Information and Privacy Commissioner,
Ontario, Canada

Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-3489

Appeal PA13-379

Lakeridge Health

May 12, 2015

Summary: The appellant made a request to the hospital for records relating to an RFP for pre-mixed IV solutions, including scoring information and other records related to the procurement process. The hospital notified the successful proponent and two unsuccessful proponents of the RFP and then issued a decision withholding information on the basis of the mandatory third party information exemption in section 17(1). The appellant raised the issue of the possible application of the public interest override in section 23 of the *Act*. In this order, the adjudicator upholds the hospital's decision in part, and orders it to disclose some of the affected parties' information. The adjudicator also finds that section 23 does not apply as the disclosure of the information subject to section 17(1) would not serve the purpose of shedding light on the public interest identified.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 17(1) and 23.

Orders and Investigation Reports Considered: MO-2403, MO-2627, MO-2927, MO-3058-F, P-1173, PO-1705, PO-2435, PO-2755, PO-2853 and PO-3062-R.

BACKGROUND:

[1] After conducting a Request for Proposal (RFP) through a group procurement process, a number of hospitals, which included the Lakeridge Hospital (the hospital), contracted with an organization to provide it with prepared intravenous solutions of two chemotherapy drugs. As a result of this, in 2013, it was reported that due to a diluted

chemotherapy medication error, more than 1,200 patients at five hospitals received doses of two chemotherapy drugs that were weaker than doctors had prescribed over the course of about a year. This controversy has received significant media coverage.

[2] The appellant made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the hospital for records relating to this competitive procurement process for pre-mixed IV solutions and for contracts with suppliers of compounding ingredients. The appellant later narrowed her request to include only:

- The scores for each of the three bids received
- All other notes, emails, letters or other documentation related to the competitive procurement process – including correspondence between a named company and the hospital, a named company and three bidders and three bidders and the hospital
- Records showing the amount of supplies ordered from the compounding companies, what products/materials were compounded together in hospital, why the compounding was done and the size of batches of compounded products made with these supplies.

[3] In response, the hospital issued a partial decision regarding access to the first and third parts of the request. With regard to the second part of the request, the hospital advised the requester that it was required to notify a number of third parties whose interests may be affected by the disclosure of the records (the affected parties) under section 28 of the *Act*. After reviewing the affected parties' submissions in response to the notice, the hospital granted partial access to the responsive records to the appellant. The hospital advised that portions of the records were withheld under the mandatory third party information exemption in section 17(1) and that other portions of the records were not responsive to the appellant's request.

[4] The appellant appealed the hospital's decision, citing the possible application of the public interest override in section 23 of the *Act* to the information at issue.

[5] At mediation, the hospital revised its decision regarding disclosure of employees' names and disclosed this information, which it previously identified as not responsive, to the appellant. Accordingly, this information is not at issue in this appeal.

[6] During the inquiry into this appeal, the adjudicator sought representations from the hospital and four affected parties. The hospital advised that it had no representations to make regarding its access decision. One of the affected parties advised that it wished to rely on its representations made in appeal PA13-281. Two of

the affected parties did not respond.[1] The fourth affected party submitted representations.

[7] The adjudicator also sought and received representations from the appellant. The parties' representations were shared in accordance with section 7 of this office's *Code of Procedure* and *Practice Direction 7*. The appeal file was then assigned to me to complete the order.

[8] For the purposes of this order, the four affected parties are identified as follows:

- Affected party 1: the organization that conducted the RFP
- Affected party 2: the winning proponent
- Affected party 3: the first losing proponent
- Affected party 4: the second losing proponent

[9] In the discussion that follows, I uphold the hospital's decision, in part.

RECORDS:

[10] The records at issue consist of the withheld portions of the following three records:

- Scoring Participation by Members for RFP WS10863 (4 pages) – **RECORD 1**

- Sterile Preparation Compounding Services: Excerpts from Pharmacy Committee Meetings/Conference Calls Minutes (9 pages) – **RECORD 2**

- WS10863 Scoring (5 pages) – **RECORD 3**

[11] I have labelled these records as Records 1, 2 and 3 for the purposes of my discussion below.

ISSUES:

A. Can an affected party claim the application of section 18(1) to the records when the hospital has not?

B. Does the mandatory exemption at section 17(1) apply to the records?

[1] Specifically, Affected parties 1 and 2 did not provide representations in this appeal.

C. Is there a compelling public interest in the disclosure of the records that clearly outweighs the purpose of the section 17(1) exemption as contemplated by section 23?

DISCUSSION:

A. Can an affected party claim the application of section 18(1) to the records when the hospital has not?

[12] In its representations, Affected party 3 claimed the application of section 18(1)(c) and (d) to the records at issue. The affected party submits that disclosure of the pricing and value-added benefit information in the records could reasonably be expected to prejudice the hospital's (and other hospitals) economic interests, and could be injurious to the Government of Ontario's financial interests.

[13] The purpose of section 18 is to protect certain economic interests of institutions. Generally, it is intended to exempt commercially valuable information of institutions to the same extent that similar information of non-governmental organizations is protected under the *Act*.

[14] I note that the hospital did not claim the application of section 18(1) to the information remaining at issue. In appeals, where a party other than the institution raises the possible application of a discretionary exemption, the adjudicator must consider the purposes of the *Act* and the circumstances in the particular appeal. Accordingly, I must consider the rationale in the finding in Order PO-1705, where former Assistant Commissioner Tom Mitchinson stated the following:

> During mediation, the third party raised the application of the sections 13(1) and 18(1) discretionary exemption claims for those records or partial records Hydro decided to disclose to the requester. The third party also claimed that Hydro had improperly considered, or neglected to consider, these discretionary exemptions in making its access decision.
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> This raises the issue of whether the third party should be permitted to raise discretionary exemptions not claimed by the institution. This issue has been considered in a number of previous orders of this Office. The leading case is Order P-1137, where former Adjudicator Anita Fineberg made the following comments:
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> > The *Act* includes a number of discretionary exemptions within sections 13 to 22 [of the provincial *Freedom of Information and Protection of Privacy Act*, the equivalent of sections 6 to 16 of the *Act*] which provide the head of an institution with the discretion to refuse to disclose a record

> to which one of these exemptions would apply. These exemptions are designed to protect various interests of the institution in question. If the head feels that, despite the application of an exemption, a record should be disclosed, he or she may do so. In these circumstances, it would only be in the most unusual of situations that the matter would come to the attention of the Commissioner's office since the record would have been released.
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> The *Act* also recognizes that government institutions may have custody of information, the disclosure of which would affect other interests. Such information may be personal information or third party information. The mandatory exemptions in sections 21(1) and 17(1) of the *Act* respectively are designed to protect these other interests. Because the Office of the Information and Privacy Commissioner has an inherent obligation to ensure the integrity of Ontario's access and privacy scheme, the Commissioner's office, either of its own accord, or at the request of a party to an appeal, will raise and consider the issue of the application of these mandatory exemptions. This is to ensure that the interests of individuals and third parties are considered in the context of a request for government information.
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> Because the purpose of the discretionary exemptions is to protect institutional interests, it would only be in the most unusual of cases that an affected person could raise the application of an exemption which has not been claimed by the head of an institution. Depending on the type of information at issue, the interests of such an affected person would usually only be considered in the context of the mandatory exemptions in section 17 or 21(1) of the *Act*.

[15] I adopt the rationale in Orders P-1173 and PO-1705. It is evident to me from the way the hospital has severed the records, that it carefully considered its decision to disclose certain information. I assume that this consideration also included an examination of the possible harms that disclosure may have on its own interests. I find that Affected party 3 has not established that this appeal is one of those unusual cases where it should be permitted to raise the issue of the application of section 18(1) when the hospital has exercised its discretion to not to claim it. Accordingly, I will not be considering the application of section 18(1)(c) and/or (d) to the information at issue.

B. Does the mandatory exemption at section 17(1) apply to the records at issue?

[16] Section 17(1) states, in part:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,
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> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
>
> (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

[17] Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[2] Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.[3]

[18] For section 17(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

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[2] *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.) (*Boeing Co.*).
[3] Orders PO-1805, PO-2018, PO-2184 and MO-1706.

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 17(1) will occur.

Part 1: type of information

[19] The appellant does not dispute that the records at issue contain the types of information protected under section 17(1). Based on my review of the records, I find that they contain both commercial and financial information. These terms have been defined in past orders as follows:

> *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.[4] The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.[5]
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> *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.[6]

[20] The information at issue relates to the RFP and purchase of pre-mixed IV solutions by the hospital from Affected party 2. The description of the goods and services to be provided by the affected parties is also contained in the information at issue. This information clearly fits within the definition of commercial and financial information as defined in past orders of this office. I find that part 1 of the test has been met for the information at issue.

Part 2: supplied in confidence

Supplied

[21] The requirement that the information was "supplied" to the institution reflects the purpose in section 17(1) of protecting the informational assets of third parties.[7]

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[4] Order PO-2010.
[5] Order P-1621.
[6] Order PO-2010.
[7] Order MO-1706.

[22] 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.[8]

In confidence

[23] In order to satisfy the "in confidence" component of part two, 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.[9]

[24] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, all the circumstances of the case are considered, 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 by the third party in a manner that indicates a concern for confidentiality
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure.[10]

[25] Affected party 3 submits that it supplied its information to the hospital in confidence and it relies upon past decisions of this office that found that proposals submitted in response to a call for tenders are considered to have been supplied in confidence for the purposes of section 17(1).

[26] Based on my review of the records, I find that the disclosure of Record 1 would not reveal information that would disclose information supplied by any of the affected parties, nor would disclosure permit an accurate inference to be made as to the information supplied by the affected parties. Record 1 contains the scoring members' comments about the affected parties' RFP submissions. These comments only contain the members' opinions about the submissions and do not describe the information supplied by the affected parties. As the information in this record was not supplied for

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[8] Orders PO-2020 and PO-2043.
[9] Order PO-2020.
[10] Orders PO-2043, PO-2371 and PO-2497, *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC); 298 DLR (4th) 134; 88 Admin LR (4th) 68; 241 OAC 346.

the purposes of section 17(1), and all three parts of the test must be met in order for the information to be exempt, I will order that Record 1 be disclosed to the appellant.

[27] Record 2 contains the minutes of the scoring members' meetings about the RFP, the supply of drugs and the affected parties' submissions in response to the RFP. While some of the withheld information in the minutes contains information where the supplied commercial information may be inferred, I find that neither the hospital nor the affected parties has established that the majority of the withheld information in the minutes was supplied.

[28] As I have found that most of the information in Record 2 was not supplied and all three parts of the test must be met for the application of section 17(1), I find that this information should be disclosed to the appellant. I find that the other portions of Record 2 were supplied in confidence and I will proceed to consider the harms that could arise upon disclosure.

[29] Record 3 is a table containing the summary of the affected parties' RFP submissions. I find that the withheld information was supplied by the affected parties to the hospital during the RFP process. I further find that the affected parties provided this information to the hospital with a reasonably held expectation that the information would be treated confidentially.

[30] In summary, I have found only a portion of the withheld information in Record 2 and all of the withheld information in Record 3 meets the part 2 test for the application of section 17(1). I will proceed to consider the harm in disclosure of this information below. The information in Records 1 and 2 that I have found not to have been supplied in confidence does not meet the part 2 test for section 17(1) and as such this information cannot be exempt under this exemption. As no other mandatory exemptions apply to this information and the hospital did not claim discretionary exemptions for it, I will order this information to be disclosed.

Part 3: harms

[31] The party resisting disclosure must provide detailed and convincing evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.[11]

[11] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

[32] 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 the surrounding circumstances. However, parties should not assume that the harms under section 17(1) are self-evident or can be proven simply by repeating the description of harms in the *Act.*[12]

[33] In applying section 17(1) to government contracts, 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 17(1).[13]

[34] Affected party 3 submits that the harms set out in sections 17(1)(a), (b) and (c) apply to the records. It argues that disclosure of the information will be detrimental to its business including: prejudicing its competitive position, interfering significantly with its contractual or other negotiations and resulting in undue loss to itself or undue gain to its competitors and customers. Lastly, it argues that disclosure will result in similar information no longer being supplied to the hospital where it is in the public interest that this information continues to be so supplied. In an affidavit filed in support of its argument on harm, the affiant, the Director of Integrated Pharmacy solutions for Affected party 3, affirms:

> At the time the RFP was issued, this area was not formally regulated. Accordingly, [Affected party 3] developed its own quality control on a multiplicity of levels from training to toxicity levels, the latter of which is extremely complicated process.
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> [Affected party 3's] standards are the gold standards for admixing medications. [Affected party 3's] unique and proprietary information is revealed in the records, the disclosure of which would be significantly prejudicial to [Affected party 3's] competitive position in the market resulting in undue loss to it.
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> The information in the records reveals [Affected party 3's] proposed pricing, rebate, discount and other value-added benefits which, in and of itself, have inherent value for [Affected party 3]. This information reveals [Affected party 3's] approach to its business relationships with hospitals and is a direct indication of its values, strengths and marketing strategies.
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> This information also discloses [Affected party 3's] operating philosophies and priorities, as well as the bargaining tools that it uses when engaging hospitals to use its services. Disclosure of this information would most certainly lead to a direct negative impact on [Affected party 3's] ability to

[12] Order PO-2435.
[13] Order PO-2435.

> compete for other contracts since competitors would benefit without any effort or expense from [Affected party 3's] established business knowledge, expertise and experience to [Affected party 3's] detriment.

[35] Affected party 3 also submits that disclosure of the information at issue would result in a reluctance to respond to future hospital RFP's. It submits that the harm it would suffer from disclosure of its proprietary information would outweigh any benefit it would experience in engaging in the RFP process.

[36] Affected party 4 submits that I should consider its representations in appeal PA13-281 regarding the harm that disclosure of its "Preparation Schedule" would give rise to. This record was not identified as a responsive record in this appeal, nor is there any information at issue in the present appeal that relates to Affected party 4's preparation schedule. Within the context of this appeal, Affected party 4 submits that disclosure of its pricing information, when combined with other pricing information from other bids or sources, can be used to determine its pricing structures. This information could be used by its competitors to outbid it in future RFP's. Accordingly, Affected party 4 submits that it does not agree to the release of its pricing or business information contained within the responsive records.

[37] The other two affected parties whose information is included in the records at issue did not submit representations on the harm in section 17(1). The hospital also did not submit representations.

[38] In her representations, the appellant submits that the affected parties have failed to provide the detailed and convincing evidence to establish a reasonable expectation of harm, particularly related to the pricing and scoring information. The appellant notes that in Order MO-2403, Adjudicator Daphne Loukidelis found that "pricing information…cannot reasonably be said to have inherent information as an information asset." As well, the appellant submits that it is up to the affected parties to decide whether to respond to future RFP's. She argues that any loss suffered by the affected party after making the decision is a result of that decision and not the disclosure of the records.

Findings

[39] In Order PO-2987, Adjudicator Loukidelis stated that the disclosure or exemption of information relating to procurement must be:

> …approached thoughtfully, with consideration of the tests developed by this office, as well as an appreciation of the commercial realities of a procurement process and the nature of the industry in which the procurement occurs (Order MO-1888). In each case, the quality and cogency of the evidence presented, including the positions taken by

> affected parties, the passage of time, and the nature of the records and the information at issue in them must be considered. Furthermore, the strength of the affected party's evidence in support of non-disclosure must be weighed against the key purposes of access-to-information legislation, namely the need for transparency and government accountability (see Order MO-2496-I).

[40] As stated above, I only received representations form Affected parties 3 and 4 regarding reasonable possibility of the harms in section 17(1) following disclosure of the information at issue.

[41] I find the information relating to Affected Party 4, specifically the charted information in Record 3, has already been disclosed, in a different form to the appellant in appeal PA13-281. In that appeal, Affected party 4 consented to the disclosure of its summarized information. This is the only information of Affected Party 4 that remains at issue and I find that Affected party 4's representations do not provide the detailed and convincing evidence necessary to establish any of the harms set out in section 17(1). Moreover, as it consented to the disclosure of this information in another appeal, I am unable to find that disclosure of Affected party 4's information would result in any of the harms in section 17(1). Accordingly, I find this information is not exempt under section 17(1) and I will order it disclosed.

[42] On the other hand, I find that Affected party 3 has established there is a reasonable expectation that it will suffer undue loss if disclosure of some of its information was ordered disclosed. In particular, I find that disclosure of a portion of the information in Record 2 and some of the information in Record 3 could reasonably be expected to result in undue loss to Affected party 3, as it has established in its representations that it has spent money, effort and time to develop its proposed pricing, rebate and process information. I find that disclosure of this information would result in undue gain by Affected party 3's competitors. As, I have found that disclosure of this information could reasonably be expected to result in the harm set out in section 17(1)(c), I find that it is exempt under section 17(1).

[43] While I did not receive representations from Affected party 2, I find that some of its information is similar enough to Affected party 3's information that, the disclosure of it would also result in the harm discussed above. Accordingly, I find that some of the information relating to Affected party 2 is also exempt under section 17(1).

[44] As I have found that some of the information in the records is exempt under section 17(1), I will now proceed to consider whether section 23 applies to it.

C. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 17(1) exemption?

[45] The appellant claims the application of the public interest override in section 23 of the *Act*, which states:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[46] For section 23 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.

[47] The *Act* is silent as to who bears the burden of proof in respect of section 23. 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 23 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.[14]

Compelling public interest

[48] 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.[15] 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.[16]

[49] A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation[17]
- the integrity of the criminal justice system has been called into question[18]

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[14] Order P-244.
[15] Orders P-984 and PO-2607.
[16] Orders P-984 and PO-2556.
[17] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).
[18] Order PO-1779.

- public safety issues relating to the operation of nuclear facilities have been raised[19]

- disclosure would shed light on the safe operation of petrochemical facilities[20] or the province's ability to prepare for a nuclear emergency[21]

- the records contain information about contributions to municipal election campaigns[22]

[50] 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[23]

- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations[24]

- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding[25]

- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter[26]

- the records do not respond to the applicable public interest raised by appellant[27]

[51] The appellant submits that the events she reported on in March 2013 raise serious questions about where the hospitals' priorities lie when it comes to making decisions about the purchasing of products and services. The appellant refers in her article to the opposition party health critic's skepticism with the findings of the Standing Committee on Social Policy's report on the under-dosing incident.

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[19] Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.) and Order PO-1805.
[20] Order P-1175.
[21] Order P-901.
[22] *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.
[23] Orders P-123/124, P-391 and M-539.
[24] Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.
[25] Orders M-249 and M-317.
[26] Order P-613.
[27] Orders MO-1994 and PO-2607.

[52] The appellant acknowledges that there have been other public inquiries into the incident, but submits that while those inquiries have shed a great deal of light on the issue, they have failed to answer the question of why Affected party 1 awarded the contract to Affected party 2, instead of Affected party 3.

[53] Affected party 3 submits that there has already been wide public coverage and study about the under-dosing incident, including the study by Dr. Thiessen by the Ministry of Health and Long-Term Care and the creation of the Standing Committee on Social Policy. Affected party 3 notes that it provided information to the Committee, including redacted records and testified before the Committee. Both Dr. Thiessen and the Committee made a number of recommendations that have already been accepted and put in place. Finally, Affected party 3 states:

> In considering whether there is a "public interest" in disclosure of the records, there must be a relationship between the Records and the Act's central purpose of shedding light on the operations of the government. 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 or where a significant amount of information has already been disclosed and is adequate to address any public interest considerations.

[54] Finally, Affected party 3 states that the public interest in ensuring openness and accountability of the hospitals for the under-dosing incidents would not be advanced the disclosure of its confidential proprietary information.

[55] The information that I have found exempt under section 17(1) consists of portions of Affected party 2 and 3's commercial information that was provided in response to the RFP. I find that disclosure of this information would not serve the purpose of shedding light on the hospital's decision to contract with Affected party 2 over Affected party 3. The information that I have found exempt under section 17(1) relates to the services being provided by Affected parties 2 and 3, which do not address the public interest identified by the appellant in examining more closely the hospital's decision regarding the successful proponent to the RFP. Accordingly, I find that section 23 does not apply to the information that I have found exempt under section 17(1) as the information would not shed light on the hospital's decision.

ORDER:

1. I order the hospital to disclose all of Record 1 and portions of Records 2 and 3 that I have found not to be exempt under section 17(1) to the appellant by providing her with a copy of the records by **June 17, 2015** but not before **June 12, 2015**. To be clear, I have provided the hospital with a copy of Records 2 and 3 identifying information which should **not** be disclosed to the appellant.

2. I uphold the hospital's decision to withhold the remaining information at issue.

3. In order to verify compliance with order provision 1, I reserve the right to require the hospital to provide me with a copy of the records disclosed to the appellant.

Original Signed by: May 12, 2015
Stephanie Haly
Adjudicator