

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3540

Appeal MA16-725

City of Toronto

December 19, 2017

Summary: An affected third party appealed a City of Toronto decision to disclose some information in the third party's RFP proposal for interpretation services under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The exemption in section 10(1) of the *Act* for third party information does not apply to the information at issue. The City of Toronto's decision to disclose the information is upheld.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 10(1).

OVERVIEW:

[1] The City of Toronto (the city) received a request under the *Act* for:

- all proposals submitted in response to an RFP for the provision of interpretation services on behalf of Toronto Public Health
- pricing information included in all proposals
- a copy of the scoring sheet (including scores obtained in each section) used to evaluate all proposals
- a copy of the contract signed between the city and the successful proponent

[2] After considering the representations of affected third parties, the city issued a decision granting partial access to the responsive records, withholding some information under sections 10 (third party information) and 14 (personal privacy) of the *Act*.

[3] Several affected third parties appealed the city's decision. Mediation resolved all but one third party's appeal of the city's decision, who opposed disclosure of any of its bid proposal.

[4] The requester confirmed that they wanted access to the information the city had decided to disclose. Therefore, the appeal proceeded to adjudication, where an inquiry is conducted. During the inquiry the third party appellant, the requester and the city were invited to provide representations. Only the city provided representations.

[5] This order upholds the city's decision to disclose to the requester the portions of the RFP submission at issue in this appeal. Section 10(1) does not apply to the information in the RFP proposal the city decided to disclose.

RECORDS:

[6] The record at issue in this appeal is a proposal submitted to the city by the third party appellant in response to a city RFP for interpretation services. The proposal includes information about the appellant's staff and contractors, and the appellant's approach to administration, customer service and quality control. The only information in the record that is at issue in this appeal is the portions of the proposal the city decided to disclose to the requester. The information in the responsive record the city decided to withhold is not at issue, because the requester did not appeal that decision.

DISCUSSION:

[7] The sole issue in this appeal is whether the mandatory exemption at section 10(1) of the *Act* for third party information applies to the portions of the RFP proposal the city decided to disclose.

Section 10(1) states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

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

(d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

[8] Section 10(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions.¹ 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.²

[9] For section 10(1) to apply, the third party appellant, as the party resisting disclosure, must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 10(1) will occur.

[10] As noted above, neither the appellant nor the requester provided representations in this inquiry. The appellant has therefore not provided evidence to establish that section 10(1) applies to the information at issue. However, section 10(1) is a mandatory exemption, so I will consider its application from my review of the information at issue, the city’s submissions and previous decisions of this office.

[11] I will consider part three of the test first.

¹ *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.*).

² Orders PO-1805, PO-2018, PO-2184 and MO-1706.

Part 3: Harms

[12] Part three of the test involves considering whether disclosure of the information at issue could reasonably be expected to result in any of the harms set out in section 10(1).

[13] There is no evidence from my review of the information at issue to support a finding that any of the harms in sections 10(1)(a), (b), (c) and/or (d) are established.

[14] Further, some of the city's arguments provide some support for the position that there is unlikely to be harm from disclosure of the information at issue. The relevant city submissions are that:

- some of the information at issue is publicly available.
- as the third party appellant was the successful proponent, information from their proposal was incorporated into a contract with the city.

[15] Given the city's representations and the lack of evidence of harms, I conclude that part three of the section 10(1) test is not met.

[16] My conclusion regarding part three of the section 10(1) test means that section 10(1) does not apply to the information at issue, and it is not necessary to consider the other parts of the test. Accordingly, I uphold the city's decision to disclose the information at issue to the requester.

ORDER:

1. I uphold the city's decision to disclose the information at issue in the RFP submission.
2. I order the city to disclose the information at issue to the requester by **January 26, 2018** but not before **January 22, 2018**.

Original Signed by: _____

Hamish Flanagan
Adjudicator

December 19, 2017