Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3629

Appeal PA12-394

Ontario Power Generation

July 11, 2016

Summary: The appellant seeks access to a copy of a spreadsheet used by OPG to calculate the range of Levelized Unit Energy Costs (LUEC) estimates for the proposed refurbishment and life-extension of the Darlington Nuclear Generating Station. OPG identified one responsive record and granted the appellant partial access to it. OPG advised the appellant that portions of the record were withheld from disclosure under the discretionary exemptions in sections 18(1)(a) (information belonging to the institution) and (c) (prejudice to the institution's economic interests). In this order, the adjudicator finds that the information at issue is not exempt under sections 18(1)(a) or (c) and orders OPG to disclose the entire record to the appellant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 18(1)(a) and (c)

Orders and Investigation Reports Considered: PO-2195, PO-2676, PO-2758, PO-2990, PO-3011 and PO-3311

OVERVIEW:

[1] Ontario Power Generation (OPG) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

> … a copy of the spreadsheet (or tables summarizing the spreadsheet) OPG has used to calculate the range of LUEC (Levelized Unit Energy

> Costs) estimates for the proposed refurbishment and life-extension of the Darlington [Nuclear Generating Station].

[2] As background, the Levelized Unit Energy Cost (LUEC) is a standard technique for comparing different types of energy generation with different relative cost components and represents the price of electricity produced, to be charged to recover all costs during the operating lifetime of a plant. According to the Canadian Energy Research Institute:

> The LUEC can be thought of as a 'supply cost', where the unit cost is the price needed to recover all costs over the period and is determined by finding the price that sets the sum of all future discounted cash flows (net present value, or NPV) to zero. It can also be thought of as representing the constant real wholesale price of electricity that meets the financing cost, debt repayment, income tax and cash flow constraints associated with the construction operation and decommissioning of a generating plant.[1]

[3] OPG identified one record responsive to the appellant's request and issued a decision granting him partial access to it. OPG relied on the discretionary exemptions in sections 18(1)(a) (valuable government information) and (c) (economic and other interests of the institution) of the *Act* to deny access to portions of the record.

[4] The appellant filed an appeal of OPG's decision and claimed that it is in the public interest to disclose the redacted information. Accordingly, the possible application of the public interest override in section 23 of the *Act* was added as an issue in the appeal during mediation.

[5] Mediation did not resolve the issues in this appeal and the file was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. This office originally sent a Notice of Inquiry to OPG, inviting it to make submissions on the issues in this appeal. OPG submitted representations.

[6] The adjudicator originally assigned to this appeal then invited the appellant to make representations in response to the Notice of Inquiry and the complete representations of OPG, which were shared in accordance with *Practice Direction Number 7* of the IPC's *Code of Procedure*. The appellant submitted representations. The adjudicator then sought and received reply representations from OPG.

[7] The appeal was then transferred to me. In the discussion that follows, I find the information at issue is not exempt from disclosure under either section 18(1)(a) or (c) and order OPG to disclose the record, in full, to the appellant.

---

[1] Matt Ayres, Morgan MacRae and Melanie Stogran (Canadian Energy Research Institute), "Levelised Unit Electricity Cost Comparison of Alternate Technologies for Baseload Generation in Ontario" (August 2004) Online available at: http://www.ieso.ca/imoweb/pubs/consult/se16/se16_dacp-swg-20060216-ceri-report.pdf

RECORDS:

[8] The information at issue consists of the withheld portions of pages 1, 3, 4, 5, 6 and 7 of a seven-page record entitled "Ontario Power Generation Inc. Explanation of Calculation of Levelized Unit Energy Costs".

DISCUSSION:

Do the discretionary exemptions at section 18(1)(a) and/or (c) apply to the information at issue?

[9] The relevant paragraphs of section 18(1) of the *Act* read as follows:

> A head may refuse to disclose a record that contains,
>
> > (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
> >
> > …
> >
> > (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution.

[10] 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 section 17 of the *Act*.[2]

[11] I will begin by considering the application of section 18(1)(a) to the withheld information.

Section 18(1)(a)

[12] For section 18(1)(a) to apply, OPG must show the following: (1) the information fits within one or more of the types of protected information, (2) it *belongs to* the Government of Ontario or OPG, and (3) it has monetary value or potential monetary value.

Part 1: Type of Information

[13] According to OPG, the record at issue contains financial and commercial information. The appellant accepts OPG's claim that the withheld portions of the records

[2] See *Public Government for Private People: the Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980).

contain financial or commercial information within the meaning of section 18(1)(a).

[14] Previous orders of this office establish the following definitions:

> *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.[3] The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.[4]
>
> *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.[5]

I adopt these definitions for the purpose of this appeal.

[15] Based on my review of the information at issue, I am satisfied that it consists of commercial or financial information as those terms are contemplated by section 18(1)(a). The withheld information relates to both pricing and the buying, selling or exchange of merchandise or services. Therefore, I find that part one of the section 18(1)(a) test has been satisfied.

Part 2: Belongs To

[16] The term *belongs to* refers to *ownership* by an institution. It is more than the right simply to possess, use or dispose of information, or control access to the physical record in which the information is contained. For information to *belong to* an institution, the institution must have some proprietary interest in it either in a traditional intellectual property sense – such as copyright, trade mark, patent or industrial design – or in the sense that the law would recognize a substantial interest in protecting the information from misappropriation by another party.[6]

[17] Examples of the latter type of information may include trade secrets, business-to-business mailing lists,[7] customer or supplier lists, price lists, or other types of confidential business information. In each of these examples, there is an inherent monetary value in the information to the organization resulting from the expenditure of money or the application of skill and effort to develop the information. If, in addition, the information is consistently treated in a confidential manner, and it derives its value

---

[3] Orders P-493 and PO-2010.
[4] Order P-1621.
[5] Order PO-2010.
[6] Order PO-1763, upheld on judicial review in *Ontario Lottery and Gaming Corporation v. Ontario (Information and Privacy Commissioner)*, [2001] O.J. No. 2552 (Div. Ct.). See also Orders PO-1805, PO-2226 and PO-2632.
[7] Order P-636.

to the organization from not being generally known, the courts will recognize a valid interest in protecting the confidential business information from misappropriation by others.[8]

[18] In its representations, OPG refers to Order PO-1763 and the meaning of *belongs to* and asserts that the information at issue "is financial information, developed by OPG, at its expense and has proprietary value to the company, because disclosure would adversely affect OPG's ability to secure contracts and in the case of nuclear refurbishment disclosure would deprive OPG of the opportunity to negotiate with bidders contracts with the most favourable pricing."

[19] OPG refers to an affidavit of its Director of Strategic Oversight and Partnership Management of Nuclear Projects (the OPG Director) which it attached to its representations. In her affidavit, the OPG Director states that the information at issue in this appeal was developed at OPG's expense and it should not be disclosed publicly as it "would provide an unfair advantage to some suppliers and contractors".

[20] Based on my review of the information that remains at issue, I accept that it *belongs to* OPG within the meaning of section 18(1)(a) of the *Act*. I accept that the information at issue was created as a result of OPG's expenditure of money and application of skill and effort to develop the LUEC estimates for the Darlington Refurbishment Project. Accordingly, I find that the second part of the three-part test in section 18(1)(a) is met.

Part 3: Monetary Value

[21] To have *monetary value*, the information itself must have an intrinsic value. The purpose of this section is to permit an institution to refuse to disclose a record where disclosure of the information would deprive the institution of the monetary value of the information.[9]

[22] The mere fact that the institution incurred a cost to create the record does not mean it has monetary value for the purposes of this section.[10] Nor does the fact, on its own, that the information has been kept confidential.[11]

[23] In its representations, OPG submits that the information at issue "has proprietary value to the company because disclosure would adversely affect OPG's ability to secure contracts and in the case of nuclear refurbishment disclosure would deprive OPG of the opportunity to negotiate with bidders contracts with the most favourable pricing." OPG refers to the OPG Director's affidavit and her submission that the disclosure of the information at issue would result in an unfair advantage to some of OPG's suppliers and contractors.

---

[8] Order PO-1736, *supra* note 5.
[9] Orders M-654 and PO-2226.
[10] Orders P-1281 and PO-2166.
[11] Order PO-2724.

[24] From my review of OPG's representations on the application of section 18(1)(a), it appears that the OPG is most concerned about the effect that disclosure of the information at issue will have on its negotiating position. However, these arguments do not speak to whether the information at issue has *monetary value*. Rather, these arguments support the OPG's position that section 18(1)(c) of the *Act* applies.

[25] I have reviewed the information at issue, which consists of withheld capital costs, related interest rates, tax shield estimates, LUEC estimates and project duration, and OPG's representations. Based upon this review, I am not satisfied that OPG provided me with sufficient evidence to demonstrate that the information at issue has intrinsic monetary value. OPG's only submission with regard to the application of section 18(1)(a) to the information at issue relates to the harms that will result from its disclosure, not whether disclosure of the information would deprive OPG of its monetary value. In my view, the fact that the disclosure of the information at issue would adversely affect OPG's ability to secure contracts in the future does not mean that the information at issue also has an intrinsic monetary value. In the absence of any representations demonstrating how this information has intrinsic monetary value, I find that it does not meet the third requirement for the three-part test in section 18(1)(a).

[26] Based on my review of the information at issue and the representations of OPG, I am not satisfied that I have been provided with sufficient evidence to demonstrate that the information has intrinsic monetary value. The information at issue does not appear to have intrinsic monetary value as trade secrets, client lists or other similar types of information that the IPC has previously found exempt under section 18(1)(a) would have. Accordingly, I find that the information that remains at issue does not qualify for exemption under section 18(1)(a) of the *Act*.

[27] I will now consider the application of section 18(1)(c) to the withheld information.

Section 18(1)(c)

[28] The purpose of section 18(1)(c) is to protect the ability of institutions to earn money in the marketplace. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions.[12]

[29] The section 18(1)(c) exemption is arguably broader than section 18(1)(a) in that it does not require the institution to establish that the information in the record belongs to the institution, that it falls within any particular category or type of information or that it has intrinsic monetary value. The exemption requires only that disclosure of the

[12] Orders P-1190 and MO-2233.

information could reasonably be expected to prejudice the institution's economic interests or competitive position.[13]

[30] For section 18(1)(c) to apply, the institution must provide detailed and convincing evidence about the potential of 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.[14]

[31] The fact that disclosure of contractual arrangements may subject individuals or corporations doing business with an institution to a more competitive bidding process does not prejudice the institution's economic interests, competitive position or financial interests.[15]

Representations

[32] In support of its position that section 18(1)(c) of the *Act* applies to exempt the information at issue, OPG relies on Order PO-2676, in which Adjudicator Jennifer James upheld the exemption of fuel, operating and maintenance cost estimates of OPG's (coal-powered) generating stations under section 18(1)(c). In that decision, Adjudicator James found that disclosure of "key price information" to fuel suppliers and transportation contractors could affect the bidding on current and future contracts, thereby increasing OPG's costs and reducing competition and OPG's profitability accordingly. Further, the adjudicator accepted OPG's submission that when future bidders "have the means to determine OPG's costs and the price ceiling set by government and the [Ontario Energy Board (OEB)], they can strategically bid at a price somewhat higher than their most competitive price."[16] OPG submits that the redacted information in this appeal is similar to the information found to be exempt in Order PO-2676.

[33] According to OPG, disclosure of the commercially sensitive information at issue in this appeal would appeal to "the highly expert and very small qualified pool of potential bidders" and would negatively impact OPG's ability to negotiate the "best deal" in upcoming contracts.

[34] In addition, OPG refers to Order PO-2195, stating that former Assistant Commissioner Tom Mitchinson observed that "OPG has a mandate to negotiate further similar business arrangements in the future and… disclosing information that would provide competitors with insight into OPG's business operations and strategies could reasonably be expected to result in competitive harm to OPG."[17] In light of Order PO-

---

[13] Orders PO-2014-I, MO-2233, MO-2363, PO-2632 and PO-2758.
[14] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras 52-54.
[15] See Orders MO-2363 and PO-2758.
[16] Order PO-2676 at page 7.
[17] I note that in Order PO-2195, the interests of OPG as a *third party* were found to be sufficiently engaged to uphold the application of section 17(1)(a) and (c), *not* 18(1).

2195, OPG submits that the disclosure of the Darlington Refurbishment costs and expenditures and the point estimate of the LUEC could reasonably be expected to compromise OPG's ability to negotiate in the future by providing restricted and highly expert third parties with the ability to predict OPG's negotiation and valuation schemes.

[35] In addition, OPG submits that the information contained in the records, when collectively analyzed, would give potential suppliers an unfair advantage as they enter into negotiations for the subsequent contracts that need to be finalized for the project to proceed to execution. Accordingly, OPG claims that the disclosure of the information at issue would be detrimental to the economic viability of the project and ultimately to the ratepayers of Ontario.

[36] As indicated above, OPG provided an affidavit of its Director of Strategic Oversight and Partnership Management of Nuclear Projects. In addition, OPG provided affidavits of its Director of Asset Planning and Integration, Finance and its Director of Planning and Controls, Nuclear Refurbishment with its reply representations. The arguments regarding the application of section 18(1)(c) are substantially similar in all three affidavits. In the affidavits, the OPG's directors confirm that the Darlington Refurbishment Project is currently active and there will be "many contracts and sub-contracts negotiated and awarded throughout the timeline of the project." The three directors submit that the information at issue in this appeal was developed at OPG's expense and it should not be disclosed publicly as it "would provide an unfair advantage to suppliers and contractors with whom OPG is currently negotiating." They also submit that the disclosure of the point estimate of the LUEC and the estimates of the project costs and expenditures used to calculate the LUEC "would permit sophisticated companies to deduce various costs with reasonable precision." The OPG's directors indicate that these "sophisticated companies" would be able to deduce these costs with their "subject matter expertise, their understanding of the time frames included in the project and their knowledge of the standard major components of nuclear projects." Finally, the three OPG directors submit that the redacted information could be used to extrapolate costs which would give these sophisticated companies an advantage in the current and upcoming negotiations as they would know what OPG expects to pay and what they have budgeted for. The three OPG directors submit that OPG and, ultimately, the ratepayers of Ontario would be deprived of the opportunity to gain the best price for any contracts going forward.

[37] In his representations, the appellant submits that "some of the withheld information" does not qualify for exemption under section 18 because its severance "in no way reflects the purpose of section 18." In support of his position, the appellant submits that OPG's arguments that the disclosure of the records would weaken its negotiating position is undermined by the fact that OPG has already disclosed some of the redacted information in other sections of the records. The appellant also notes that some of the information at issue is already publicly available. For example, the appellant submits that the OPG previously disclosed annualized LUEC estimates on its website but has withheld the amounts on page 4 of the records.

[38] Referring to section 18(1)(c) in particular, the appellant submits that OPG failed to provide detailed and convincing evidence that disclosure of the Project LUEC estimates, costs, duration, interest rates and CCA tax shield would weaken its negotiating position. Instead, the appellant submits that OPG provided case law that should not apply to the information at issue. The appellant refers specifically to Order PO-2195 and submits that the finding should not apply to the facts in this appeal because Order PO-2195 considered the application of section 18(1)(c) to lease arrangements and related memoranda or other reports. Similarly, the appellant submits that I should not follow Order PO-2676 as that order considered "fuel, operating and maintenance costs", which is information OPG already disclosed in this appeal.

[39] In response to the appellant's representations, OPG states that it redacted any information relating to specific contracts and sub-projects consistently. OPG also states that these redactions were submitted to and agreed by the Ontario Energy Board (OEB) under the OEB's rules on confidentiality of information. OPG asserts that it continues to protect the overall cost estimate for refurbishment and all cost estimates for portions of the scope where contracts are still not finalized although it has released significant amounts of additional information on the Darlington Refurbishment Project since its original response to the appellant's request.

[40] With regard to the appellant's claim that OPG failed to provide the annualized LUEC estimates on page 4, OPG asserts that it does not calculate an annualized LUEC estimate. OPG states that the LUEC is a single number which applies to the *entire lifecycle* of a project. OPG submits that it properly redacted the point estimate of the LUEC on page 4 on the basis that the information could be used by sophisticated parties to reverse engineer the point estimate of the Darlington Refurbishment Project costs.

Analysis and Findings

[41] As noted above, the purpose of section 18(1)(c) is to protect the ability of institution such as OPG to earn money in the marketplace, recognizing that they may have economic interest and compete for business with other public or private sector entities. To establish that section 18(1)(c) applies, OPG must provide sufficient evidence to demonstrate that disclosure of the information at issue could reasonably be expect to prejudice these economic interests or competitive positions.

[42] Previous orders of this office acknowledge that it is in the public interest that the Ontario government, its agencies and its institutions, negotiate favourable commercial and contractual arrangements.[18] However, accepting the existence of such a public interest does not alter the fact that an institution must provide me with sufficient evidence to establish that a claimed exemption applies to withhold government-held information that is otherwise subject to a right of access under the *Act*.

[43] In this appeal, I find that OPG has not provided sufficient evidence to persuade me that section 18(1)(c) applies to the information severed from the records. The main

[18] See, for example, Orders PO-2632, PO-2990 and PO-2987.

crux of OPG's submission is that the information at issue is commercially sensitive and, if disclosed, would negatively impact its ability to negotiate the "best deal" in upcoming contracts. OPG submits that the disclosure of the information that remains at issue would negatively impact its negotiation position because "sophisticated companies" and potential suppliers will be able to "deduce various costs with reasonable precision" and then use this knowledge in its negotiations with OPG. OPG submits that if these suppliers and other contractors know what OPG expects to pay and what their budget for the project is, OPG will be unable to negotiate effectively.

[44] Based on my review of the information at issue, I am not satisfied that OPG has provided me with sufficient evidence to demonstrate that the disclosure of the information that remains at issue would result in harm contemplated by section 18(1)(c). Insofar as my conclusion differs from the one cited by OPG in Order PO-2676, I am satisfied that it can be distinguished by the fact that the alleged harm to OPG's competitive position from disclosure of cost information in that order was in relation to OPG's own sale of electricity. In Order PO-2676, Adjudicator James concluded that knowledge of OPG's pricing information could reveal value to OPG's competitors. However, in the present appeal, the information at issue relates to the LUEC, which, according to OPG, is a single number which applies to the *entire lifecycle* of a project. From my review of the records, it appears that the information is aggregate in nature and relates to the refurbishment project as a whole rather than the specific costs, such as fuel and unit energy, considered in Order PO-2676. Given the fact that the information at issue reflects that costs over the entire lifecycle of the project, I am not satisfied that the information, if disclosed, could reasonably be expected to harm OPG's ability to negotiate specific contracts in the future. Further, the OPG has not provided me with sufficient evidence to demonstrate that the harm to its economic or competitive position is more than merely possible or speculative.

[45] As stated above, OPG's main submission is that the information at issue could, if disclosed, reasonably be expected to negatively impact its ability to negotiate the "best deal" in upcoming contracts or negotiations. However, OPG does not provide me with evidence that specifically relates to harms that could reasonably be expected to result from the disclosure of the type of information at issue in this appeal. OPG does not refer to specific negotiations that are either currently underway or upcoming. OPG also does not describe how high level costs relating to the entire lifecycle of a project can be broken down by these "sophisticated" prospective suppliers or contractors and used to OPG's disadvantage during the negotiation process of upcoming projects. The three affidavits provided by the OPG are similarly general and do not offer sufficient evidence to show a connection between the disclosure of the information at issue and harm to OPG's economic or competitive position.

[46] I note that OPG relies on Order PO-2195, as it did in Orders PO-2990 and PO-3311. However, OPG's arguments regarding Order PO-2195 were dismissed by both decision makers in Orders PO-2990 and PO-3311. In Order PO-2990, Commissioner Brian Beamish found that section 18(1)(c) did not apply to a lease agreement between OPG and Bruce Power and distinguished Order PO-2195 as follows:

> In Order PO-2195, former Assistant Commissioner Mitchinson upheld the Ministry of Finance's decision to withhold portions of a lease agreement between the OPG and Bruce Power. However, this order can be distinguished on two grounds. Most importantly, the exemption at issue was not section 18, but rather section 17(1), which has significantly different considerations, including the question of whether the information was "supplied" to the institution receiving the request, which is not a factor under section 18(1)(c)….
>
> It is nevertheless true that, like section 17(1), section 18(1)(c) takes into consideration the consequences that would result in an institution if the withheld information is released…. However, as stated previously, the mere fact that an institution, or individuals or corporations doing business with it, maybe subject to a more competitive bidding process as a result of the disclosure of their contractual arrangements does not necessarily prejudice the institution's economic interests or competitive position.[19]

[47] I agree with Commissioner Beamish's conclusion. While OPG submits that there are a number of upcoming contracts to negotiate, I am not satisfied by the evidence that disclosure of the information at issue could reasonably be expected to prejudice in its economic interests or competitive position.

[48] With regard to OPG's concern that the disclosure of the information at issue could reasonably be expected to compromise its ability to negotiate the upcoming contracts, I refer OPG to Order PO-2758. In that decision, Senior Adjudicator John Higgins reviewed the decision of McMaster University to deny access under section 18(1)(c) to the payment terms of vending contracts it signed with various third parties. After considering McMaster University's claim that the disclosure of the information at issue would establish a precedent of a "floor or ceiling" for any prospective supplier in advance of negotiations, Senior Adjudicator Higgins stated:

> … McMaster's arguments ignore an absolutely fundamental fact of the marketplace. That is to say, if a competitor (or renewing party) truly wishes to secure a contract with McMaster, it will do so by charging lower fees to McMaster than its competitor, resulting in a net saving to McMaster. Similarly, in circumstances where McMaster is receiving payment, a competitor or renewing party would attempt to secure a contract by paying more than its rivals, resulting in financial gain for McMaster. To argue that disclosure of the rate information at issue would produce the opposite result flies in the face of commercial reality.

[49] This line of reasoning has been followed in numerous orders of this office where

[19] This finding was adopted by Adjudicator Daphne Loukidelis in Order PO-3311.

similar arguments were put before the adjudicator.[20] I agree with the reasoning of Senior Adjudicator Higgins in Order PO-2758 and adopt it in my analysis of the information at issue.

[50] I have reviewed the information at issue and the parties' representations. Based on this review, I am not persuaded that disclosure of the information at issue could reasonably be expected to compromise or prejudice OPG's negotiating position in relation to its effort to optimize contractual arrangements with potential suppliers or contractors. As stated by Adjudicator Daphne Loukidelis in Order PO-3311, in which she considered substantially similar arguments made by OPG:

> Even if I were to accept that disclosure of certain information (for example, the pricing summary on pages 1 and 2 of Exhibit 6.1) might provide certain insights for potential bidders into OPG's estimates or expectations about this project, I am not persuaded that the harm asserted by OPG could reasonably be expected to result. To paraphrase former Senior Adjudicator Higgins, if a counterparty, or a renewing party for that matter, truly wishes to secure a contract with OPG, it will do so by charging lower fees to OPG than its competitor. This is a sophisticated and competitive industry. In this context, I find that OPG has failed to provide me with sufficiently detailed evidence to establish a link between the disclosure of the remaining information and a reasonable expectation of the harms section 18(1)(c) is intended to protect against.

[51] I agree with Adjudicator Loukidelis' reasoning in Order PO-3311 and adopt it in my analysis of the information at issue. The industry is competitive and, as OPG contends, the members of that industry are sophisticated. Given this context and the lack of specific evidence relating to the particular information at issue, I am not satisfied that the harm asserted by OPG could reasonably be expected to result. Therefore, I find that section 18(1)(c) does not apply to the information at issue.

[52] As I am not upholding OPG's exemption claim under sections 18(1)(a) or (c), it is not necessary to consider OPG's exercise of discretion or whether the public interest override in section 23 of the *Act* applies to the information at issue in this appeal. In conclusion, I find that the information at issue is not exempt from disclosure under sections 18(1)(a) or (c) and will order OPG to disclose the withheld information to the appellant.

ORDER:

I order OPG to disclose the entire record at issue to the appellant by **August 16, 2016**.

---

[20] Orders MO-2490, PO-2990, PO-3011 (upheld in *HKSC Developments LP v. Infrastructure Ontario and Information and Privacy Commissioner of Ontario*, 2013 ONSC 6776) and PO-3311 (upheld in *Aecon Construction Group Inc. v. Information and Privacy Commissioner of Ontario*, 2015 ONSC 1392).

Original Signed by: July 11, 2016

Justine Wai
Adjudicator