

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3791

Appeals MA18-148 and MA18-432

City of Toronto

June 25, 2019

**Summary:** The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to responses to a specific request for proposal (RFP). The responsive record at issue in this appeal is the RFP of a company that was an unsuccessful proponent of the bidding process. The city issued an access decision, withholding only the unit-pricing information in the record from the requester, on the basis of the mandatory third party information exemption at section 10(1) of the *Act*. The company appealed that decision (Appeal MA18-148), resisting disclosure of the entire bid, also on the basis of section 10(1). The requester also appealed the city's decision to withhold any information in the bid (Appeal MA18- 432). These appeals were processed jointly. During the inquiry, the company narrowed the portions of the record that it resists disclosure to. In this order, the adjudicator upholds the city's decision, in part. She finds that section 10(1) applies to portions of the record, but not to others. She also finds that the mandatory personal privacy exemption at section 14(1) of the *Act* applies to certain personal information in the record, and orders the city to withhold it.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 10(1), and 14(1).

**Order Considered:** Order PO-2461.

**Case Considered:** *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 SCR 23, 2012 SCC 3 (CanLII).

## **OVERVIEW:**

[1] The City of Toronto (the city) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA, or the Act)* for responses to a specified request for proposal (RFP).

[2] The city located several responsive records; this order concerns one of the unsuccessful bids.

[3] Before issuing its decision, the city notified the company that had submitted the unsuccessful bid in question (an affected party) of the request,<sup>1</sup> seeking its views about disclosure of the responsive record. The company did not respond to the city. The city issued an access decision to grant partial access to the record, denying access to unit pricing information, relying on the mandatory third party information at section 10(1) of the *Act* to do so. The record was not released to the requester in order to allow for an appeal by the company of the city's decision.<sup>2</sup>

[4] The requester and the company both appealed the city's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC, or this office). The IPC opened appeal files MA18-148 and MA18-432, and processed them jointly.

[5] Mediation was attempted but could not resolve the dispute.

[6] Therefore, appeals MA18-148 and MA18-432 proceeded to adjudication on the sole issue of the application of the section 10(1) third party information exemption with respect to the same record. The city's position is that section 10(1) of the *Act* applies to some of the financial information in the record, but that the rest of the record can be disclosed. The company initially resisted disclosure of the whole record, but, later in the inquiry, limited its opposition to certain portions of the record. The original requester seeks access to the whole record, including the financial information withheld by the city. As a result, the company is the appellant in Appeal MA18-148 and an affected party in Appeal MA18-432; the requester is an affected party in Appeal MA18-148 and the appellant in Appeal MA18-432. However, for ease of reference, I will refer to these parties as the company and the requester in this order.

[7] I sought, received, and shared representations from the city, the company, and the requester in accordance with the IPC's *Practice Direction 7* on sharing representations. During the inquiry, the company raised the possible application of the mandatory personal privacy exemption at section 14(1) to part of the record.

[8] For the reasons that follow, I uphold the city's access decision under the

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<sup>1</sup> In accordance with section 21(1) of the *Act*.

<sup>2</sup> In accordance with section 39(1) of the *Act*.

mandatory third party information exemption at section 10(1), in part, and find that the mandatory personal privacy exemption at section 14(1) of the *Act* applies to portions of the record, which I will order the city to withhold.

## **RECORDS:**

[9] The record consists of the unsuccessful bid (or RFP) of the company, in response to a specified RFP issued by the city.

## **ISSUES:**

- A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 14(1) apply to the personal information at issue?
- C. Does the mandatory exemption at section 10(1) apply to the remainder of the record?

## **DISCUSSION:**

### **Issue A: Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[10] In order to determine whether the mandatory personal privacy exemption at section 14(1) applies, I must first decide whether the record contains "personal information," and if so, to whom it relates. For the reasons that follow, I agree, in part, with the company's position that what it describes as "personal biographical information" belonging to its employees should be withheld.

[11] The term "personal information" in section 2(1) of the *Act* means "recorded information about an identifiable individual." Section 2(1) also lists examples of "personal information," including information relating to employment history of an individual,<sup>3</sup> but the listed examples are not exhaustive. Therefore, information that does not fall under the listed examples may still qualify as personal information.<sup>4</sup>

[12] To qualify as personal information, it must be reasonable to expect that an

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<sup>3</sup> Section 2(1) (definition of "personal information") of the *Act*, paragraph (b).

<sup>4</sup> Order 11.

individual may be identified if the information is disclosed.<sup>5</sup>

[13] Having reviewed the record at issue, and for the following reasons, I find that portions of it contain personal information, as defined under section 2(1) of the *Act*, belonging to several identifiable individuals, but not the requester.

[14] To qualify as personal information, the information must be about the individual in a personal capacity.

[15] Sections 2.1 and 2.2 of the *Act* relate to the definition of personal information, and say:

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[16] In this case, the record contains the first name, first initial of the surname (in most cases), and title of the company's employees. Under sections 2.1 and 2.2 of the *Act*, this is not their personal information. Therefore, I will be upholding the city's decision to disclose this information, since only "personal information," as defined by the *Act*, may be subject to the personal privacy exemption at section 14(1) of the *Act*.

[17] However, there is other information relating to these employees in the record at issue.

[18] As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.<sup>6</sup> However, if the disclosure of the information would reveal something of a personal nature about the individual, it may still qualify as personal information even if information relates to an individual in a professional, official or business capacity.<sup>7</sup>

[19] Having reviewed the record, I find that the company's employees' photographs and work histories in the record is personal information of each of those employees under the *Act*. This office has found that images of individuals contained in photographs

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<sup>5</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

<sup>6</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>7</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

and video footage qualify as the personal information of identifiable individuals.<sup>8</sup> The photographs contain information relating to the race, national or ethnic origin, colour and sex of the employees, which also qualifies as personal information under paragraph (a) of section 2(1) of the *Act*. The employees' work/education histories is their personal information under the introductory wording of the definition of "personal information" in the *Act* and under paragraph (b) of that definition.

[20] Since the record at issue contains the personal information of identifiable individuals but not the requester, I must assess any right of access under Part I of the *Act*, specifically under the mandatory personal privacy exemption at section 14(1).

**Issue B: Does the mandatory exemption at section 14(1) apply to the personal information at issue?**

[21] Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. For the reasons set out below, the photographic images and work histories in a section of the record about the company's team are exempt from disclosure under section 14(1).

[22] On my review of the record, I find that none of the exceptions at sections 14(1)(a) to (e) apply.

[23] Under section 14(1)(f), if disclosure would not be an unjustified invasion of personal privacy, it is not exempt from disclosure. Sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f). Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy, but based on my review of the record, section 14(4) has no relevance in this appeal.

[24] I will discuss whether disclosure of each of the types of personal information in the record would constitute an unjustified invasion of personal privacy under section 14(1)(f), below.

***Photographic images of employees***

[25] I find that no presumptions at section 14(3) apply to the employees' photographs.

[26] Since none of the section 14(3) presumptions apply, I turn to the factors listed at section 14(2), which may be relevant in determining whether disclosure of personal

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<sup>8</sup> Orders PO-2477, MO-1570, and PO-3172.

information would constitute an unjustified invasion of personal privacy.<sup>9</sup>

[27] In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring *disclosure* in section 14(2) must be present. In the absence of such a finding, the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies.<sup>10</sup>

[28] That is the case here: I find that there are no factors that favour disclosure of the employees' photographs found next to their work histories, and as a result, disclosure of these photographs would be an unjustified invasion of the personal privacy of these individuals under section 14(1). Therefore, I will be ordering the city to withhold these images.

### ***Work histories of employees***

[29] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies.<sup>11</sup>

[30] Based on my review of the employees' work histories, I find that the presumption at section 14(3)(d) applies, which says:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information, [. . .] relates to employment or educational history[.]

[31] I note that a person's name and professional title, without more, does not constitute "employment history".<sup>12</sup>

[32] However, information contained in resumes<sup>13</sup> and work histories<sup>14</sup> falls within the scope of section 14(3)(d). Since the record contains personal information that relates to the employment and/or educational history of the company's employees, I find that this information, if disclosed, is presumed to be an unjustified invasion of those individuals' personal privacy under section 14(3)(d).

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<sup>9</sup> Order P-239.

<sup>10</sup> Orders PO-2267 and PO-2733.

<sup>11</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

<sup>12</sup> Order P-216.

<sup>13</sup> Orders M-7, M-319 and M-1084.

<sup>14</sup> Orders M-1084 and MO-1257.

[33] Once a presumed unjustified invasion of personal privacy is established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2).<sup>15</sup> As mentioned, section 14(4) does not apply in this case. In addition, the parties did not argue, and I do not find, that section 16 applies either. Therefore, I will be ordering the city to withhold those portions of the record.

**Issue C: Does the mandatory third party information exemption at section 10(1) apply to the remainder of the record?**

[34] For the reasons that follow, I uphold the city's decision on the remaining information in the record, in part.

[35] The company relies on all parts of section 10(1), but particularly section 10(1)(a).

[36] Section 10(1) says:

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.

[37] Section 10(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.<sup>16</sup> Although one of the central purposes of the *Act* is to shed light on the operations of

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<sup>15</sup> *John Doe*, cited above.

<sup>16</sup> *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.*).

government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.<sup>17</sup>

[38] Parties resisting disclosure must demonstrate that a record, or part of a record, is exempt under the *Act*. In Appeals MA18-148 and MA18-432, there are two parties resisting disclosure, the city and the company. However, they differ over which portions of the record are exempt, as described below.

[39] For section 10(1) to apply, a party resisting disclosure must prove that each part of the following three-part test applies to the information it seeks to withhold:

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.

***Positions of the parties on section 10(1)***

[40] The requester seeks access to the entire record, and submits that section 10(1) does not apply to it because of:

- the existence of an *MFIPPA* clause in the city's bid form;
- the company's lack of representations to the city re: disclosure (at the request stage);
- deference to the city's expertise in applying the *Act*; and
- the company's failure to sufficiently prove that the information withheld is exempt during the inquiry.

[41] The city's position is that the unit pricing on three specified pages of the record is exempt under sections 10(1)(a) and 10(1)(c). It submits that without representations from the company at the notification stage, the city had no basis to withhold the bid in full. Therefore, the city followed its practice of not disclosing unit pricing of unsuccessful bidders, as that information would reasonably be expected to lead to a competitive disadvantage or undue losses to an unsuccessful bidder if disclosed.

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<sup>17</sup> Orders PO-1805, PO-2018, PO-2184 and MO-1706.



[42] The company initially objected to disclosure of the entire record, but revised its position during the inquiry, in response to the requester's representations. On the basis of sections 10(1)(a), (b), (c), and/or (d), but particularly 10(1)(a), the company now objects to disclosure of portions of the record. Specifically, the company does not consent to the disclosure of the following information on specified pages of the record, described as "together the Proprietary Information":

- Engagement process (in a portion of the record that covers both "Engagement Process" and "Development Process");
- Personal biographical information on staff;
- The entirety of the "Experience Section" (that it describes as "a de facto client listing"); and
- Methodology of pricing (on a specified page).

[43] I have already explained why the photographs and work histories of the company's team are exempt under the mandatory personal privacy exemption of section 14 of the *Act*. However, what remains at issue from that section of the record are the first names and, for most of the staff, the first initial of the surnames.

[44] The requester submits that the company did not identify information in the record that would qualify as exempt under section 10(1) to the city at the notification/request stage. However, because the third party exemption is a mandatory one, I have considered the nature of the record myself.

### ***Part 1: Type of information***

[45] For the reasons that follow, I find that the record at issue meets Part 1 of the test.

[46] The record is the unsuccessful bid of the company, submitted to the city as part of a bidding process to do specified work for the city.

[47] The company's position is that the information it seeks to withhold (listed above) is a trade secret, and that this information contains the company's own "layout, look, feel, and content."

[48] The IPC has defined "trade secret" as follows:

*Trade secret* means information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which

- (i) is, or may be used in a trade or business,

- (ii) is not generally known in that trade or business,
- (iii) has economic value from not being generally known, and
- (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.<sup>18</sup>

[49] I can accept that the record itself does not appear on the company's website and its contents may well have evolved over the years. However, having reviewed the record and the submissions of the company, I find that there is insufficient evidence that the information at issue falls within the above definition of a trade secret.

[50] Rather, I find that, as an unsuccessful bid, the record meets the first part of the test because it contains two types of information listed under section 10(1), commercial and financial information, defined by this office as:

*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.<sup>19</sup> The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.<sup>20</sup> *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.<sup>21</sup>

[51] The company's bid contains information that relates to the provision of services (commercial information) and the payment for those services (financial information).

[52] Therefore, I find that Part 1 of the test is met because the record as a whole contains financial and commercial information.

### ***Part 2: Supplied in confidence***

[53] For the reasons that follow, I find that the remaining information at issue meets Part 2 of the test.

[54] Part 2 of the three-part test itself has two parts: the information at issue must

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<sup>18</sup> Order PO-2010.

<sup>19</sup> Order PO-2010.

<sup>20</sup> Order P-1621.

<sup>21</sup> Order PO-2010.

have been “supplied” to the city by the company, and the company must have done so “in confidence”, implicitly or explicitly. If the information was not supplied, section 10(1) does not apply, and there is no need to decide the “in confidence” element of Part 2 (or Part 3) of the test.

[55] The requirement that the information was “supplied” to the institution reflects the purpose in section 10(1) of protecting the informational assets of third parties.<sup>22</sup>

[56] 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.<sup>23</sup>

[57] In order to satisfy the “in confidence” component of Part 2, 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.<sup>24</sup>

[58] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, all the circumstances 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.<sup>25</sup>

### *Supplied*

[59] In the appeals resolved by this order, the record at issue is a bid. Accordingly, it is reasonable to conclude that it was “supplied” for the purposes of section 10(1) because I find the city had no other way of (or reason for) having that information apart from the company supplying it to the city as part of the city’s bidding process.

[60] The requester and company made submissions about whether or not the

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<sup>22</sup> Order MO-1706.

<sup>23</sup> Orders PO-2020 and PO-2043.

<sup>24</sup> Order PO-2020.

<sup>25</sup> Orders PO-2043, PO-2371 and PO-2497, upheld in *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

“inferred disclosure” or “immutability” exceptions apply. However, since the record at issue is not a contract, neither exception can apply.<sup>26</sup>

### *In Confidence*

[61] The city’s bid form included an *MFIPPA* clause, which may weigh against finding that the record was supplied “in confidence.” I also acknowledge that there is no evidence that the company flagged any particular information to the city as being subject to section 10(1) at the bidding stage.

[62] Nevertheless, given the context that the city received this information from the company – a bidding process – I am satisfied that the information at issue was provided with a reasonable, objective expectation of confidence. As the city argued, the unit pricing was not subject to negotiation and is not known to other parties. Similarly, I accept that the company disclosed its total base bid price and accompanying descriptive information to the city as part of the bidding process, and not to others outside the confines of the bidding process in question. It is also reasonable to accept that this type of information would not be readily known to others. Finally, for similar reasons, I can accept that the company’s descriptions of its engagement and development processes were supplied to the city in confidence.

[63] Therefore, all of the information that the company wants withheld — the unit pricing on three specified pages, the pricing information on a specified page, and the engagement and development sections of the record — meets Part 2 of the test.

### ***Part 3: Harms***

#### *Onus of proof*

[64] Parties resisting disclosure must establish a risk of harm from disclosure of the record that is well beyond the merely possible or speculative, but need not prove that disclosure will in fact result in such harm.<sup>27</sup>

[65] Parties should provide detailed evidence to demonstrate the harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.<sup>28</sup> The failure of a party resisting disclosure to provide detailed evidence will not necessarily defeat the claim for exemption where harm can be inferred

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<sup>26</sup> The “inferred disclosure” and “immutability” exceptions are exceptions to the general principle that terms of a contract are mutually generated and not “supplied”.

<sup>27</sup> *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616, *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2014] 1 S.C.R. 674, *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

<sup>28</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, cited above.

from the records themselves and/or the surrounding circumstances. However, parties should not assume that the harms under section 10(1) are self-evident or can be proven simply by repeating the description of harms in the *Act*.<sup>29</sup>

*The requester's representations*

[66] In response to the company's initial representations objecting to the entire record, the requester submitted that "simply stating a product or service is unique does not render it so." It also submits that the company must provide explicit evidence that "intellectual property, beyond publicly available industry best-practices, exists" and that disclosure would "constitute harm beyond speculative measure."

[67] The requester also argues that the company's submission about the "look and feel" of its bid is an assertion made "without the inclusion of any background materials, documentation, or relative case authorities, and until such provisions are submitted, we cannot assume that harms are self-evident."

*The company's reply representations*

[68] After receiving the requester's submissions, the company narrowed the scope of its objections to four parts of the record, as already discussed.

[69] The company also submitted that it would explicitly withdraw its objections to disclosure if it could be granted a statement by the requester that he is not a competitor. However, this office does not release such information without the consent of a requester. From the requester's refusal to provide a statement that he is not a competitor, the company concluded that he is.

[70] On the basis of that conclusion, the company then asks why else a requester would ask for "Proprietary Information" in a bid that was not accepted. It then submits an answer to its question: that the requester wants to use "the portions of the record that have given [the company] a competitive advantage and/or obtain its confidential listing of clientele [by whom the company has] successfully been retained," apart from the clients listed, and other information, on its website. The company then argues that disclosure of "either type of information or trade secret would carry with it a real risk of material harm to" its business. However, it does not elaborate further on the nature of this material harm.

[71] With these representations in mind, I will proceed to examine each portion of the record for which the company claims the application of section 10(1).

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<sup>29</sup> Order PO-2435.

Names/initials and titles of company's employees

[72] The company's position is that the entire section of the bid containing "biographical information" of its employees is "deemed excludable under decision MO-2786;" it includes this section of the record in its description of the "Proprietary Information." However, I do not accept the company's position.

[73] Under Issue B, I explained why the photographs and work histories are exempt under the mandatory personal privacy exemption at section 14.

[74] What remains in this portion of the bid is the first name, first initial of the surname (in most cases), and title of the company's employees. Order MO-2786 is of no assistance to the company in withholding this information because in that order, the staffing information was withheld by the city, and the decision to do so was not being appealed by the party resisting disclosure. I am also unpersuaded that the company's generalized representations about its "Proprietary Information" could apply to these names and titles. It is reasonable to believe that staff do not "belong" to a company in the way contemplated by section 10(1). Therefore, without sufficient evidence that disclosure of the titles, first names, and first initials of the surname of its employees could reasonably be expected to lead to any of the harms contemplated by section 10(1), I will uphold the city's decision to disclose this information to the requester.

"De facto client listing"

[75] This section of the record includes descriptions of work performed for, and the official logos of, organizations that the company has provided services to in the past.

[76] As mentioned, the company suspects that the requester is a competitor, and argues that it must be trying to obtain its "confidential" client list. The company submits that this would come with a real risk of material harm to the company. I find that argument to be vague, especially without further information as to why the company posts this type of information online for some clients and not others. I am unable to determine the basis of the assertion that this list is confidential. I also find this argument to be speculative because many things would have to be true for the specified harms to materialize. Those circumstances include: a competitor taking the time to seeking out each client listed and proposing their own service, the potential client's need for that service, and the potential client's acceptance of those terms. There is no evidence before me that any of that is reasonably expected.

[77] Without sufficient representations from the company about the harms reasonably anticipated by the disclosure of information in this portion of the record, I find it does not meet Part 3 of the test, and I will uphold the city's decision to disclose it to the requester.

Unit pricing (withheld by the city)

[78] On the basis of the following, I accept the city's submission that the unit pricing on three specified pages of the record meets Part 3 of the test.

[79] The city argues that the harms contemplated by sections 10(1)(a) (competitive position) and 10(1)(c) (undue loss) can reasonably be expected to transpire if the unit pricing of the company were disclosed. The city submits, and I find, that it is reasonable to believe that the disclosure of that unit pricing to the public could be expected to have a negative effect on the company's competitive position in the market and cause undue loss to the company, and that such an outcome would not reflect the goals and objectives of *MFIPPA*. Therefore, I will be upholding this aspect of the city's decision.

"Methodology of pricing" on a specified page

[80] Whereas the unit pricing was not at issue to the company because the city had already decided to withhold it, the company objects to the disclosure of one of the pages containing unit pricing in its entirety. It is one of the three pages containing unit pricing, but it also contains the total "base bid" price, and other explanatory pricing information. The company objects to the disclosure the whole page because it reveals its "methodology of pricing."

[81] I find that the remaining part of the page in question (that is, the non-unit pricing, as distinct from the unit pricing withheld by the city) meets Part 3 of the test for the same reasons I found that the unit pricing meets Part 3. I find that it is reasonable to expect that the remaining information on this page could have a negative impact on the company's competitiveness and that there is a reasonable possibility of undue losses.

[82] Therefore, I find that the page specified by the company as detailing its "methodology of pricing" meets Part 3 of the test. Since this information meets all three parts of the test under section 10(1), it is exempt from disclosure and I will be ordering the city to withhold it.

Engagement and development processes

[83] For the reasons that follow, I find that the company did not meet its onus to show that this portion of the record meets Part 3 of the test.

[84] The company identified a number of pages in the record that describe its "engagement process," though I note that some of those pages are labeled "development process."

[85] The requester argues, and I agree, that simply asserting that something is unique does not make it so.

[86] In response to the requester's representations, the company stated the

following:

As a response to the applicant's statement that we provided an assertion without background material, we are of the opinion that the Proprietary Material is the particular material in the document which contains our unique layout, look and feel and content. We hope this will provide you with some further focus in making your decision.

[87] I find that these submissions amount to an assertion without a sufficient explanation as to how the pages marked engagement or development process meet Part 3 of the test. It is not clear from the record itself what, if anything, is specifically proprietary (or particular to this company) about the processes described, or how the descriptions of those processes are particular to this company and can be distinguished from the general processes followed in the business by other companies.

[88] Since the company has not sufficiently demonstrated that disclosure of the information about its engagement and development processes could reasonably be expected to lead to any of the harms contemplated by sections 10(1), that information does not meet Part 3 of the test. As all three parts of the test under section 10(1) must be met for information to be exempt and this portion of the record does not meet Part 3, I uphold the city's decision to disclose that information to the requester.

## **ORDER:**

1. I uphold the city's access decision, in part. I order the city to withhold the personal photographs and work histories of the employees contained in the record (but not their names and titles), and page 20 of the record in its entirety.
2. I order the city to disclose the remaining portions of the record, in accordance with this order, to the requester by **July 31, 2019** but not before **July 26, 2019**.
3. In order to verify compliance with this order, I reserve the right to require the city to provide me with a copy of the record sent to the requester, pursuant to paragraph 2 of this order.

Original Signed by: \_\_\_\_\_

Marian Sami  
Adjudicator

June 25, 2019 \_\_\_\_\_