Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4053

Appeal PA17-510

Sinai Heath System

July 29, 2020

Summary: Sinai Health System (SHS) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records related to its linen and laundry services agreements with a third party provider. SHS decided to grant access to the responsive records. The third party provider appealed this decision, claiming that the mandatory third party information exemption in section 17(1) applies to portions of the records.

In this order, the adjudicator orders SHS to withhold the pricing information offered by the third party appellant to SHS for services not set out in an agreement between SHS and the third party appellant. She orders SHS to disclose the remaining information at issue, which she finds is not exempt under section 17(1).

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

OVERVIEW:

[1] Sinai Health System (SHS)[1] received a request for the following records under

[1] In July 2017, the requester sought access to linen and laundry services agreements for all Mount Sinai facilities locations, including agreements between the appellant and any formerly separate health care facilities that had merged with Mount Sinai Hospital. Mount Sinai Hospital amalgamated with Bridgepoint Health in 2015 and together with Circle of Care and the Lunenfeld Tanenbaum Research Institute, formed Sinai Health System.

the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*):

1. all linen and laundry services agreements currently in force or which were in force at any time between January 1, 2017 and the present, relating to or in the custody or control of Mount Sinai Hospital for all Mount Sinai facilities locations (including locations of any formerly separate health care facilities merged with Mount Sinai), and

2. all documents relating to the linen or laundry service agreements requested in part 1 including, but not limited to, any amendments, proposed amendments, terms or service extensions, internal and external correspondence, briefing notes, memos, successful bids or proposal documents, whether those agreements and documents form part of the institution's Contract and Agreements, Facilities Management Records, Laundry Services Records or other classes of records and whether they are stored in paper or electronic form.

[2] Following notification to SHS's linen and laundry services provider, SHS issued an access decision to the requester granting partial access to the responsive records.

[3] SHS denied access to portions of the responsive records pursuant to the mandatory exemptions in sections 17(1) (third party information) and 21(1) (personal privacy) of the *Act*. SHS also stated that some portions of the records were not responsive and, therefore, those portions of the records were withheld.

[4] The requester appealed SHS's decision. Appeal PA17-556 was opened to address the requester's appeal. The linen and laundry services provider (now the appellant) also appealed SHS's decision and this file, Appeal PA17-510, was opened to deal with its concerns.

[5] During mediation, the requester stated that she was not seeking access to the portions of the records withheld pursuant to section 21(1) and the portions of the records withheld as non-responsive; therefore, those portions of the records are not at issue in this appeal. The requester stated that she was only seeking the portions of the records withheld pursuant to section 17(1) of the *Act*.

[6] SHS later issued a revised decision stating that it was granting full access to the responsive information in the records that it had previously withheld pursuant to section 17(1) of the *Act*. Specifically, SHS stated that it was now granting full access to the responsive information in two specified services agreements and a specified PowerPoint presentation. Accordingly, the requester's appeal file (PA17-556) was closed.

[7] As mediation did not resolve the issues in Appeal PA17-510, however, it was transferred to the adjudication stage where I conducted an inquiry.

[8] Representations were sought and exchanged between the appellant and the requester in accordance with section 7 of the IPC's *Code of Procedure* and *Practice*

Direction 7.[2]

[9] After I asked the SHS about the portions of the two agreements (Records 1 and 2) withheld as not responsive to the request, SHS decided that these portions were responsive and that both of these records should be disclosed to the requester in full.

[10] I then asked the appellant to provide submissions in response to this new disclosure decision. It did not provide submissions. Instead, it provided me with a copy of the records, identifying which portions of all three records at issue it claims are subject to section 17(1).

[11] In this order, I uphold SHS's decision in part and order SHS to disclose the records to the requester, except for the pricing information in the PowerPoint presentation and the information withheld under section 21(1), which is non-responsive.[3]

RECORDS:

[12] The portions of the records remaining at issue are set out on pages 15, 71, 75, 83-85, 100, 119, 257, 258, 262, and 274 to 279 of the appellant's USB, which are more particularly described by the appellant as follows:

Record 1 - Laundry and Linen Services Agreement dated February 2011 between Bridgepoint Health (BH) and the appellant

Page # of USB[4]	Part of record	Sub-part of record	Portion at issue
15	Appellant's proposal attached to executed letter agreement between BH and the appellant containing additions and clarifications of the appellant's proposal	Appellant's proposal Section 5.2 References	Entire page Listing customer references

Record 2 - Laundry and Linen Services Agreement dated May 2013 between Mount Sinai Hospital (MSH) and the appellant

[2] I did not seek representations from SHS, as its decision was to disclose the records.
[3] Only Records 1 and 2 contain personal information exempt under section 21(1), and the requester does not seek access to it.
[4] The appellant provided me with a USB containing a copy of all the records. The appellant identified on the USB where the portions subject to its section 17(1) claims are located.

Page # of USB	Part of record	Sub-part of record	Portion at issue
71	Article 2 General	Order Fill Rate	One figure and the example
75	Article 2 General	Laundry and Linen Services	Appellant's pricing and payment in last column and Note 3
75	Article 2 General	Price Adjustment	Part of the sentence
83 to 85	Schedule 7, appellant's response to RFP [#] March 25, 2013	Executive Summary	Entire section
100	Schedule 7, appellant's response to RFP [#] March 25, 2013	Implementation Plan	Name and Title of appellant's employees[5]
119	Schedule 7, appellant's response to RFP [#] March 25, 2013	Appendix F - references	Entire page
257 to 258	Schedule 7, appellant's response to RFP [#] March 25, 2013	Exhibit 8	Appellant's operational flow charts
262	Schedule 7, appellant's response to RFP [#] March 25, 2013	Exhibit 10	Quality control chart

Record 3 - PowerPoint presentation dated May 16, 2017 presented to SHS by the appellant

Page # of USB	Part of record	Sub-part of record	Portion at issue
274	Slide 2	Surcharge for options (for each of three options)	Price figures severed

[5] The remainder of this severance is not responsive as it contains these individuals' employment history, which fits within section 21(1).

275	Slide 3	Processing cost of options (for each of three options)	Price figures severed
276	Slide 4	Total cost of Program (for each of three options)	Price figures severed
277	Slide 5	Processing cost of options (for each of two options)	Price figures severed
278	Slide 6	Processing cost of options (for each of two options)	Price figures severed
279	Slide 7	Total cost of Program (for each of two options)	Price figures severed

DISCUSSION:

Does the mandatory third party information exemption at sections 17(1)(a) or (c) apply to the information at issue in the records?

[13] The appellant relies on sections 17(1)(a) and 17(1)(c), which 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,
>
> > (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
> >
> > (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

[14] Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[6]

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[6] *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.*).

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.[7]

[15] 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 paragraphs (a), (b), (c) and/or (d) of section 17(1) will occur.

Part 1: does the record reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information?

Representations

[16] The appellant states that the records contain commercial and financial information related to the relationship between a hospital and a supplier for the provision of linen and laundry services.

[17] The requester did not provide representations on part 1 of the test.

Analysis/Findings re part 1

[18] The types of information relied upon by the appellant in section 17(1) have been discussed in prior orders:

> *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.[8] The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.[9]

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[7] Orders PO-1805, PO-2018, PO-2184 and MO-1706.
[8] Order PO-2010.
[9] Order P-1621.

> *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.[10]

[19] I agree with the appellant that the records contain commercial and financial information relating to the selling of linen and laundry services to a hospital and the costs of these services.

[20] Therefore, I find that part 1 of the test under section 17(1) has been met.

Part 2: was the information supplied to SHS in confidence, either implicitly or explicitly?

Representations re supplied

[21] The appellant states that it supplied the information in Records 1 and 2 and that the information at issue is the same as that included in its RFP response attached to these records. It states that it did not engage in any negotiations with the individual hospitals prior to the execution of Records 1 and 2.

[22] The appellant submits that because Mount Sinai Hospital was not involved in the RFP process that resulted in Record 1 (the Bridgepoint Health agreement),[11] the best evidence on the "supplied point" for Record 1 is that included in the Affidavit of the Chief Executive Officer (CEO) and President of the appellant who has held this position since 2000.

[23] In that affidavit, the appellant's CEO states that the appellant's response to the RFP is attached to, and is an integral part of Record 1 and the cover letter to Record 1 merely clarifies certain points in the appellant's response to the RFP. The CEO states that:

> [The appellant's] contract termination provisions, standard in all of its services agreements, were not questioned by Bridgepoint. Bridgepoint signed the cover letter with the attached [appellant's] RFP response "as is." Other than [the appellant] sending the document to Bridgepoint for execution, the parties had no communication whatsoever.

[24] The appellant states that nowhere in the records is there any suggestion or evidence that either Bridgepoint Health or Mount Sinai Hospital was attempting to negotiate with it with respect to the terms of Records 1 or 2.

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[10] Order PO-2010.
[11] As Bridgepoint Health and Mount Sinai Hospital did not amalgamate until 2015.

[25] The appellant states that the largest portions of Records 1 and 2 consist of its response to the respective RFPs. It submits that these responses were clearly supplied to Bridgepoint Health and Mount Sinai Hospital in response to their respective RFPs.

[26] The appellant states that nowhere in Records 1 or 2 is there any suggestion or evidence that the individual hospitals were attempting to negotiate with it with respect to the terms of these records.

[27] The appellant submits that the agreements in this case are clearly distinguishable from those considered and found not to be supplied by the Divisional Court in the *Boeing Co.,*[12] *Miller Transit,*[13] *Aecon*[14] and *Accenture*[15] decisions for the following reasons:

i. The agreements (Records 1 and 2) are simple services contracts.

ii. They involve only two parties: Record 1 - the appellant and Bridgepoint Health; and Record 2 - the appellant and Mount Sinai Hospital.

iii. There is nothing in the information at issue in Records 1 or 2 to suggest that they were in any way "customized". In fact, the Record 1 agreement consists merely of a cover letter and the appellant's response to the RFP for the services captured in the agreement.

[28] The appellant states that Record 3 is a PowerPoint presentation provided by it to SHS on May 16, 2017 in response to a request for information related to the matter addressed in the presentation. It states that SHS did not pursue this matter with the appellant and the appellant never provided services related to the matters addressed in Record 3 to SHS. Therefore, no contract was entered into with respect to this matter.

[29] In response, the requester states that Records 1 and 2, the specified laundry and linen services agreements, fall squarely within the "well-established approach" of the IPC that the contents of a contract involving an institution and a third party are mutually generated and not "supplied" by the third party, even when the contract is

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[12] *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*).
[13] *Miller Transit Limited v. Information and Privacy Commissioner of Ontario et al,* 2013 ONSC 7139 (Can LII) (*Miller Transit*).
[14] *Aecon Construction Group Inc. v. Information and Privacy Commissioner of Ontario,* ONSC 1392 (Div. Ct.) (*Aecon*).
[15] *Accenture Inc. v Ontario (IPC),* 2016 ONSC 1616, (*Accenture*).

preceded by little or no negotiation or discussion.[16]

[30] The requester states that many previous orders of the IPC have determined that contracts resulting from a bidder's proposal in an RFP process are considered negotiated and not "supplied", even if the information in the contracts was "simply directly copied from the Proposal." She states:

> For example, in Order PO-2018, Adjudicator Liang ordered the Management Board Secretariat ("MBS") to disclose the complete final agreement between MBS and an affected third party resulting from an RFP process for the provision of integrated network services. The adjudicator rejected the argument that section 17 should apply because mandating this disclosure might allow a requestor to work backwards to determine the information in the third party's proposal: this interpretation of section 17(1) would result in the exemption from disclosure of the terms of any number of contracts awarded through a similar process to that used in this case.
>
> The [appellant's] attempt to minimize the weight of this dominant approach based on the Divisional Court's standard of review of reasonableness does not alter the current state of the jurisprudence and its application to this appeal…
>
> Contrary to the [appellant's] submissions, the absence of negotiations does not lead to a conclusion that the information was "supplied". In Order P- 1545, Assistant Commissioner Mitchinson ordered Ontario Hydro to disclose a contract, the terms and conditions of which had been set out by a consultant. The Assistant Commissioner found that the contract was a "negotiated arrangement" even though the consultant had been asked to set out the terms which became the basis of the contract. The IPC has applied this same approach when a contract incorporates information proposed by a third party in its response to an RFP. In Order PO-2435, then- Assistant Commissioner Beamish confirmed that information submitted by a bidder which is accepted and becomes a contract constitutes a negotiated agreement because "the acceptance or rejection of a consultant's bid in response to the RFP released by [the Ministry] is a form of negotiation."

[31] Concerning Records 1 and 2, the requester also relies on Orders PO-3885, PO-

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[16] The requester relies on Order PO-3311, upheld in *Aecon Construction Group Inc. v. Information and Privacy Commissioner of Ontario,* 2015 ONSC 1392, *Miller Transit Ltd. v. Ontario (Information and Privacy Commissioner),* 2013 ONSC 7139, and Orders PO-2755 and PO-3264.

3886, and PO-3887, where the IPC ordered disclosure of straightforward bilateral services or product agreements, which were services agreements for the provision of laundry and linen services to three different hospitals.

[32] The requester states that the "unusual circumstances" in which agreed on terms of a contract are considered "supplied" have been limited in the IPC's decisions to date to circumstances where the "inferred disclosure" or "immutability" exceptions apply. She states that the onus in this case is on the appellant to show how the immutability or inferred disclosure exception applies and that the appellant has not argued that either of these exceptions apply.

[33] Concerning Record 3, the specified PowerPoint presentation, the requester submits that this document should be disclosed because the information is "part of a larger negotiation process" for laundry and linen services.

[34] In reply, the appellant submits that while the IPC may have ordered disclosure of straightforward bilateral services or product agreements, it is clear that none of the Divisional Court decisions involved straightforward bilateral services or product agreements.

[35] The appellant states that all of the Divisional Court decisions referred to concerning the supplied test involved IPC orders in which the contracts involved a number of parties, very complex issues and/or a suite of agreements that together formed the basis of the commercial relationship between and among the parties. It submits that these agreements relate to commercial matters that, on their face, demonstrate that the "final contracts" resulted from negotiations. It states:

> It is clear from the orders themselves that not only did the recent orders cited by the requester - Orders PO-3885, PO-3886 and PO-3887 – involve such a fact situation, they also involved a fact situation that was clearly very different from the RFP context as is the case in the current appeal.

[36] Concerning Record 3, the appellant repeats that this record relates to services that could be provided by it to SHS that were not requested and consequently not addressed in the appellant's response to the RFP. Therefore, it states that this information was never part of any "negotiation process."

[37] In sur-reply, the requester states that neither *Boeing* nor *Miller's* endorsement of the IPC's approach of treating contracts as mutually generated and not supplied depends on the contract being multi-party, complex, or part of a "suite of agreements". She states that although the broader context of Orders PO-3885, PO-3886, and PO-3887 involved multiple parties, the contracts at issue were bilateral services agreements.

Analysis/Findings re supplied

[38] 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.[17]

[39] 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.[18]

[40] 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 single party.[19]

[41] 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.[20] 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.[21]

Records 1 and 2

[42] In this appeal, select information from two contracts between the appellant and two hospitals, Bridgepoint Health and Mount Sinai Hospital (now merged into Sinai Health System), Records 1 and 2, is at issue. The appellant, a laundry and linen services provider, has appealed SHS's decision to disclose this information. The appellant claims that both Records 1 and 2 were supplied. It has not claimed that the inferred disclosure or the immutability exceptions apply.

[43] The appellant did not provide detailed representations as to why the specific information it has identified as being at issue in each record is exempt by reason of section 17(1).

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[17] Order MO-1706.
[18] Orders PO-2020 and PO-2043.
[19] *Miller Transit,* above.
[20] Order MO-1706, cited with approval in *Miller Transit*, above at para. 33.
[21] *Miller Transit,* above at para. 34.

[44] Instead, the appellant's position is that because the agreements are between two parties and essentially reflect the terms of the attached responses to RFPs, these agreements contain non-negotiated information that was supplied to BH and MSH.

[45] I disagree with the appellant that the information in Records 1 and 2 was not negotiated. Contrary to the appellant's assertions, it is clear from my review of Records 1 and 2 that these two agreements were customized to meet the requirements of the hospitals.

[46] Record 1 consists of a three-page cover letter agreement signed at the end of February 2011 with the appellant's 39 page proposal dated November 8, 2010 attached to it. The three-page cover letter agreement states that this document, along with the proposal, forms the entire agreement.

[47] Two pages of the three-page cover letter agreement to Record 1 consist of additions and clarifications to the appellant's proposal. These additions and clarifications to the proposal cover a number of different items, including pricing, volume of services to be provided, inventory management, and termination terms.

[48] Record 2 is 232 pages. The appellant's proposal is included in Record 2 as Schedule 7. Schedule 7 is one of 10 schedules attached to Record 2's 20-page cover agreement. Schedule 7 has nine appendices.

[49] Based on the contents of Records 1 and 2, and in particular the modifications and additions to each of the proposals attached to these records, I disagree with the appellant that the hospitals that entered into these two agreements, BH and MSH, simply adopted the appellant's proposal. I find that the information in Records 1 and 2 was not supplied by the appellant to the hospitals.

[50] In any event, I also agree with Orders MO-1706, PO-2018 and PO-2435 that an agreement is negotiated, and not supplied, even where it simply reflects the terms proposed by the third party.

[51] Therefore, I find that part 2 of the test under section 17(1) has not been met for these two records and I will order the information in these records disclosed to the requester, except for the information that is withheld under section 21(1).

Record 3

[52] Record 3 is a PowerPoint slide presentation concerning services that may be offered by the appellant to SHS. These services were not provided to SHS and no contract was entered into between the appellant and SHS for the provision of these services. I find that the information in Record 3 was supplied by the appellant to SHS.

[53] I will consider whether the information in Record 3 was supplied in confidence to SHS by the appellant.

Representations re in confidence

[54] The appellant states that it supplied the information with a reasonable expectation of confidentiality for the following five reasons:

1. The pricing information in the records has been consistently treated as confidential;

2. such information is only used internally within the company to prepare its proposals to potential clients, such as MSH and BH;

3. the information is not otherwise disclosed; nor is it available from sources to which the public has access;

4. the information was communicated to MSH and BH on the basis that it was confidential and that it was to be kept confidential;

5. given that the information was provided to MSH and BH for the purposes of submitting a proposal, the appellant held both an implicit and explicit expectation of the maintenance of the confidentiality of the information.

[55] The requester states that, even if the appellant did "supply" Record 3 to SHS, the appellant has not demonstrated that it had a reasonable expectation of confidentiality when it did so. She states that the appellant's "in confidence" submissions address its expectation of confidentiality for Records 1 and 2, but say nothing about Record 3.

[56] In reply, the appellant states that the five reasons supplied above included submissions on Record 3.

[57] In sur-reply, the requester points out that the appellant's alleged expectation of confidentiality relies on the provision of information as part of MSH's RFP. She submits that the appellant's argument that this submission also applies to Record 3 is inconsistent with its attempt to distinguish Record 3 from the "larger negotiation process."

Analysis/Findings re in confidence

[58] 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.[22]

[22] Order PO-2020.

[59] 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.[23]

[60] Record 3, the PowerPoint, was presented to SHS. This record contains prices about services proposed to be provided to SHS by the appellant. These services were proposed, but not contracted for or provided to SHS. I accept the appellant's submissions on this point and find that this information was:

- communicated to SHS on the basis that it was confidential and that it was to be kept confidential
- treated consistently by the appellant 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.

[61] Therefore, I find that Record 3, the PowerPoint slide presentation concerning services that the appellant could potentially also offer to SHS was supplied in confidence and part 2 of the test has been met for this record. I will now consider whether this record meets part 3 of the test.

Part 3: does the prospect of disclosure of the information in Record 3 give rise to a reasonable expectation that one of the harms specified in section 17(1) will occur?

Representations

[62] The appellant states that it is a large linen processor and has operated as such

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[23] 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.

for more than 30 years.[24] The appellant did not provide specific representations on each severance it identified in the records. Nevertheless, it provided detailed confidential representations as to why disclosure of its pricing information could lead to the harms specified by sections 17(1)(a) and (c); specifically, that under these exemptions disclosure could reasonably be expected to:

- prejudice significantly its competitive position,
- interfere significantly with the contractual or other negotiations with other government institutions, or
- result in undue loss to it or undue gain to its competitors.

[63] The requester submits that the non-confidential portions of the appellant's submissions it was provided with are general in nature and do not meet the harms test in part 3. Concerning the appellant's submissions, the requester states:

> ...the IPC has determined that being subject to a more competitive bidding process for future contracts does not, in and of itself, significantly prejudice a third party's competitive position or result in undue loss to them, as required by section 17.[25] Further, a finding that information contained in a bid is several years old has also been found to undermine a determination that the harm step is satisfied.[26] And finally, in the IPC's recent case mandating disclosure of documents related to a linen and laundry services agreement of Lakeridge Hospital, the IPC found that disclosure of the third party's slide deck presentation which contained information about the services agreement could not reasonably be expected to result in the harms claimed by the third party.[27]
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> ... the identity of the person seeking access to information is not generally considered to be a relevant factor in determining whether documents must be disclosed under FIPPA.[28] In the IPC's recent orders mandating disclosure of three hospitals' linen and laundry services agreements, the

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[24] The appellant provided both confidential and non-confidential representations on this issue. I will be referring only to the non-confidential representations in this order, although I considered all of the appellant's representations.
[25] Order PO-2435.
[26] Orders MO-2093 and MO-2072.
[27] Order PO-3885.
[28] *Bricklayers and Stonemasons Union Local 2 v Information and Privacy Commissioner of Ontario and Canadian Bricklayers and Allied Craft Unions Members v Information and Privacy Commissioner of Ontario (Bricklayers)* 2016 ONSC 3821.

> identity of the requestor was not considered and it should not be considered here.[29]

[64] In reply, the appellant submits, relying on *Bricklayers*, that the identity of the person seeking access to the information is a contextual factor that assists in considering the extent of the risk that the harms alleged will materialize. It states that in that case, the alleged harms were relevant only because of the identities of the requester and an affected party.

[65] The appellant states that it assumes that in Orders PO-3885, PO-3886 and PO-3887, where disclosure of three hospitals' linen and laundry services agreements was ordered, the identity of the requester was not considered because the third party appellants did not raise it as a consideration that impacted its arguments on the "harms" issue.

[66] In sur-reply, the requester states that the appellant has offered no explanation why this case qualifies as having the "unusual circumstances" referred to in *Bricklayers* in which the IPC should consider who the requester is in assessing the harm. She submits that the IPC should apply its general approach that the identity of the requester is not relevant.

Analysis/Findings

[67] The party resisting disclosure must provide detailed 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.[30]

[68] The failure of a party resisting disclosure to provide detailed 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*.[31]

[69] At issue are the appellant's pricing figures on six pages of Record 3. Each page concerns a different service and each page contains two or three options for each matter.

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[29] Orders PO-3885, PO-3886, and PO-3887.
[30] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner),* 2014 SCC 31 (CanLII) at paras. 52-4.
[31] Order PO-2435.

[70] This pricing information in Record 3 was part of the appellant's proposal to SHS for new or additional services to be offered to SHS. This information is not included in any agreements made between the appellant and SHS, MSH or BH. As stated, the appellant provided confidential representations regarding the harms set out in sections 17(1)(a) and (c).

[71] The appellant has provided detailed evidence about the highly competitive linen and laundry services industry, particularly as it pertains to the markets it competes in for business. Although the actual identity of the requester may not be relevant in an access request, in considering the application of sections 17(1)(a) and (c) to the records in these appeals, the ability of the appellant's competitors and customers to have access to the requested information is relevant.

[72] I find that disclosure of the information at issue in Record 3, which is information that reveals the pricing of the appellant's proposed services to SHS, meets part 3 of the test under sections 17(1)(a) and (c). I find that this information could provide information to the appellant's competitors and its other customers as to the rate structure under which the appellant is willing to offer these new services and the price differential range it is prepared to accept.

[73] Specifically, I find that disclosure of this information in Record 3 could reasonably be expected to significantly prejudice the competitive position of the appellant under section 17(1)(a) and could also reasonably be expected to result in undue loss to the appellant or gain to its competitors under section 17(1)(c).

[74] Accordingly, I find that the information identified by the appellant as being subject to section 17(1) in Record 3 is exempt under section 17(1).

ORDER:

1. I order SHS to:

    - withhold from the requester the pricing information from Record 3; and,
    - disclose to the requester Records 1 and 2, except for the information in Records 1 and 2 that is withheld under section 21(1).

    With a separate cover letter dated July 31, 2020, I will courier SHS a highlighted copy of the information not to be disclosed from Records 1 to 3. SHS is to disclose the non-highlighted information in Records 1 to 3 to the requester by **September 9, 2020** but not before **August 31, 2020.**

2. The timeline noted in order provision number 1 may be extended if SHS is unable to comply in light of the current COVID-19 situation. I remain seized of the appeal to address any such extension requests.

Original Signed by: July 29, 2020

Diane Smith
Adjudicator