure that involved labeling or marking as confidential the types of records that are subject to this appeal. Rather, it was implicit at the time the information was collected that it would be kept in confidence by the City and only used for the purpose of approving the budget and calculating the subsidy.

The City submits that the exempted data on the budget information sheet and the MOU were obtained by the City in order to calculate and approve a subsidy, and not for any purpose that would involve disclosure. It reiterates its position that the information was treated as confidential. The City explains:

> The City has not disclosed the information that is subject to this appeal and has consistently treated the subject information in a manner that indicates a concern for its protection from disclosure. Child care specialists store Budget Process files in a secure area that is not accessible by the public. The following year, when the process begins anew, these files are transferred to a secure area only accessible by those who require access to the files for the performance of their job. After two years, these files are transferred into an off-site storage area. Only designated City staff that require access to these files have the ability to recall these files from the off-site storage area.

Affected party A submits in reply that the information at issue was provided on the implicit understanding that it would not be disclosed. It submits that the information on page 34 is very detailed and sensitive. With respect to the appellant's assertion that the pages should have been labeled "Confidential", affected party A submits:

> … the individuals concerned are unsophisticated laypersons who were not aware that documents had to be labeled confidential for the documents to be treated as such and in fact the legislation does not require it. The fact of the matter was that they expected confidentiality due to the nature of the disclosure. Detailed

> financial information was taken by the City of Ottawa consistently as confidential information. This was understood by [affected party A].

With respect to the allegation that it does not treat the information at issue confidentially, affected party A submits that:

> The information is released to its membership only - it is not public information. The appellant would appear to be confusing the membership of affected party A with the public.

Analysis and Findings

I accept the evidence of the City and affected party A and I find that the information on page 34 and the MOU was supplied by affected party A to the City with a reasonably held implicit expectation that it would be treated in confidence. The fact that there is no explicit notation of confidentiality does not displace this finding. It is not necessary that a document to be marked confidential for a finding that it was supplied with a reasonable expectation of confidentiality [see in this regard Order PO-2283]. Finally, I accept the submission of affected party A that sharing the information with its membership does not displace the implicit expectation of confidentiality that existed when it supplied the information in page 34 and the MOU to the City.

As a result, I find that the City and affected party A have satisfied Part 2 of the three part test for the application of the section 10(1) exemption.

Part 3: Harms

General principles

To meet this part of the test, the institution and/or affected party A 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]. Parties should not assume that harms under section 10(1) are self-evident or can be substantiated by submissions that repeat the words of the *Act* [Order PO-2435].

The need for public accountability in the expenditure of public funds is an important reason behind the need for "detailed and convincing" evidence to support the harms outlined in section 10(1) [Order PO-2435].

Representations

In support of its assertion that disclosure could reasonably be expected to result in the harm contemplated by section 10(1)(a), the City submits that the MOU is a legal agreement between affected party A and affected party B that is "likely of central importance to the operation of [affected party A] and may be re-negotiated in the future." With respect to the information on page 34, the City submits that it is possible that a competitor may replicate that budget breakdown and that it is possible that disclosure of the withheld information could result in someone using the information to interfere with the operations of affected party A.

With respect to the section 10(1)(b) harms, the City submits that:

> It is in the public interest that the City continue to collect detailed financial and commercial information in order to efficiently and accurately calculate subsidies and provide proper oversight of the expenditure of funds on Day Care services. The City submits that third parties may be reluctant to supply the City with detailed information in the future if their detailed financial and commercial information were to be available to the general public.

With respect to the harms under section 10(1)(c), the City refers to its submissions on section 10(1)(a) and asserts that, for the same reasons, disclosing the information could reasonably be expected to cause undue loss to affected party A and undue gain "to the person, group of persons, or organization that would exploit" affected party A's information. The City submits that:

> Although licensed Day Cares do not operate on a for-profit basis, the quality of Day Care services could diminish or the operation could entirely cease if it could not compete with other Day Cares.

Affected party A submits that disclosing the information to third parties, such as affected party A's competitors, would harm its operation "in that the information could be analyzed and ratios obtained therefrom." It submits that the withheld information represented a breakdown of the financial information in support of the budget:

> … [that] was compiled as a result of the management's efforts to balance the costs of operating the daycare for the year in question. Thus the information included sensitive figures such as the payroll and third party contracts for the various services rendered to the operation of the daycare and other sensitive information.

In the confidential portion of its representations, affected party A provides additional grounds in support of its position that disclosure of the information at issue would cause the section 10(1)(a) and (c) harms alleged. In summary and without revealing the particulars of those submissions, affected party A's position is that disclosure of the withheld information would significantly prejudice its competitive position and significantly interfere with future contractual relations and negotiations.

With respect to the harms under section 10(1)(b), affected party A submits that the information may never have been submitted to the City if affected party A thought that it would be disclosed to "an outsider". Affected party A submits that this is more significant in this case because it believes that the same requester has recently requested more information from the City for a subsequent time period. Affected party A submits that "it would seem that it will be an unending process which is interfering significantly with the operation of [affected party A] and its viability." Affected party A believes that the information is requested as "a fishing expedition by some third party whose sole purpose is to bring down [affected party A] as a viable operation." It submits that if it ceases operations "the children and their parents will be the first to suffer as a result."

The appellant submits that affected party A is a not-for-profit corporation which receives significant subsidies funded by the taxpayer. A disclosure of losses, the appellant submits, will simply result in more subsidies to affected party A. Furthermore, a disclosure of profits will "entail better competitiveness." The appellant submits that in both cases the disclosure does not prejudice the competitive position of affected party A. With respect to the particular information at issue in this appeal, the appellant submits:

> The disclosure does not interfere with the contractual agreement [on] page 77, since the contract is with a charitable organization whose financial position is completely open, published in details on Revenue Canada Website and is subject to public scrutiny.

The appellant further submits that disclosing this information would not prevent similar information from being supplied "since the information is not supplied voluntarily. It is a requirement that affected party A submit the information to continue receiving the Government support."

In reply, the City submits that the Canada Revenue Agency website contains tax returns for registered charities, including the 2008 tax return for affected party B. The City submits:

> Although this document is not in the custody or control of the City, to the best of the knowledge of the City the information contained in the [MOU at] page 77 is not available on the Revenue Canada Website in the same level of detail.

The City acknowledges that it has certain leverage over affected party A and other day cares to continue to supply financial and commercial information due to its ability to add pre-conditions to its approval of subsidies. The City explains:

> The Ministry of Children and Youth Services Child Care Service Management Guidelines require that the City ensure that funds are used in accordance [with] the ministry's policies, procedures and guidelines, monitor the use of funds with service providers on an annual basis, reconcile service provider use of funds as required; and meet service targets. Although the budget information is not required by statute, the City requires the detailed budget information of day cares in order for it to meet these provincial requirements The City defers to the

> representations of [affected party A] as to whether the harm would result in [affected party A] no longer providing detailed financial and commercial information to the City.

In reply, affected party A submits that while income and expenses are disclosed to Revenue Canada its contractual agreements are private documents that are not disclosed to Revenue Canada. Affected party A submits that it is entitled to keep the information at issue confidential and "does not have to provide any information to the City of Ottawa which includes full documents between it and third parties."

Analysis and Finding

In reply, affected party A acknowledged that the withheld information on page 34 represented a breakdown of the financial information in support of a budget "for the year in question", being 2008. It is not clear to me how releasing those figures now could reasonably be expected to cause the section 10(1)(a), (b) or (c) harms alleged. Furthermore, the submission that "information could be analyzed and ratios obtained therefrom" fails to go the extra step to explain how knowledge of the "ratios" could then reasonably be expected to cause the harms alleged. Similarly, the City's bald allegation that disclosing the withheld information on page 34 "could result in someone using detailed information to interfere with the operations of affected party A" is not sufficient without providing additional detailed and convincing evidence as to how that result could reasonably be expected to occur. Finally, the allegation that affected party A "may" not have provided the information on page 34 if it was aware the information would be disclosed ignores the reality that the provision of the information at page 34 was required to obtain financial support from the City. In my view, the City and affected party A failed to provide sufficient evidence to demonstrate that revealing the withheld information on page 34 could reasonably be expected to result in it, or other day cares, not providing the same type of information to the City to obtain financial support in the future. I find therefore that the City and affected party A have failed to provide sufficient evidence to demonstrate that disclosing the information contained in page 34 could reasonably be expected to cause the section 10(1)(a), (b) or (c) harms alleged.

I do find however, that affected party A has provided sufficiently detailed and convincing evidence to establish that disclosing the MOU would cause the type of harm contemplated by section 10(1)(a). The MOU is a private agreement that sets out certain rights and obligations between affected party A and affected party B. In that regard, I accept the confidential submission of affected party A that disclosing the MOU could reasonably be expected to interfere significantly with its future contractual negotiations. As I have found that section 10(1)(a) harms may be expected to occur it is not necessary to also consider whether disclosing the MOU could also reasonably be expected to cause the section 10(1)(b) and/or (c) harms alleged.

As a result, I find that the City and/or the affected party have only satisfied the three-part test under section 10(1) with respect to the MOU. Accordingly, as no other mandatory exemptions apply to it, I will order that the withheld information on page 34 be disclosed to the appellant.

I will now address the appellant's argument that it is in the public interest that the MOU be disclosed.

PUBLIC INTEREST

Section 16 states:

> 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]

For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

The *Act* is silent as to who bears the burden of proof in respect of section 16. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 16 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption. [Order P-244]

Compelling public interest

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Orders P-984, PO-2607]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, 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 [Orders P-984 and PO-2556].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347 and P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

The word "compelling" has been defined in previous orders as "rousing strong interest or attention" [Order P-984].

Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)]. If there is a significant public interest in the non-disclosure of the record then disclosure cannot be considered "compelling" and the override will not apply [Orders PO-2072-F and PO-2098-R].

A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations [Orders P-123/124, P-391 and M-539]

- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations [Orders P-532, P-568, PO-2626, PO-2472 and PO-2614]

- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter [Order P-613]

- the records do not respond to the applicable public interest raised by the appellant [Orders MO-1994 and PO-2607]

Purpose of the exemption

The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with 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.)]

The City submits that there is no compelling public interest in disclosure of the information that would outweigh the purpose of applying section 10(1)(a). The City submits that it has disclosed affected party A's total budget figures, audit statements, and correspondence with the City. Considering the extent of the information that it has disclosed, the City submits that the appellant has been provided with sufficient information to determine how the City's POS Budget Submission process was applied to affected party A for the time period in question as well as to quantify the expenditure of public funds. The City further submits that there is no public health and safety or environmental protection interest in the disclosure of the exempted record. For these reasons, the City takes the position that there is no compelling public interest in disclosure of the MOU.

Furthermore, the City submits that even if there was a compelling public interest in disclosure it could not clearly outweigh the purpose of protecting affected party A's commercially valuable information, "that consists of a legal agreement to which the City is not a party".

Finally, in its reply representations on harms the City submits that it is in the public interest that it receive and retain as detailed and accurate information as possible so that it can properly account for the expenditure of public funds.

The appellant submits that the fee per child (or per space) at affected party A's day care is based on the expenses incurred along with the subsidy provided by the "taxpayer funding" of affected party A's daycare operation. The appellant asserts that it is in the public interest to know the basis for the fees charged by affected party A, and whether subsidy funds paid by the public are effectively utilized in "bringing the fees down."

The appellant elaborates as follows:

> The information on the expenses - which is directly linked to the public subsidy - is important for the public in making political choices. When it comes to [the] Daycare support issue, political parties in Canada generally adopt two approaches: One party would provide the financial support directly to qualified parents, the other party would provide support - as in the current situation - to the Daycare institution. The disclosure of information in this inquiry, would enlighten the citizen about the merits of parental support versus the institutional support, thus making the appropriate political choice.

Finally, the appellant submits that because the MOU is between a business entity and a charity, "an issue of general interest is raised here concerning possible involvement of charitable organization in business operations."

In reply, the City submits that it has been transparent in showing how subsidies were calculated and approved for affected party A. In any event, the City says, the operational transparency of affected party A and/or affected party B is not a relevant consideration in the analysis. The City takes the position, therefore, that disclosure of detailed financial and/or commercial information pertaining to affected party A "adds only minimal additional transparency to the City Budget Process."

The City adds:

> The City submits that information contained in the responsive records to this access to information request is limited to a single day care and as such could not possibly enlighten the public as the merits of "parental support versus institutional support". The City respectfully submits that in determining the applicability of the compelling public interest section of *MFIPPA*, the purpose of protecting financial and commercial information of third parties must be balanced with the public interest in ensuring the City conducts necessary due diligence in reviewing subsidy applications. The City submits that the decision to disclose all records except detailed data on the budget information sheet and legal lease type document represents an appropriate balance in that it allows the Appellant to verify that the Budget Process was followed while protecting the financial information of [affected part A] and the details as to the legal/financial relationship between [affected party B] and [affected party A].

With respect to the appellant's final submission, affected party A submits in reply that:

> … the appellant seems to be confusing "business" with not-for-profit business, in that the appellant refers to the operations of [affected party A] as a business. [Affected party A] as the appellant is well aware is a not-for-profit business and not a business. [Affected party B] is a charity and all its operations are carried out accordingly. However, again the appellant would appear to be confused in that the Appellant does not appear to realize that [affected party B] and [affected party A] are two separate legal entities - not that this is relevant in this case, as [affected party A] is also a not-for-profit business.

Analysis and Finding

I accept that there may be a public interest in information pertaining to day care funding generally. However, in the circumstances of this appeal in my view the interests being advanced with respect to access to the MOU are essentially private in nature [Orders P-347 and P-1439].

I further find that any compelling public interest present in this appeal does not clearly outweigh the purpose of the section 10(1)(a) exemption claim. I have reached this finding based on the following reasons:

- I have ordered that the information withheld from page 34 be disclosed;
- the City had already disclosed a great deal of information to the appellant pursuant to his request in order to determine how the City POS Budget Submission process was applied to affected party A for the time period in question and to quantify the expenditure of public funds;
- I found above that disclosing the MOU could reasonably be expected to interfere significantly with its future contractual negotiations.

Accordingly, the public interest override at section 16 does not apply.

ORDER:

1. I order the City to disclose the withheld portion of page 34 to the appellant by sending it to him by **March 3, 2011** but not before **February 25, 2011**.

2. I uphold the decision of the City not to disclose page 77 to the appellant.

3. In order to verify compliance with provision 1 of this order, I reserve the right to require the City to provide me with a copy of page 34 as disclosed to the appellant.

Original signed by: January 27, 2011
Steven Faughnan
Adjudicator