Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3845

Appeal PA16-394

Wilfrid Laurier University

May 23, 2018

Summary: The requester sought access to copies of any contracts between the university and a named provider of standardized test preparation courses. The university advised that there were no contracts but it identified three purchase orders and three invoices as responsive to the request. Following notification of the provider (the third party), the university issued a decision granting partial access to the records, denying access to portions pursuant to the exemption for third party information at section 17(1). The requester appealed the university's decision to disclose the records in part. During mediation, the third party claimed that the records are not responsive to the request or, in the alternative that the exemption for third party information at section 17(1) applies to the records, in their entirety.

This order finds that the records identified by the university are responsive to the request. This order also finds that the records are not exempt from disclosure under section 17(1). Accordingly, the adjudicator orders the records disclosed (with the exception of information to which the appellant does not seek access).

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

Orders Considered: Orders MO-3062, MO-3175, PO-2806, PO-3347, PO-3517, and PO-3518.

OVERVIEW:

[1] The University of Wilfrid Laurier (the university) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act)* for access to copies of any contracts between the university and a named provider of standardized test

preparation courses. The requester stated that he was filing the request in the public interest.

[2] The university located 12 pages of responsive records, consisting of three purchase orders and three invoices. Prior to issuing its access decision, the university notified the provider of the courses (the third party) pursuant to section 28(1) of the *Act*. The third party provided submissions advising that it did not consent to the disclosure of the requested information. Following receipt of the third party's representations, the university issued an access decision granting partial access to the records. The university denied access to portions of the records pursuant to the mandatory exemption for third party commercial information at section 17(1) and the discretionary exemption for information related to economic and other interests at section 18(1) of the *Act*.

[3] The requester, now the appellant, appealed the university's decision to deny access to portions of the records.

[4] During mediation, the university advised that the responsive records, namely the purchase orders and the invoices, constitute the agreement between the university and the third party and that there is no separate contract document. The third party advised that it objects to the disclosure of the requested records, in their entirety. The appellant advised that he is not seeking access to the banking information that was severed from the records. As a result, section 18(1) is no longer at issue in this appeal and the banking information should not be disclosed.

[5] The sole issue on appeal is whether the exemption at section 17(1) for third party information applies to the responsive records.

[6] As a mediated resolution could not be reached, the file was transferred to the adjudication stage of the appeal process for an adjudicator to conduct an inquiry. I sought representations from the university and the third party initially. The third party chose to submit representations while the university did not. I shared the non-confidential portions of the third party's representations with the appellant, who provided representations in response. The third party was then provided with an opportunity to reply to the appellant's non-confidential representations and did so.

[7] In this order, I find that the purchase orders and invoices are responsive to the request. I also find that they are not "supplied" within the meaning of that term in part two of the section 17(1) test and the exemption does not apply. I order the university to disclose the records (with the exception of the banking information which is no longer at issue) to the appellant.

RECORDS:

[8] The responsive records consist of three purchase orders (dated December 15, 2015; March 15, 2016 and March 16, 2016) and three invoices (dated October 29,

2015; December 8, 2015, and February 5, 2016). The information that remains at issue is all of the information in the purchase orders, with the exception of the third party's banking information (identified by the university as subject to section 18(1)) and all of the information in the invoices, with the exception of the third party's banking information that appears in the middle of the page of each invoice (identified by the university as subject to section 18(1)).

DISCUSSION:

Preliminary Matter: Are the records responsive to the request?

[9] The third party takes the position that the records at issue are not responsive to the request. It submits that the university "was not required or permitted to consider disclosure of any records that are not responsive to the request under the *Act*." The third party states that there is no dispute that the request was for "a copy of any and all **contracts"** between itself and the university, not for other records such as communications, invoices or purchase orders relating to such contracts. It submits that records at issue, the invoices and purchase orders, should not be considered to be responsive to the request.

[10] The appellant takes the position that the invoices and purchase orders are responsive to his request. He submits that during mediation the university advised that as no separate contract between itself and the third party exists, the invoices constitute the agreement between the parties. Accordingly, the appellant submits, the records are responsive to the request.

[11] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
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> (a) make a request in writing to the institution that the person believes has custody or control of the record;
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> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[12] In the circumstances of this appeal, I accept that the university explained to the appellant during mediation that there is no separate and distinct contract between the university and the third party, for the provision of standardized test preparation

services. I accept that the invoices, prepared by the third party demonstrate its agreement to provide services to the university, and the purchase orders, prepared by the university, demonstrate its acceptance of the terms reached with the third party for the provision of services. I also accept that, as one of the parties to the agreement for those services, the university identifies the invoices and purchase agreements between the two parties as constituting the commercial agreement between them.

[13] In the absence of the existence of a separate contract, by identifying the invoices and purchase orders as responsive to the request, in my view the university adopted a liberal interpretation of the request in order to best service the purpose and spirit of the *Act* and to resolve any ambiguity in the requester's favour.[1]

[14] Additionally, it has previously been established that to be considered responsive to the request, records must "reasonably relate" to the request.[2] In my view the invoices and purchase orders relating to the third party's provision of standardized test preparation services to the university are clearly "reasonably related" to the appellant's request.

[15] Accordingly, I accept that the invoices and purchase orders are responsive to the appellant's request.

Do any of the mandatory exemptions at section 17(1)(a),(b), or (c) apply to the records?

[16] The third party submits that the records are exempt from disclosure, in their entirety, pursuant to sections 17(1)(a), (b), and/or (c) of the *Act*.

[17] Sections 17(1)(a), (b) and (c) state:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, 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;

[1] Orders P-134 and P-880.
[2] Orders P-880 and PO-2661.

…

[18] Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[3] 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.[4]

[19] 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

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

[20] The third party claims that the records contain commercial and financial information. The types of information that are listed in section 17(1) have been discussed in prior orders. Specifically, commercial and financial information have been described 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.5 The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.6
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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.7

[21] I adopt these definitions for the purposes of this appeal.

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[3] *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.*).
[4] Orders PO-1805, PO-2018, PO-2184 and MO-1706.
[5] Order PO-2010.
[6] Order P-1621.
[7] Order PO-2010.

Representations

[22] The third party states that the records contain both commercial and financial information. It states that the Supreme Court of Canada has considered both of those terms and has held that they should be given their ordinary dictionary meaning.[8] The third party submits that the records are "plainly comprised of, and permit inferences about, commercial and financial information." It submits that "[t]here is no dispute that invoices and purchase orders (including banking information) relate to the buying and selling of goods and services, and to money and its use [or distribution], squarely within the meaning of 'commercial information' and 'financial information."

[23] The appellant submits that as he has not seen copies of the records he cannot state definitively whether or not the records contain commercial or financial information but concedes that previous decisions have found that purchase orders contain information that qualifies as either commercial or financial information.

Analysis and finding

[24] Having considered the third party's submissions as well as having reviewed the records themselves, I am satisfied that the invoices and purchase orders that make up the records at issue contain "commercial information" and/or "financial information" within the meaning of those terms as defined by this office. The third party provides test preparation services for the university and the records relate to the buying and selling of those services ("commercial information"). The records also breakdown the financial costs for those services ("financial information"). As a result, I find that the first part of the section 17(1) test has been established.

Part 2: Supplied in confidence

[25] In order to satisfy the second part of the section 17(1) test, the third party must have supplied the information to the university in confidence, either implicitly or explicitly.

[26] 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.[9] 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.[10]

[27] 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 17(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

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[8] *Mecrk Frosst Canada Ltd. v. Canada (Health),* 2012 SCC 3 at paras 136-140.
[9] Order MO-1706.
[10] Orders PO-2020 and PO-2043.

single party.[11]

[28] 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 third party to the institution.[12]The immutability exception arises where the contract contains information supplied by the third party, but the information is not susceptible to negotiation. Examples are financial statements, underlying fixed costs and product samples or designs.[13]

[29] 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.[14]

[30] 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.[15]

Representations

[31] The third party submits that it supplied the invoices directly to the university and that the balance of the information in the purchase orders would reveal or permit inferences about information that it supplied to the university regarding its services as reflected in the purchase orders.

[32] The third party further submits that the information in the records, which includes banking information, pricing, volume and related matters, is inherently confidential, and has been treated and protected as such by both the university and

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[11] This approach was approved by the Divisional Court in *Boeing Co., cited above, and in Miller Transit Limited v. Information and Privacy Commissioner of Ontario et al.,* 2013 ONSC 7139 (CanLII) (*Miller Transit*).
[12] Order MO-1706, cited with approval in *Miller Transit*, above at para. 33.
[13] *Miller Transit*, above at para. 34.
[14] Order PO-2020.
[15] 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.

itself. It submits that the "circumstances of the relationship between the parties in relation to this information are such that confidentiality was implied, if not express." The third party also submits that the information contained in the records is not publicly available and is "precisely the type of information that organizations and businesses reasonably protect as confidential…."

[33] Regarding the "supplied" component of part two of the three-part test, the appellant submits that previous orders issued by this office have consistently found that purchase orders and contracts prepared and issued by government institutions to a service provider do not meet the "supplied" component of the test in section 17(1). He submits that the provisions of purchase orders which he submits "presumably dictate the amount invoiced," have been treated in past decision as information that has been mutually generated, rather than supplied.[16] The appellant further submits that "the mere delivery of a document containing payment information does not mean that information was supplied in confidence." He submits that previous orders have found that "the terms of a financial agreement, be it contained in a contract or invoice 'have been found not to meet the criterion of having been supplied by a third party, even where they were proposed by the third party and agreed to with little discussion.'"[17] He further submits that "[e]ven if the amount paid for services was accepted with no discussion, the act of choosing to accept means the information was negotiated by both parties and not supplied in confidence."[18]

[34] With respect to whether the information can be said to have been supplied "in confidence" the appellant submits that the content of the records is "not inherently confidential in nature." He submits that the records reveal routine transactions between an institution and a company providing services.

[35] The appellant also submits that there is insufficient evidence to support an argument that the "inferred disclosure" or "immutability" exceptions apply in the circumstances.

Analysis and finding

[36] From my review of the records and having considered the circumstances of this appeal, I am not satisfied that either the invoices or the purchase orders meet the "supplied in confidence" requirement of part two of the section 17(1) test.

[37] First, dealing with the purchase orders, these are records that were clearly prepared and issued by the university. In my view, they contain information about the mutually agreed upon price the university agreed to pay for the third party's services. Accordingly, I find that they cannot be considered to have been supplied by the affected party within the meaning of that term in the second part of the section 17(1) test.

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[16] The appellant cites Orders PO-3347 and MO-3062 in support of his position on this point.
[17] The appellant cites Orders PO-3345 and PO-1545 in support of his position on this point.
[18] The appellant cites Order PO-2453 in support of his position on this point.

[38] This is in keeping with the reasoning in a number of previous orders issued in this office that have consistently found that purchase orders prepared and issued by government institutions to a service provider do not meet the "supplied" component of part two of the test in section 17(1).[19]

[39] Additionally, from the evidence before me, I do not accept that disclosure would reveal any information that can be described as having been supplied in confidence by the appellant.

[40] As a result, I find that the purchase orders created by the university were not "supplied" for the purposes of section 17(1) and do not meet the second part of the three-part test for that exemption to apply. As all three parts of the section 17(1) test must be met, it is not necessary for me to also review the confidentiality requirement of the second part of the test of the harms contemplated in the third part with respect to the purchase orders. I find that section 17(1) does not apply to the purchase orders.

[41] With respect to the invoices, it is clear that they were prepared by the third party and subsequently provided to the university for payment. However, this fact does not end the discussion of whether the invoices meet the supplied component of the section 17(1) test given that the invoices were issued in accordance with a contractual arrangement between the parties.

[42] Previous orders issued by this office have examined the issue of whether records detailing payments meet the "supplied" component of the section 17(1) test. In Order PO-2806, Adjudicator Daphne Loukidelis found that annual payments made by the Ontario Power Generation to a company did not meet the "supplied" component of part two of the section 17(1) test as those payments could be "readily traced back" to the negotiated agreement between the parties.

[43] Similarly, In Order PO-3518, Adjudicator Jennifer James found that invoices created by a third party to effect payment in accordance with a negotiated agreement between the parties could be traced back to the negotiated agreement could not be said to have been "supplied" for the purposes of the section 17(1) test.

[44] In the circumstances of this appeal, despite the absence of an explicit written contract between the parties, the invoices were created by the third party to effect payment from the university, for the provision of the third party's test preparation services. From my review of the records, the three invoices prepared by the third party directly reflect the three purchase orders prepared and issued by the university. In my view, this demonstrates the existence of a negotiated agreement for the provision of services between the third party and the university. Given that the pricing information set out in the invoices can be traced back to a negotiated agreement between the parties, I agree and adopt the reasoning set out in both Orders PO-2806 and PO-3518 for the purposes of this appeal.

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[19] Orders PO-3347, PO-3517, PO-3518 and MO-3062.

[45] Although the third party submits that the "circumstances of the relationship between the parties in relation to this information are such that confidentiality was implied, if not express," it does not support its submission with evidence. Moreover, it is not reasonable taking into consideration that the payment the appellant received from the university involved the expenditure of public funds. Furthermore, the payments were made pursuant to a negotiated agreement between the parties and the longstanding approach of this office, which has been consistently upheld by the courts, is that information regarding the amount of monies a government institution has contractually agreed to pay for a service should be available to the public.[20]

[46] In Order MO-3175, I summarized the court's position that access to details of government contracts should be granted:

> … it is well established that the agreed-upon essential terms of a contract or agreement are considered to be the product of a negotiation process and not "supplied" even when "negotiation" amounts to acceptance of the terms proposed by the third party [See Orders PO-2384, PO-2497 (upheld in CMPA) and PO-3157]. In Order MO-1706, Adjudicator Bernard Morrow stated:
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> > …[T]he fact that a contract is preceded by little negotiation, or that the contract substantially reflects the terms proposed by a third party, does not lead to a conclusion that the information in the contract was "supplied" within the meaning of section 10(1). The terms of a contract have been found not to meet the criterion of having been supplied by a third party, even where they were proposed by the third party and agreed to with little discussion.
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> Also … the Divisional Court has affirmed this office's approach with respect to the application of section 10(1) to negotiated agreements and specifically confirmed in *Miller Transit* and *Aecon Construction* that the approach is consistent with the intent of the legislation, which recognizes that public access to information contained in government contracts is essential to government accountability for expenditures of public funds.

[47] In light of the information set out above, my review of the content of the invoices and the representations of the third party, I do not accept that disclosure of the invoices would reveal non-negotiable confidential information as considered by the "inferred disclosure" exception. Specifically, but not exclusively, I do not accept that the

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[20] See Orders PO-2018, and PO-2496, upheld in *Grant Forest Products Inc. v. Caddigan*, [2008] O.J. No. 2243 (Div. Ct.) (*Grant Forest Products Inc.*) and PO-2497, upheld *in Canadian Medical Protective Association v. Loukidelis*, [2008] O.J. No. 3475 (Div. Ct) (*CMPA*). See also *HKSC Developments L.P. v. Infrastructure Ontario and Information and Privacy Commissioner of Ontario*, 2013 ONSC 6776 (CanLII), 2013 ONSC 6776 (Can LII) and in *Miller Transit Limited v. Information and Privacy Commissioner of Ontario* et al., 2013 ONSC 7139 (CanLII) (*Miller Transit*) and*Aecon Construction Group Inc. v. Information and Privacy Commissioner of Ontario*, 2015 ONSC 1392 (CanLII) (*Aecon Construction*).

university had no say in the determination of the dates of the courses to be provided or that the prices identified were not negotiable, taking into consideration that agreed upon terms are considered to be the product of negotiation.

[48] I also do not accept that the disclosure of the information contained in the purchase orders could either permit accurate inferences to be made with respect to underlying non-negotiated confidential information supplied by the third party to the university or information that is not susceptible to negotiation. As a result, I find that neither of the "inferred disclosure" or the "immutability" exceptions apply to the records at issue.

[49] Accordingly, based on the evidence that is before me, I find that the invoices were not "supplied in confidence" to the university for the purposes of section 17(1) as I am satisfied that they can be traced back to an agreement reached by the two parties for the provision of test preparation services. However, if it could be established that the payments set out in the invoices were in fact "supplied in confidence" by the third party, for the sake of completeness, I will go on to consider part three of the section 17(1) test. Specifically, I will consider whether the disclosure of the information contained in the invoices could reasonably be expected to result in any of the harms set out in section 17(1).

Part 3: harms

[50] 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.[21]

[51] 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.*[22]

[52] 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).[23]

Representations

[53] The third party submits that disclosure of the information could reasonably be expected to cause harm, in the form of prejudice to its competitive position and undue

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[21] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.
[22] Order PO-2435.
[23] Order PO-2435.

loss. It submits that disclosure would also "prejudice its position in its regular negotiations with other institutions regarding contracts, pricing and other aspects of its services." It explains that the detailed information about its services, pricing and other information in relation to this particular university would allow a competitor to have valuable information about the relative competitive position of its products and services.

[54] The third party submits that disclosure of this information could reasonably be expected to be used by a competitor to make decisions about the research and development required to create a competitive product. The third party submits that this would provide a competitor with an unfair competitive advantage resulting in an undue gain. It further submits that pricing and related information contained in the records could be used by a competitor to undercut for the university at issue in this appeal, as well as for other universities with which it has existing relationships. The third party submits that as it does not have similar information about its competitors, its competitive position would be prejudiced if the information were disclosed.

[55] More specifically the third party submits that the disclosure of the following information could result in correlative harms:

- Disclosure of the pricing information could put its revenue at risk and harm its relationships and bargaining position with other schools with which it does business.

- Disclosure of the dates of events, workshops or courses could permit inferences about the potential success rate compared to the failure rate of certain events.

- Disclosure of the order and frequency of events, workshops or courses offered would allow competing test preparation companies to mimic its event schedule or offer similar services at the same times in the same market.

- Disclosure of the percentage of events, workshops or courses held compared to the number not held could be used to determine success rates.

[56] Addressing the reasonable expectation of harm resulting from the disclosure of the information at issue, the appellant submits that the third party has not met the requisite "detailed and convincing" standard of evidence. He submits that the prices of the third party's events, workshops and courses, as well as their dates, is information that is presumably already publicly available "as courses and workshops are at some point advertised to prospective participants." The appellant further submits that the third party's representations fail to demonstrate a risk of harm that is well beyond the speculative or merely possible, as is required by the *Act*.

Analysis and findings

[57] In my view, I have not been provided with sufficiently detailed and convincing evidence to establish that any of the harms set out in section 17(1)(a), (b) and/or (c) could reasonably be expected to occur were the information in the invoices disclosed.

[58] The third party argues that pricing related information and the dates of its courses could reasonably be expected to result in the enumerated harms, including permitting a competitor to offer similar services at the same times to the same markets and harm its ongoing relationships and bargaining positions with the universities with which it does business.

[59] In Order PO-2435 Commissioner Brian Beamish stated:

> The fact that a consultant working for the government may be subject to a more competitive bidding process for future contracts does not, in an of itself, significantly prejudice their competitive position or result in undue loss to them.

[60] I agree with the position taken by Commissioner Beamish and adopt it in the present case. I am not satisfied that the evidence before me has established that the disclosure of the information contained in the invoices including the dates, order and frequency of events and the price charged to the university per course could reasonably be expected to prejudice significantly the competitive position of the third party or interfere significantly with its contracts or other negotiations as contemplated by section 17(a). I also am not satisfied that disclosure of the information could reasonably be expected to result in an undue loss to the third party or a correlative undue gain to one of its competitors as contemplated by section 17(1)(c).

[61] The third party also alleges that the disclosure of the order and frequency of events would assist a competitor with research and development of a similar product. In my view, the third party has not provided me with sufficiently detailed evidence to support this position, describing how disclosure of the specific information contained in the invoices could assist in such "research and development." Accordingly, I find that I have not been provided with representations which satisfy me that this type of information contained in the invoices qualifies for exemption under either of sections 10(1)(a) and/or (c).

[62] I also am not satisfied that the disclosure of the information in the invoices could reasonably be expected to result in similar information no longer being supplied to the university (or other universities) in the future, as contemplated by section 10(1)(b). In my view, companies doing business with public institutions such as universities must understand that certain information detailing the expenditure of public funds might be disclosed. In the case of the third party, university students are its prime target market and I do not accept that the disclosure of the specific information set out in the invoices could reasonably be expected to cause it to terminate its business arrangements with universities.

Summary

[63] In summary, I found that the purchase orders were not "supplied" to the university for the purposes of section 17(1) and do not meet the second part of the three-part test for that exemption to apply.

[64] I found that the invoices were also not "supplied" to the university for the purposes of the second part of the section 17(1) test. However, for the sake of completeness I decided to consider whether any of the harms contemplated in part three of the test could be established. I found that I have not been provided with sufficient evidence to establish that any of the harms set out in section 17(1)(a), (b) or(c) could reasonably be expected to occur were the information disclosed and therefore, that part three of the test had not been met.

[65] As all three parts of the section 17(1) test must be met I find that the exemption at section 17(1) does not apply to the records and I will order the information at issue disclosed.

ORDER:

1. I order the university to disclose the records, with the exception of the third party's banking information which is found on the purchase orders and in the middle of each invoice, to the requester by **June 27,2018** but not before **June 21, 2018**.

2. In order to verify compliance with order provision 1, I reserve the right to require that the university provide me with a copy of the records disclosed to the requester.

Original Signed By: May 23, 2018
Catherine Corban
Adjudicator