

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-4162

Appeal MA20-00244

City of Owen Sound

February 18, 2022

**Summary:** The City of Owen Sound received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* for “body and chassis specifications and drawing” of the successful bid under a specified Request for Proposal. The city granted partial access to responsive records, withholding drawings in full and portions of the specifications under the mandatory third party information exemption at section 10(1) of the Act. This order finds that the information at issue is not exempt and orders it disclosed.

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

**Orders Considered:** Orders MO-1706, MO-3058-F and PO-2435.

### OVERVIEW:

[1] The City of Owen Sound (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the aerial platform fire truck specifications for the successful bid under a specified Request for Proposal (the RFP).

[2] After notifying the successful proponent as a party whose interests may be affected by disclosure (the successful bidder) and considering its response, the city issued an access decision, granting partial access to responsive records. It explained that it was releasing portions of the RFP requesting specification information from

bidders, while withholding the responses of the successful proponent pursuant to the mandatory exemption at section 10(1) (third party information) of the *Act*.

[3] Following the city's decision, the requester did not appeal, but submitted another access request for "Body and chassis specifications and drawing of awarded bid" for the same RFP. The city advised the requester that the responsive records and its decision in response to the new access request would be the same as its initial decision.

[4] The requester (now the appellant) appealed this latter decision of the city to the Information and Privacy Commissioner of Ontario (the IPC).

[5] The appeal was assigned to a mediator. The mediator notified the manufacturer of the fire truck (the manufacturer) of the appeal and it did not consent to the disclosure of the records in which it had an interest.

[6] Further mediation was not possible and the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry under the *Act*.

[7] An adjudicator was assigned to this appeal and he decided to conduct an inquiry. He commenced his inquiry by sending a Notice of Inquiry, setting out the facts and issues in the appeal to the city and the two affected parties. The city and the successful bidder submitted representations, which were shared with the appellant, who then submitted representations. He received reply representations from the city, the successful bidder and the manufacturer, and sur-reply representations from the appellant. The parties' representations were shared in accordance with the IPC's *Code of Procedure and Practice Direction 7*.

[8] This appeal was then transferred to me to continue with the adjudication of the appeal.<sup>1</sup> In this order, I do not uphold the city's application of the mandatory exemption at section 10(1) of the *Act* to withhold the information at issue. On that basis, I order the city to disclose the information at issue to the appellant.

## **RECORDS:**

[9] The records at issue form part of the bid submission by the successful bidder in response to the RFP. The pages of the bid submission at issue consist of 39 pages of specifications (specifications), withheld in part and two pages of drawings (drawings), withheld in full (collectively the information at issue). There is no pricing information in the records at issue.

---

<sup>1</sup> I have reviewed all the file material and representations and I have determined that I do not require further information before making my decision.

## **DISCUSSION:**

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

[11] Section 10(1) states:

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

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

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

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

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

[12] Section 10(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions.<sup>2</sup> Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.<sup>3</sup>

[13] For section 10(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

---

<sup>2</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.*).

<sup>3</sup> Orders PO-1805, PO-2018, PO-2184 and MO-1706.

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.

**Part one: Type of information – does the information remaining at issue contain technical, commercial or financial information?**

[14] As explained below, I find that the information remaining at issue consists of technical and commercial information and therefore, it meets part one of the test.

[15] Past IPC orders have defined the types of information listed in part one of the test. The types of information raised in this appeal are:

*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>4</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>5</sup>

*Financial information* is information relating to money and its use or distribution. The record must contain or refer to specific data. Some examples include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.<sup>6</sup>

*Technical information* is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. While it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing.<sup>7</sup>

***Representations of the parties***

[16] The city submits that the records clearly contain confidential commercial and/or financial information because they concern the financial and commercial terms upon which the successful bidder was prepared to contract with the city for the supply of a fire truck. It also submits that the records contain technical information because they contain the scientific and engineering methodology, along with the detailed specification and comprehensive line drawings, used in the manufacturing of the fire truck.

---

<sup>4</sup> Order PO-2010.

<sup>5</sup> Order P-1621.

<sup>6</sup> Order PO-2010.

<sup>7</sup> Order PO-2010.

[17] The successful bidder submits that the information provided to the city contains a full technical specification and engineering drawing of the fire truck, defining critical features and dimensions specific to this fire truck. The manufacturer confirms that it provided the vehicle specification and engineering information to the successful bidder to submit as part of its bid submission to the city.

***Analysis and findings – the information at issue is technical and commercial information***

[18] Based on my review of the records, I am satisfied that the information at issue constitutes technical and commercial information; however, I do not find that it constitutes financial information.

[19] The city, the successful bidder and the manufacturer all agree that the records contain technical information. I agree that the information at issue is about the construction and operation of the fire truck being described in the bid submission and belongs to an organized field of knowledge.

[20] The city also argues that the information at issue also contains commercial and financial information because they concern the financial and commercial terms upon which the successful bidder was prepared to contract with the city for the supply of a fire truck. Based on my review, I agree with the city that the information at issue contains commercial information because it specifies whether the successful bidder can provide the city with the specifications requested in the RFP and outlines the terms under which it is willing to contract with the city for the supply of a fire truck. However, I do not agree with the city that this information also reveals financial information because it does not contain any numerical information that corresponds to finances. While the information at issue does outline commercial terms, these terms are not specifically associated with a financial cost.

[21] Accordingly, as the information at issue reveals technical and commercial information, I find that part 1 of the test under section 10(1) has been met.

**Part two: Supplied in confidence – was the information at issue supplied in confidence?**

[22] The city, the successful bidder and the manufacturer share the position that the information at issue was supplied in confidence, which the appellant disagrees. For the following reasons, I agree that the information was supplied in confidence.

[23] Part two of the two-part test itself has two parts: the successful bidder must have *supplied* the records to the city, and must have done so *in confidence*, either implicitly or explicitly.

### ***Supplied***

[24] 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>8</sup>

[25] 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>9</sup>

### ***In confidence***

[26] 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.<sup>10</sup>

[27] 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; and
- prepared for a purpose that would not entail disclosure.<sup>11</sup>

### ***Representations of the parties***

[28] The city submits that the successful bidder supplied the information to it with a reasonable expectation that the information would be held in confidence by the city. It submits that the information was clearly *supplied* to the city, as it was in response to the RFP and it did not constitute an agreement or contract with the city. Accordingly, the city submits that the general rule that contracts are not “supplied” within the meaning of section 10(1) does not apply here.

[29] It also submits that all four factors from Order P-561, that are relevant in

---

<sup>8</sup> Order MO-1706.

<sup>9</sup> Orders PO-2020 and PO-2043.

<sup>10</sup> Order PO-2020.

<sup>11</sup> Orders PO-2043, PO-2371 and PO-2497, upheld in *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

determining whether an expectation of confidentiality is based on reasonable and objective grounds, are met. Specifically, it submits that the successful bidder, as a past participant in another bid process with the city, was familiar with and relied upon the city's procedures to ensure the bid information was kept confidential and that it would be treated in a manner that would protect it from disclosure. While the bid submission did not explicitly indicate that it was supplied on the basis that it was confidential, the city submits that this intent may be implied. It submits that the bid submission was provided to the city in a sealed envelope that the successful bidder understood would ensure that the enclosed information would be used only for evaluation purposes and would not be made available to competitors in the bidding process, as well as remain sealed until after the closing date and time.

[30] The city further submits that its RFP document advised that all material will be subject to the *Act*, meaning that, where necessary, material that must be disclosed will be and material, such as that covered by section 10(1), will be protected. It further submits that all RFPs are subject to its purchasing bylaw, which advises that city staff are subject to its Code of Ethics and that information about suppliers will be kept confidential.

[31] In addition, the city submits that it bases its procurement practice on compliance with legislation, trade agreements, case law and best practice. It specifically refers to Article 517 of the *Canadian Free Trade Agreement*, which states:

Notwithstanding any other provision of this Chapter, a procuring entity shall not provide to any particular supplier information that might prejudice fair competition between suppliers.

[32] The city submits that the successful bidder relied on the city to treat its sensitive technical or commercial information as confidential because the city is experienced in the public procurement process. It also submits that, to the best of its knowledge, none of the information supplied by the successful bidder in its bid submission has ever been made public.

[33] The successful bidder submits that the records were provided to the city with the expectation that it was only for use by the city as part of the RFP and for use in the development of specifications and evaluation criteria for the selection of a fire truck and not for release to the public. It also submits that if bid submissions are to be made public, it should be made clear at the time bids are submitted so that steps can be taken to protect critical information. The successful bidder states: "It is not reasonable to receive information in confidence then release that information to the public."

[34] It further submits that its bid submission included confidential information provided by the manufacturer, who manufactured the fire truck. As a distributor bound by non-disclosure agreements, the successful bidder submits that the disclosure of some of the information provided could negatively affect its business relationship with

the manufacturer. It also explains that while some of the information about the fire truck is available on the websites of the successful bidder and the manufacturer, the release of the information remaining at issue, which is more detailed, is unjustified and unnecessary for any concerned citizen to become informed regarding the specifications of the fire truck.

[35] The manufacturer also argues that the successful bidder is bound by a non-disclosure agreement related to the information provided to the successful bidder by the manufacturer, but does not elaborate.

[36] The appellant provided me with a copy of the RFP, where section 13 states:

All correspondence, documentation and information provided to the City, including the submissions of Proposals, shall become the property of the City. As such, these items are subject to the Municipal Freedom of Information and Protection of Privacy Act and may be subject to release pursuant to the Act. Proponents are reminded to identify in their Proposal any specific, scientific, technical, commercial, proprietary, or similar confidential information, for which disclosure could cause them injury. **Complete Proposals are not [to] be identified as confidential.** [Emphasis added by the appellant.]

[37] Given that this section requests that bidders mark specific confidential areas in their bid submissions, the appellant submits that the successful bidder cannot now say that the bid submission, in its entirety and including the information at issue, was supplied in confidence when it did not mark such information as being confidential at the time of submitting its bid.

[38] In response, the city submits that section 10(1) of the *Act* does not require the successful bidder to identify the parts of its bid submission that it regards as confidential information. It submits that the head of the city still has an obligation to refuse to disclose a record that reveals information, including information implicitly supplied in confidence and not explicitly identified as being confidential.

[39] With reference to section 13 of the RFP, the city submits that this section gives notice to proponents that the information provided to the city is subject to the *Act* and is meant to give them comfort that the city would refuse to disclose the type of information listed in section 10(1) of the *Act*.

[40] The city points to the "obviously confidential nature of the information" in the records, and the fact that it "could rely upon the previous submission from [the successful bidder refusing to consent to the disclosure of similar information for a previous RFP] as an explicit proviso that the information was being supplied [for the current RFP subject to this appeal] in confidence."

[41] In response to the city's representations above, the appellant refers again to



section 13 of the RFP.

*Analysis and findings – the information at issue was supplied to the city in confidence*

[42] Based on the representations of the parties, I am satisfied that the successful bidder supplied the information at issue to the city in confidence.

***Supplied***

[43] The city disclosed to the appellant portions of the specifications that wholly reproduce what the city created and issued in the RFP, including requesting specific details and outlining stated requirements for the fire truck, and providing instructions for proponents to indicate 'yes' or 'no' with an explanation of what can be provided, for each stated requirement. In addition to the drawings, remaining at issue in the specifications are the portions completed by the successful bidder, namely, specific details about the fire truck, and a 'yes' or 'no' with an explanation of what can be provided, in response to the city's stated requirements.

[44] 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 10(1). The provisions of a contract, in general, have been treated by the IPC 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.<sup>12</sup> The city, however, submits that the information at issue does not itself constitute an agreement or contract with the city. The city advised during mediation that the contract incorporated or referenced the bid submission of the successful bidder.

[45] Previous IPC orders have considered the application of section 10(1), or its provincial equivalent, to RFP bid submissions. The city's representations are consistent with Order MO-1706, where the adjudicator stated:

...it is clear that the information contained in the Proposal was supplied by the affected party to the Board in response to the Board's solicitation of proposals from the affected party and a competitor for the delivery of vending services. This information was not the product of any negotiation and remains in the form originally provided by the affected party to the Board. This finding is consistent with previous decisions of this office involving information delivered in a proposal by a third party to an institution...<sup>13</sup>

---

<sup>12</sup> 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*).

<sup>13</sup> At page 9.

[46] Even though the information at issue was incorporated into, or referenced in, the contract between the city and the successful bidder, I agree with the city that the successful bidder's bid submission is not a contract. For this reason, the principle that, in general, the contents of a negotiated contract do not meet the "supplied" requirement does not apply here. In Order MO-3058-F, Assistant Commissioner Sherry Liang stated that:

I am aware that in some orders, adjudicators have found the contents of a winning proposal to have been "mutually generated" rather than "supplied", where the terms of the proposal were incorporated into the contract between a third party and an institution. In this appeal, it may well be that some of the terms proposed by the winning bidder were included in the town's contract with that party. But the possible subsequent incorporation of those terms does not serve to transform the proposal, in its original form, from information "supplied" to the town into a "mutually generated" contract. In the appeal before me, the appellant seeks access to the winning proposal, and that is the record at issue.<sup>14</sup>

[47] Assistant Commissioner Liang also stated:

I distinguish the circumstances before me from those where a winning proposal becomes, on acceptance, the basis of the commercial arrangement between the parties, and no separate contract between the parties is created. In Order MO-2093, for instance, this office found that where a winning proposal governed the commercial relationship between a city and a proponent, and there was no separate written agreement, the terms of the winning proposal were mutually generated and not "supplied" for the purpose of section 10(1). In such a case, it is reasonable to view the winning proposal as no longer the "informational asset" of the proponent alone but as belonging equally to both sides of the transaction.<sup>15</sup>

[48] I adopt this rationale for the current appeal. Based on the facts of this appeal, I am of the view that the information at issue was provided to the city as part of the successful bidder's bid submission in response to the RFP. In my view, it is not a final agreement between the city and the successful bidder; rather, it contains details of the fire truck the successful bidder proposed to provide to the city. The city has confirmed that the subsequent contract between it and the successful bidder incorporated or referenced the bid submission of the successful bidder. This is not a case where there was no separate contract entered into after the RFP at issue was accepted. I find, therefore, that the information at issue was not the product of negotiation and, consequently, was not mutually generated by the city and the successful bidder.

---

<sup>14</sup> At paragraph 25.

<sup>15</sup> At paragraph 26.

Accordingly, I am satisfied that the information at issue was “supplied” by the successful bidder to the city.

[49] The fact that the city set out the specific requirements for the fire truck does not negate that the successful bidder provided the city with its response to the RFP, indicating what it could provide in response to the city’s specific requirements.

***In confidence***

[50] The successful bidder claims that if bid submissions are to be made public, it should be made clear at the time bids are submitted so that steps can be taken to protect critical information. However, I note that the city’s RFP document advised bidders that materials in response to the RFP would be subject to the *Act* and “encouraged” bidders to mark confidential information as such in their bid submissions.

[51] The successful bidder did not mark any of the information in its bid submission as “confidential”. However, I agree with the city that this does not alleviate the city of its obligation under the *Act* not to disclose third party information protected by the mandatory exemption in section 10(1), nor is it determinative of the issue of whether the information at issue was supplied to the city *implicitly* in confidence.

[52] Based on the facts of this appeal, I agree with the city, the successful bidder and the manufacturer that the information at issue was supplied in confidence. With reference to the factors from previous IPC orders for determining whether an expectation of confidentiality is based on reasonable and objective grounds,<sup>16</sup> the information at issue appears to me to have been:

- communicated to the city on the basis that it was confidential and that it was to be kept confidential;
- treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the city;
- not otherwise disclosed or available from sources to which the public has access; and
- prepared for a purpose that would not entail disclosure.

[53] As the successful bidder was a past participant in a bid process with the city, I note that the city relied on the successful bidder’s familiarity with the city’s procedures and previous refusal to consent to the disclosure of similar information associated with a previous RFP, to conclude that the information at issue was supplied in confidence. The successful bidder confirms this, articulating its expectation that the city would keep

---

<sup>16</sup> See Orders P-561, PO-2043, PO-2371 and PO-2497, upheld in *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

the information at issue confidential. Moreover, the successful bidder and the manufacturer advise that there is a non-disclosure agreement between them.

[54] I do note that some discrete details about the fire truck in the information at issue are available online, including actual photos of the fire truck following delivery to the city. However, I agree with the successful bidder that the level of detail in the specifications and drawings is not available online, nor are the vast majority of the details in the information at issue. In addition, it is clear from the representations of the city and the successful bidder that, at the time of submitting its bid, the successful bidder expected the city to keep its bid submission, including the information at issue, confidential.

[55] Accordingly, I am satisfied that the successful bidder had an implicit expectation of confidentiality in the information at issue that was both reasonable and objective.

[56] Therefore, I find that the successful bidder supplied the information remaining at issue to the city in confidence, thereby satisfying part 2 of the test.

**Part three: Harms – could disclosure of the information at issue reasonably be expected to cause the harms in sections 10(1)(a), (b) or (c)?**

[57] As outlined below, I find that the city, the successful bidder and the manufacturer have not met part three of the test.

[58] To begin, I observe that the parties made representations on the harms that could reasonably be expected to result from releasing pricing information, together with the specifications and drawings. However, as I found above, there is no pricing information in the information at issue and, for that reason, I have not set out the parties' arguments on pricing information.

[59] The position of the city, the successful bidder and the manufacturer is that disclosure of the information at issue could reasonably be expected to cause the harms outlined in section 10(1)(a), (b) and (c) of the *Act*. As the parties resisting disclosure, they 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>17</sup> They must provide detailed evidence about the potential for harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.<sup>18</sup>

[60] The failure of a party resisting disclosure to provide detailed evidence will not

---

<sup>17</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>18</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, cited above, at paragraphs 52-54.

necessarily defeat the claim for exemption where harm can be inferred 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>19</sup>

[61] In applying section 10(1) to government contracts, the need for public accountability in the expenditure of public funds is an important reason behind the need for detailed evidence to support the harms outlined in section 10(1).<sup>20</sup>

### ***Representations of the parties***

#### *Section 10(1)(a): Prejudice to Competitive Position*

[62] The city submits that given the competitive nature of the successful bidder's business, the disclosure of the records would be highly prejudicial to the successful bidder.

[63] The city submits that a prejudiced competitive position very directly translates into a risk of undue loss.

[64] The city submits that a review of the detailed specifications contained in the RFP demonstrates the harm that the successful bidder would be exposed to if the records were to be disclosed. It specifically explains that the specifications and drawings of the fire truck reveal details concerning its size, features and capabilities, as well as the materials to be used and the manufacturing process to be applied. While many of the specifications are industry standard, the city submits that the successful bidder has revealed a unique combination of features, which constitute sensitive and proprietary information that, if disclosed, could be prejudicial to the successful bidder's competitive position.

[65] The city also submits that disclosure of the records would also interfere with the successful bidder's ability to negotiate other contracts for the provision of fire trucks because the successful bidder's pricing offered to the city in this instance,<sup>21</sup> if disclosed, could be used to gain leverage over the successful bidder by other municipalities seeking to purchase a fire truck.

[66] The successful bidder submits that the fire truck industry is very competitive and disclosure of its confidential bid submission could be damaging to its competitive position in the industry.

[67] The successful bidder also submits that it believes that the appellant is a competitor using the freedom of information and access process to obtain commercial

---

<sup>19</sup> Order PO-2435.

<sup>20</sup> Order PO-2435.

<sup>21</sup> As will be discussed below in my analysis and findings, this information is not at issue in this appeal.

advantage and gain access to confidential information that they would otherwise not be able to access. It submits that this is a misuse of the access to information process.

[68] The appellant submits that some of the information at issue is already public knowledge based on the information available online. They refer to a previous appeal filed with the IPC, which involved the release of information about a fire apparatus of an awarded bid with another institution.<sup>22</sup>

*Section 10(1)(b): Similar information no longer supplied*

[69] The city submits that if vendors felt that this type of confidential information could be released, the number of bidders competing on bid solicitations may decrease and also impact the detail that vendors submit in a bid submission. Because it requires detailed information to carry out a comprehensive evaluation of the bid submissions, the city submits that private companies will not want to share detailed pricing and manufacturing information if that information will be made public.

[70] The city submits that it understands the concern of vendors that specifications could be revealed or ascertainable from the information provided and could then become known to competitors or others who could exploit this information to their benefit and to the detriment of the vendor who reveals it.

[71] The successful bidder submits that if the records are made public, without making that a condition of the bid prior to its submission, this may result in it having to decline bidding on fire trucks in Ontario and to refuse to supply similar information regarding firefighting apparatus specifications in the future.

*Section 10(1)(c): Undue loss or gain*

[72] The city submits that the disclosure of the records would cause significant financial loss to the successful bidder when it bids in future competitions, while its competitors would receive an undue gain by simply copying the successful bidder's design specifications and bid submission format, without investing any time and money.

[73] The successful bidder submits that it is common for competitors or consultants to request information from competitive bids they have lost and then use such information to disrupt the purchase or make trouble for the city or fire department in an attempt to create favorable circumstances for themselves or influence decisions in the future.

***Analysis and findings - disclosure of the information at issue could not reasonably be expected to result in the harms in sections 10(1)(a) (b) and (c)***

[74] As explained below, I find that part 3 of the test is not met.

---

<sup>22</sup> This appeal was resolved at mediation and no order was issued.

[75] To find that any of the section 10(1) harms are present, I must be satisfied that there is a reasonable expectation of harm. I can reach this conclusion either on the basis of the information remaining at issue in the record itself, the surrounding circumstances, and/or the representations made by the party resisting disclosure (in this case, the city, the successful bidder and the manufacturer).<sup>23</sup>

*Section 10(1)(a): Prejudice to competitive position*

[76] Both the city, the successful bidder and the manufacturer submit that due to the competitive nature of the successful bidder's business, the disclosure of the information at issue would be highly prejudicial to the successful bidder and that this risk of harm is well beyond the merely possible or speculative.

[77] The city refers to previous IPC orders that considered the risk of disclosing unit pricing information and concluded that disclosure of such information could reasonably be expected to prejudice the competitive position of an affected party. Given that no such information is at issue here, it is my view that these orders are not relevant.

[78] I disagree with the city's position that a review of the specifications demonstrates the harm that the successful bidder would be exposed to if the records were disclosed. I note that the specifications, upon which the drawings are based, were largely dictated by the stated requirements in the city's RFP, where proponents were asked to indicate whether they could provide each of them. Presumably, the successful bidder would be the one who could deliver a large portion of these stated requirements. Also, by the city's own admission, some of the specifications are industry standard. In addition, as already noted, some details about the fire truck are available online and would be visible upon seeing the fire truck in person. Given the customized nature of the fire truck requested by and provided to the city, I do not accept the city's representations that the information at issue reveals sensitive and proprietary information that, if disclosed, could be copied by competitors and could be prejudicial to the successful bidder's competitive position in general and on similar projects in the future.

[79] The city also submits that disclosure of the records would also interfere with the successful bidder's ability to negotiate other contracts for the provision of fire trucks because the successful bidder's pricing offered to the city in this instance, if disclosed, could be used to gain leverage over the successful bidder by other municipalities seeking to purchase a fire truck. However, again, the information at issue does not include pricing information.

[80] Neither the city, the successful bidder nor the manufacturer has established any reasonable expectation of the type of harm contemplated by section 10(1)(a) resulting from disclosure of the information at issue.

---

<sup>23</sup> *Accenture, cited above; Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2014] 1 S.C.R. 674 at paras 40-41.

[81] The city, the successful bidder and the manufacturer have not provided me with sufficiently detailed evidence to support the position that the disclosure of the information at issue could reasonably be expected to result in the harms set out in section 10(1)(a) of the *Act*. Nor are the harms self-evident from my review of the information at issue. I find, therefore, that there is no reasonable expectation that disclosure of the information at issue could significantly prejudice the competitive position of the successful bidder and the manufacturer or could interfere significantly with the contractual or other negotiations of the successful bidder and the manufacturer.

*Section 10(1)(b): Similar information no longer supplied*

[82] The city submits that private companies will not want to share detailed manufacturing information if that information will be made public. Given that the specifications were largely dictated and prescribed by the city, I disagree with the city's representations that vendors could reasonably be expected to change their behaviour in providing information to the city, fearing that competitors will exploit their specifications.

[83] In addition, the successful bidder submits that companies may decline to submit bids and refuse to supply similar information if the records are made public without making this a condition of the RFP prior to submitting its bid. This representation is not persuasive because, once again, I note that the RFP advised all bidders that material would be subject to the *Act*. This includes section 10(1), which prohibits the disclosure of third party information where harm can be established and which permits the disclosure of information where harm cannot be established (subject to the other provisions of the *Act*).

[84] I am not satisfied that disclosing the information at issue could reasonably be expected to result in similar information no longer being supplied to the city in the future. It is my view that companies doing business with public institutions would not refuse to provide the information necessary to win and maintain its relationship with the institution and would understand that certain information regarding how the institution plans to carry out its obligations will be made public.

[85] Accordingly, I am not satisfied that it is reasonable to expect that the disclosure of the information at issue could have the effect that companies will no longer supply similar information to the city.

[86] Therefore, the information at issue is not exempt under section 10(1)(b) of the *Act*.

*Section 10(1)(c): Undue loss or gain*

[87] The city argues that disclosure of the records would cause significant financial loss to the successful bidder when it bids in future competitions, while its competitors



would receive an undue gain by simply copying the successful bidder's design specifications and bid submission format.

[88] I disagree. The representations of the city, the successful bidder and the manufacturer, along with the information at issue, do not convince me that the information is of a form such that competitors could simply copy the successful bidder's design specifications and bid submission format. As indicated above, the bid submission format and the specifications themselves were largely dictated and prescribed by the city.

[89] In addition, in Order PO-2435, Assistant Commission 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 and of itself, significantly prejudice their competitive position or result in undue loss to them.<sup>24</sup>

[90] I agree with the finding of Assistant Commissioner Beamish. In my view, the representations of the city, the successful bidder and the manufacturer regarding the information at issue being disclosed to potential competitors on future projects is not sufficient, in and of itself, to establish undue loss or gain within the meaning of section 10(1)(c) in the circumstances of this appeal.

[91] It is my view that the information remaining at issue is specific to the customized fire truck requested by the city and therefore could not reasonably be expected to result in undue loss to the successful bidder or the manufacturer, or undue gain to their competitors.

[92] Accordingly, I am not satisfied that it is reasonable to expect that the disclosure of the information at issue could result in undue loss for the successful bidder or the manufacturer or undue gain to their competitors. Therefore, section 10(1)(c) of the *Act* does not apply.

***Conclusion – the mandatory exemption at section 10(1) does not apply to the record***

[93] In conclusion, I find that disclosure of the information at issue could not reasonably be expected to result in the harms identified in section 10(1)(a), (b) or (c) of the *Act*, thereby not meeting part three of the test. As all three parts of the test must be established, I find that the mandatory exemption at section 10(1) of the *Act* does not apply to the information at issue.

[94] For these reasons, I find that the information at issue is not exempt from disclosure under the mandatory third party information exemption in section 10(1) of

---

<sup>24</sup> At page 11.

the Act and I will order the city to disclose this information to the appellant.

**ORDER:**

1. I order the city to disclose the 39 pages of specifications and the two pages of drawings to the appellant by **March 29, 2022** but not before **March 22, 2022**.
2. In order to verify compliance with this order, I reserve the right to require the city to provide me with a copy of the records disclosed pursuant to order provision 1.

Original signed by: \_\_\_\_\_  
Valerie Silva  
Adjudicator

February 18, 2022 \_\_\_\_\_