Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4189

Appeal MA20-00439

City of Toronto

April 13, 2022

Summary: This order arises out of an access request made to the City of Toronto for a noise control bylaw course manual provided by a private company (the affected party). The city decided to deny access to the record under section 10(1) of the *Act*. In this order, the adjudicator upholds the city's decision and finds that the public interest override does not apply, as claimed by the appellant. On that basis, she dismisses the appeal.

Statute Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 10(1) and 16.

OVERVIEW:

[1] By way of background, this appeal and the access request it addresses arise out of a dispute between the appellant and the City of Toronto (the city) about a noise complaint. The appellant believes that the city did not investigate her complaint and is seeking access to information about how city staff are trained with respect to noise complaint investigations. The city paid for the service of having an investigating acoustic consultant company (the affected party) provide a training course to its staff.

[2] The appellant submitted two separate requests to the city under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records about noise bylaw enforcement and investigation. At the appellant's request, the city merged the appellant's two requests and issued one decision under the *Act*, denying access in full to responsive records.

[3] The appellant appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[4] During mediation, the appellant decided to pursue her appeal only in respect of her request for "a noise investigation course manual provided by [the affected party], including index, charts, table of contents".

[5] After notifying the affected party, the city denied access to a responsive record in full pursuant to the mandatory exemption at section 10(1)(a) (third party information).

[6] The mediator notified the affected party, who did not consent to the disclosure of any part of the record to the appellant. The appellant claimed a public interest in disclosure of the record. As a result, the potential application of section 16 of the *Act* was added as an issue in this appeal.

[7] No further mediation was possible and this appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*.

[8] An adjudicator was assigned to this appeal and she decided to conduct an inquiry. She commenced her inquiry by inviting representations from the city and the affected party. She received representations from both parties, which were shared with the appellant. After the appellant submitted representations, this appeal was then transferred to me to continue with the adjudication of the appeal. After reviewing all file material and representations, I sought and obtained reply representations from the city and the affected party, followed by sur-reply representations from the appellant.[1] The representations of the parties were shared in accordance with the IPC's *Code of Procedure* and *Practice Direction 7*.

[9] In this order, I uphold the city's decision that the mandatory exemption at section 10(1) of the *Act* applies to the record. I also find that the public interest override does not apply, as claimed by the appellant. On that basis, I dismiss the appeal.

RECORD:

[10] The record at issue is a collection of presentation slides that comprise a course manual, prepared by the affected party (course manual).[2]

[11] In the initial Notice of Inquiry, the previous adjudicator asked the city to explain some handwritten markings appearing on the copy of the record provided to the IPC.

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[1] While the parties provided extensive representations, I have only summarized in this order those representations that deal with the issues raised by this appeal.

[2] The parties' representations sometimes refer to the record as a "training manual". For the sake of consistency, I will refer to the record as a "course manual", which most accurately reflects its nature.

The city explained that these are the personal notations of a course participant and are not responsive to the request. On her preliminary review of the record, the previous adjudicator accepted the city's explanation. I note that the appellant did not raise any issue with this explanation. I have reviewed the record and I accept the city's explanation.

ISSUES:

A. Does the mandatory exemption at section 10(1) apply to the record?

B. Is there a compelling public interest in disclosure of the record that clearly outweighs the purpose of the section 10 exemption?

DISCUSSION:

Issue A: Does the mandatory exemption at section 10(1) apply to the record?

[12] The city's decision relies on the exemption at section 10(1)(a) to deny access to the record, while the affected party's representations refer to sections 10(1)(a), 10(1)(b) and 10(1)(c) of the *Act*.

[13] Section 10(1) states, in part:

> 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,
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> > (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
> >
> > (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
> >
> > (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or…

[14] Section 10(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[3] Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third

[3] *Boeing Co. v. Ontario* (*Ministry of Economic Development and Trade*), [2005] O.J. No. 2851 (Div. Ct.)], leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

parties that could be exploited by a competitor in the marketplace.[4]

[15] 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

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.

[16] The affected party submits that it would be unfair for the record to be released to the appellant at no cost, given the considerable costs, effort, time and resources expended to develop it.

[17] The appellant submits that while the purpose of section 10(1) is designed to protect 'information assets' produced by private companies contracting with government, it is not designed to shield the city from scrutiny and possible liability. She submits that access to the course manual (as well as the *MLS Noise Investigation Technical Manual*[5]) would shed light on and inform of the procedural steps noise bylaw officers are required to follow in noise complaint investigations. She explains that she requires the record to determine when the city deviates from a standard and when the application of policy discretion is appropriate.

Part one: Does the record contain trade secret, scientific, technical or commercial information?

[18] As explained below, I find that the record contains technical and scientific information and therefore, it meets part one of the test.

[19] 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:

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

[4] Orders PO-1805, PO-2018, PO-2184 and MO-1706.
[5] I note that this document is subject to a separate appeal filed by the appellant with the IPC, and is not at issue in this appeal. MLS stands for the Municipal Licensing & Standards division of the city.

(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.[6]

Scientific information is information belonging to an organized field of knowledge in the natural, biological or social sciences, or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of a specific hypothesis or conclusion and be undertaken by an expert in the field.[7]

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.[8]

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.[9] The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.[10]

Representations of the parties

[20] The affected party submits that the record is a study course providing municipal bylaw officers with information about acoustical concepts based on publicly available noise guidelines. It explains that the information in the record contains a combination of several protected scientific methods and approaches to the analysis of noise problems, and trade secrets for scientific and engineering purposes. It provides me with the following examples: the addition of sound levels, measurement procedures, interpretation of field results, and other procedures to analyze noise data in the field without the use of specialized calculators or computers. It specifically indicates that the record contains "[its] proprietary technical details" and "[its] proprietary engineering procedures", and translates provincial and municipal noise laws, standards, policies and guidelines into proprietary figures, simplified procedures, graphic presentations and charts for the purposes of teaching. It further explains that the provincial Noise

[6] Order PO-2010.
[7] Order PO-2010.
[8] Order PO-2010.
[9] Order PO-2010.
[10] Order P-1621.

Pollution Control (NPC) Standards (published by Ontario's Ministry of the Environment, Conservation and Parks) form the basis of its course manual, rearranged for ease of presentation and understanding, and enhanced with the use of plain-word explanations and detailed graphics (all of which are created, maintained and updated by the affected party).

[21] The affected party also submits that its course manual contains trade secrets, including information not contained within any textbook or provincial guidelines.

[22] The city submits that the record contains scientific and commercial information. It submits that the record contains drawings, charts, data, solved examples and figures developed by the affected party for the sole purpose of providing training for profit. It explains that the course manual has monetary value, thus qualifying as "commercial information".

[23] The appellant submits that the record contains the city's standard operating procedures (SOPs) used for noise complaint investigations.[11] In reply, the city submits that the record does not set out the city's SOPs in relation to noise complaints.

Analysis and findings – the record contains technical and scientific information

[24] Based on my review of the record, I find that the record contains technical and scientific information; however, I do not find that it contains commercial information or a trade secret, as contemplated by section 10(1) of the *Act*.

[25] Based on my review of the record, I agree with the city and the affected party that it contains technical and scientific information about acoustics prepared and taught by an engineer. My review reveals that the record contains explanations, procedures and approaches for the analysis and measurement of noise and the interpretation of results. I find the affected party accurately explains that the record is based on the provincial NPC Standards and translates noise laws, standards, policies and guidelines, including the NPC Standards, into figures, graphics, charts and procedures for teaching purposes.

[26] Having found that the record contains both technical and scientific information, part one of the three-part test has been met.

Part two: Was the record supplied in confidence?

[27] The city and the affected party share the position that the record was *supplied in confidence*. As explained below, I find that the affected party *supplied* the record to the city *in confidence*.

[28] Part two of the three-part test itself has two parts: the affected party must have

[11] The parties submitted representations on the nature of the information contained in the record, including whether the record contains SOPs, is generic or is specific to any institution. I have not summarized these representations here, as they are not relevant to the first part of the three-part test.

supplied the record to the city, and must have done so *in confidence*, either implicitly or explicitly.

Supplied

[29] 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.[12]

[30] 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.[13]

In confidence

[31] In order to satisfy the "in confidence" component of part two, the parties resisting disclosure must establish that the supplier of the information had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.[14]

[32] 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.[15]

Representations of the parties

[33] The affected party submits that the record was supplied to the city as part of a training course for its staff. It submits that the city paid for this service and the information was supplied to the city as a service. The affected party also submits that the record was supplied to the city with an explicit expectation of confidentiality because each presentation slide of the record is clearly marked confidential with a copyright symbol.

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[12] Order MO-1706.
[13] Orders PO-2020 and PO-2043.
[14] Order PO-2020.
[15] Orders PO-2043, PO-2371 and PO-2497, upheld in *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

[34] The city submits that the affected party supplied the record to it when the city purchased the right to use the course manual as part of the affected party's training course for its staff. It submits that the course manual has never been published in any public forums or distributed to a private agency that has not been contracted by the affected party. It confirms that the record has a copyright symbol on every page. In addition, the city explains that the affected party is the only company that has prepared such a complete and comprehensive document with figures and illustrations on noise and vibrations, used to teach the city's professional staff.

[35] The appellant did not submit representations that directly addresses this part of the test. However, it appears she refers me to information on the affected party's website, including a copy of the affected party's course outline, and information on other institutions' websites, including some manuals prepared by the affected party, to demonstrate that the record was not supplied *in confidence*.

Analysis and findings – the record was supplied to the city in confidence

[36] Based on my review of the record and the representations of the parties, I find that the affected party supplied the record to the city in confidence.

[37] I agree with the affected party and the city that the record was supplied to the city when it purchased the affected party's service to teach a course to the city's staff and to provide a course manual as part of this service.

[38] I also agree with the affected party and the city that the record was provided to the city in confidence. While the appellant refers to documents made available online by other institutions and the affected party, which she believes are similar to the record, I do not agree that this is relevant to my analysis of whether *the record at issue in this appeal* was supplied to the city *in confidence*. The affected has established that it communicated to the city that the record was confidential and was to be kept confidential and that it has treated the record in a way that shows a concern for confidentiality. I also accept that the record is not otherwise disclosed or available to the public in general and it was prepared for training the city's staff that would not entail further disclosure. My review of the record reveals that virtually every presentation slide is marked with the affected party's name followed by a copyright symbol, in addition to a watermark of the affected party's name across the centre of the majority of the slides.

[39] Accordingly, I find that the affected party supplied the record to the city with a reasonable expectation of confidentiality. Having found that the second part of the three- part test has been met, I now turn to the third part of the test.

Part three: Could disclosure of the information at issue reasonably be expected to cause the harms in sections 10(1)(a), (b) and/or (c)?

[40] As explained below, I find that disclosure of the record could reasonably be expected to cause the harms contemplated in sections 10(1)(a) and (c) of the *Act*.

[41] 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.[16]

[42] 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.[17] 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 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.*[18]

Representations of the parties

Sections 10(1)(a) and (c): prejudice to competitive position and undue loss or gain

[43] The affected party submits that disclosure of the record could cause serious financial harm to its business and result in the loss of future business and repeat contracts because other investigating acoustic consultants could use its course manual. It explains that it maintains its competitive advantage by offering training courses to municipalities using its course manuals. It is concerned that other engineering firms could copy its course manual and make its course manual obsolete. It submits that:

> The disclosure of [the record] could reasonably compromise [its] unique competitive advantage and experience with many municipalities, including the [city], if such material[s] were made available and other acoustical consulting firms adopted these materials in their own courses.

[44] The affected party submits that such disclosure could result in other acoustic consultants experiencing an undue gain by using its course manual and supplying it to municipalities. This could also result in a loss to the city and other municipalities in terms of the quality of instruction and course materials available. It also submits that disclosure of the record could result in a gain for the appellant, who could obtain a copy of the affected party's course manual without paying for it, even though she has access to other publicly available information to assist her with her noise complaint.

[45] The city submits that the information in the record would lead to financial harm for the affected party as it would provide competitors with valuable scientific information that has been specifically developed and generated by the affected party, who produces manuals for training municipal government employees. It submits that it is reasonable to assume that the disclosure to the public of the record could be

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[16] *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.
[17] *Ontario* (*Community Safety and Correctional Services*) *v. Ontario* (*Information and Privacy Commissioner*), cited above.
[18] Order PO-2435.

expected to have a negative effect on the affected party's competitive position in the market. It supports the affected party's claim that release of the record could "cause substantial harm to [its] competitive position" and cause "undue loss" to the affected party. The city submits that the affected party has spent time researching available materials and preparing its training materials, which comes at a cost to the city.

[46] The appellant submits that the affected party has failed to provide *detailed and convincing* evidence that its competitive advantage *will* be compromised, or that there would be undue gain or loss, if the course manual is disclosed. She claims that the affected party has simply asserted that such harms would happen, without explanation, and that this is highly speculative.

[47] In response to the affected party's submission that it relies on the publicly available provincial noise standards to develop its course manual, the appellant submits that the affected party cannot have it both ways:

> [The affected party] cannot, on the one hand profess great prejudice and proprietorship of technical information, yet also claim the information requested is widely available in various provincial guidelines he has attached (many of which have no relevance to the case at hand). If it is widely available, then there can be no harm in the production of the [course] manual.

Section 10(1)(b): similar information no longer supplied

[48] The affected party submits that the disclosure of the record could prevent the affected party or others from supplying similar training in the future, and that it is in the public interest that the city (and other municipalities) continue to receive similar information. It explains that this could result in a degradation of the training for and knowledge of bylaw officers. It also suspects that if others copy its course manual and provide them to institutions, the quality of the copied information may not result in the feedback it receives from its municipal clients.

Analysis and findings - disclosure of the record could reasonably be expected to result in the harms in sections 10(1)(a) and (c)

[49] As explained below, I find that part 3 of the test is met.

[50] The appellant submits that the affected party has failed to provide *detailed and convincing* evidence. In addition, the appellant submits that the affected party and the city have not provided evidence that the harms contemplated by section 10(1) *will* or *would* result if the record is disclosed.

[51] However, section 10(1) does not require that the harms will occur. As I stated above, 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.[19]

[52] I find that the affected party and the city have established a risk of harm from disclosure of the record that is well beyond the merely possible or speculative. Based on my review of the parties' representations and the record itself, I find that its disclosure could reasonably be expected to prejudice significantly the competitive position of the affected party, and to result in undue gain or loss. I agree with the affected party and the city that the affected party has expended time and effort to create a course manual that it then offers for sale to municipalities. If its course manual is disclosed, there is a real risk that its commercial value would be lost, since the affected party would be unable to offer it for sale to its municipal clients, including the city. This is because past IPC orders have held that disclosure of a record is essentially "disclosure to the world."[20]

[53] Accordingly, I find that disclosure of the record could reasonably be expected to result in the harms in sections 10(1)(a) and (c). In light of this finding, I do not need to consider the affected party's representations related to section 10(1)(b) of the *Act*.

Conclusion – the mandatory exemption at section 10(1) applies to the record

[54] In conclusion, I find that disclosure of the record could reasonably be expected to result in the harms identified in sections 10(1)(a) and (c) of the *Act*, thereby meeting part three of the test. As all three parts of the test have been established, I find that the mandatory exemption at section 10(1) of the *Act* applies to the record.

[55] For these reasons, I find that the record is exempt from disclosure under the mandatory third party exemption in section 10(1) of the *Act*, subject to my analysis of the applicability of the public interest override below.

PUBLIC INTEREST OVERRIDE

Issue B: Is there a compelling public interest in disclosure of the record that clearly outweighs the purpose of the section 10 exemption?

[56] As explained below, I find that there is no compelling public interest in disclosure of the record that clearly outweighs the purpose of the section 10 exemption.

[57] Section 16 states:

> An exemption from disclosure of a record under sections 7, 9, 9.1, **10**, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [Emphasis added]

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[19] See cases listed in note 16 above.
[20] See, for example, Orders PO-1666 and PO-2629.

[58] For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the record. Second, this interest must clearly outweigh the purpose of the exemption.

[59] The *Act* is silent as to who bears the burden of proof in respect of section 16. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 16 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure, which clearly outweighs the purpose of the exemption.[21]

Compelling public interest

[60] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[22] Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[23]

[61] The word "compelling" has been defined in previous orders as "rousing strong interest or attention".[24]

[62] A public interest does not exist where the interests being advanced are essentially private in nature.[25] Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.[26] Any public interest in *non*-disclosure that may exist also must be considered.[27] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling".[28] A public interest has been found not to exist where the records do not respond to the applicable public interest raised by the appellant.[29]

Purpose of the exemption

[63] The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also be demonstrated to clearly outweigh the

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[21] Order P-244.
[22] Orders P-984 and PO-2607.
[23] Orders P-984 and PO-2556.
[24] Order P-984.
[25] Orders P-12, P-347 and P-1439.
[26] Order MO-1564.
[27] *Ontario Hydro v. Mitchinson,* [1996] O.J. No. 4636 (Div. Ct.).
[28] Orders PO-2072-F, PO-2098-R and PO-3197.
[29] Orders MO-1994 and PO-2607.

purpose of the exemption that has been claimed, which in this case, is the mandatory third party information exemption at section 10(1). As noted above, the purpose of this exemption is to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[30]

[64] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.[31]

Representations of the parties

[65] The affected party submits that there is no compelling public interest in disclosure of the record. It submits that the record supplements publicly available information, including sound level criteria and technical procedures.

[66] The city submits that the appellant has not indicated any compelling public interest for disclosure of the record. It also submits that, even if the appellant identified a compelling public interest, this would not outweigh the purpose of section 10 of the *Act*, which is to protect from disclosure the information of third parties that could be exploited by a competitor in the marketplace.

[67] The appellant submits that there is an "unquestionable overriding public interest" in disclosing the course manual. With reference to previous IPC orders noted above on "informing or enlightening the citizenry", she submits that the city's extensive review of its noise bylaws introduced in 2013 and its adoption of revisions in 2019 supports her position that there is a compelling public interest in the disclosure of the record. She points to comments made by a city councillor to the effect that:

> …previous regulations were often subjective. The new rules are based on more objective, measureable criteria such as decibel level limits…new designated noise team has undergone significant technical and operational training…[32]

[68] The appellant submits that:

> …the public is clueless in terms of what the operational standards are for noise bylaw enforcement, and it is near to impossible to determine if the [c]ity is adhering to any operational standards without knowing what those standards are. The standards are in the [course] manual.

[69] She also submits that it is in the public interest to enforce the revised noise

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[30] *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.*).
[31] Order P-1398, upheld on judicial review in *Ontario* (*Ministry of Finance*) *v. Ontario* (*Information and Privacy Commissioner*), [1999] O.J. No. 488 (C.A.).
[32] While the appellant submitted these representations for the section 10 exemption issue, I have considered them in relation to the "public interest override" issue.

bylaws in light of the harm to people caused by excessive noise.[33]

[70] The appellant submits that the city has refused to conduct a noise investigation in response to her noise complaint based on its own Noise Policy and provincial guidance. According to her, "There is no copy of the results of an investigation, because none ever took place." She believes that obtaining a copy of the course manual would shed light on the operational processes and clarify what the noise investigation standards are. She also believes that if bylaw officers deviate from the standards set out in the course manual and the city's *MLS Noise Technical Manual*[34], it is in the public interest to know this.

[71] In addition, the appellant submits that it does not advance the public interest, if the financial burden is placed solely on complainants to prove obvious noise violations, without access to the standard operational manuals. She submits that this deters public interest and only serves the purposes of shielding the city from public scrutiny.

[72] In response to the appellant's representations about the city's review of its noise bylaws, the city submits that the course manual is generic and not a specific training/instruction manual for the city, and therefore it does not "inform or enlighten the citizenry" about the activities of the city. It submits that the record is not the city's SOPs manual for investigating noise complaints. It further submits that the appellant has not provided any evidence to demonstrate how disclosure of the record "clearly outweighs the purpose of the exemption". The city submits that this appears to be a private, rather than a public interest.

[73] In response, the appellant refers to how the affected party characterizes its courses on its website to refute the city's position that the record is generic and not specific to the city. She also submits that her request has both a private and public component. She states "I have a private vested interest in obtaining a copy of the [course] manual...to assist in determining which if any noise investigation procedural steps were followed in my case, in effect to shed light into the activities of the new MLS Noise Team." She also submits that the record is of public interest because of the city's belief in the importance of rigorously enforcing noise bylaws due to the damage chronic exposure to excessive noise can have on an individual's health, as noted above.

[74] The appellant also appears to argue that there is a public interest in the disclosure of the record because other institutions have chosen to make available online manuals that the appellant believes are similar to the record, including some produced by the affected party for other institutions.

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[33] To support this point, the appellant provided me with a copy of *Health Impacts of Environmental Noise in Toronto* (Board of Health), May 29, 2017.
[34] As noted above, this document is not at issue in this appeal.

Analysis and findings – there is no compelling public interest in disclosure of the record that clearly outweighs the purpose of the section 10 exemption

[75] Based on my review of the record and the representations of the parties, I find that the public interest override does not apply to the record.

[76] I disagree with the appellant that there is an "unquestionable overriding public interest" in disclosing the course manual. I accept that the city's review of its noise bylaws demonstrates a public interest in the effect of noise on individuals and in enforcing noise bylaws, in general. However, given the nature of the record, I do not accept that the public interest highlighted by the appellant would be advanced by the disclosure of the record. I also disagree with the appellant that the disclosure of the record would shed light on the city's operational processes and clarify what the city's noise investigation standards are.

[77] As explained above, the record contains explanations, procedures and approaches for the analysis and measurement of noise and the interpretation of results based on the provincial NPC Standards; it does not contain information about how the city investigates noise complaints. I understand that the appellant is seeking access to the course manual to determine whether the city followed its operational standards for noise bylaw enforcement in her case. I do not accept that disclosure of the record would provide the appellant with this information.

[78] In addition, based on her representations, it would appear that the appellant's interest in the disclosure of the record is private, rather than public. She believes that the city has refused to conduct an investigation into her noise complaint, in accordance with the city's Noise Policy and provincial guidance.

[79] As noted above and by the appellant, previous IPC orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies. In my view, the disclosure of the record would not serve the purpose of informing or enlightening the appellant or the public about the city's enforcement of its noise bylaws. This is because the course manual does not contain the city's operational standards for noise bylaw enforcement and is not specific to the city. Therefore, I find that there is not a compelling public interest in disclosure of the record withheld under section 10(1) of the *Act*.

[80] Even if a compelling public interest in the disclosure of the record had been established, I do not accept that, in this case, any such interest would clearly outweigh the purpose of the mandatory third party information exemption. Given the harms that could result by the disclosure of the record, in my view, this is a case where the purpose of the exemption is not outweighed by the interest identified by the appellant.

[81] I am satisfied that there is not a public interest in the disclosure of the record, let alone a compelling one that outweighs the purpose of the mandatory third party information exemption in section 10(1). Accordingly, I find that the public interest

override at section 16(1) of the *Act* does not apply and section 10(1) applies to the record.

ORDER:

I uphold the city's decision to deny access to the record pursuant to section 10(1). I also find that the public interest override does not apply in the circumstances of this appeal and dismiss the appeal.

Original Signed by: April 13, 2022

Valerie Silva
Adjudicator