Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4324

Appeal PA20-00702

Ontario Lottery and Gaming Corporation (OLG)

December 6, 2022

Summary: This order deals with a request for agreements between the Ontario Lottery and Gaming Corporation (the OLG) and a third party (the appellant). Following third party notification, the OLG decided to release the agreements in full. The appellant appealed the OLG's decision, claiming that the third party information exemption at section 17(1) of the *Act* applies. At mediation, the third party consented to the release of some of the responsive information to the requester. In this order, the adjudicator dismisses the appeal and upholds the OLG's decision, finding that the information at issue is not exempt and orders it disclosed to the requester.

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

Orders Considered: Orders MO-1781, MO-1888, MO-2249-I, MO-3175, PO-2774, PO-2987 and PO-4000.

OVERVIEW:

[1] By way of background, the appellant is a landlord involved in the hospitality sector in Niagara. In this appeal, the Ontario Lottery and Gaming Corporation (the OLG) entered into leasing and licensing agreements related to the appellant's property and services.

[2] The OLG received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the July 18, 1996 CN Premises Licence and Lease

Agreements and July 2005 Parking Licence Agreement with respect to Niagara facilities, including any amendments to these agreements.[1]

[3] Following third party notification, the OLG issued a decision in which it granted full access to the responsive records.[2]

[4] A third party (now the appellant) appealed the OLG's decision with the Office of the Information and Privacy Commissioner (the IPC).

[5] During mediation, the requester raised the possible application of the public interest override in section 23 of the *Act* and the OLG confirmed its decision to grant full access to the responsive records. Also, during mediation, the appellant consented to the release of some of the responsive records and portions thereof to the requester. After the requester received partial disclosure from OLG with the consent of the appellant, the requester confirmed its interest in pursuing full access to the responsive records.

[6] As no further mediation was possible, this appeal was transferred to the adjudication stage of the appeals process, in which an adjudicator may conduct an inquiry.

[7] As the adjudicator assigned to this appeal, I decided to conduct an inquiry into this matter. I began by inviting the appellant to make representations in response to a Notice of Inquiry, which outlined the facts and issues under appeal. I received representations from the appellant, which were shared with the OLG and the requester, asking them to provide representations in response to the facts and issues in this appeal and to the appellant's representations. I received representations from the OLG and the requester, a copy of which were shared with the appellant. I then sought and received reply representations from the appellant, which were shared with the OLG and the requester, both of whom chose to not submit sur-reply representations. Representations were exchanged between the appellant, the OLG and the requester in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*.

[8] In this order, I dismiss the appellant's appeal. I uphold the OLG's decision that the information at issue is not exempt under section 17(1) of the *Act* and I order it disclosed to the requester.

RECORDS:

[9] The withheld portions of the following records (the records) remain at issue (the

---

[1] As clarified when the requester was contacted by the OLG.

[2] The appellant explains that, during notification, it advised the OLG of its view that the only record responsive to the request was a 2009 amending agreement, not the records identified as responsive by the OLG. However, during mediation, the appellant confirmed that this argument was not being further advanced and it was not included in the Mediator's Report. Accordingly, the issues of the scope of the request and the responsiveness of the records were not part of my inquiry and are not issues in this appeal.

information at issue)[3]:

Record	Portion(s) withheld	Page(s)
1. CN Licence Agreement – 1996 (licence)	Clause 1.1(l) definition	29
	Clauses 4.1(b) and (d)	32 and 33
2. Letter Agreement – April 1, 1999 (1999 letter)	Clauses C. and F.	61 and 62
3. Letter Agreement – July 23, 2002 (2002 letter)	Paragraphs 1, 2 and 7	66 and 67
4. Letter Agreement – February 16, 2006 (2006 letter)[4]	Paragraphs 1, 2 and 7	69 and 70
	Schedule C	73

ISSUES:

A. Does the mandatory exemption at section 17(1) apply to the information at issue?

B. Is there a compelling public interest in disclosure of the information at issue that clearly outweighs the purpose of the section 17(1) exemption?

DISCUSSION:

Issue A: Does the mandatory exemption at section 17(1) apply to the information at issue?

[10] Section 17(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, where the disclosure could reasonably be expected to,

[3] During my inquiry, the requester advised that it is no longer seeking access to the CN Lease Agreement 1996 because this record is now publicly available. Moreover, at mediation, the appellant consented to the disclosure of the following records: CN License Agreement 2005, Letter Agreement June 4, 1999 and Letter Agreement November 27, 2000. As a result, these records are not at issue in this order.

[4] While this record, as provided by the OLG to the IPC, includes a copy of Schedule C, Schedule A is a blank page and nothing is attached, and Schedule B is missing. OLG advised that the version of this record in its custody does not include Schedules A or B.

> (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 continues 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.

[11] Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[5] 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.[6]

[12] For section 17(1) to apply, the appellant must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 17(1) will occur.

[13] During the inquiry, the OLG did not provide representations on the applicability of the section 17(1) exemption to the records because it submits that the appellant's representations to the IPC do not provide any additional evidence or details.

Part one: type of information

[14] Past IPC orders have defined the types of information listed in section 17(1) of the *Act* for part one of the test. The two types of information raised in this appeal are:

---

[5] *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.*).
[6] Orders PO-1805, PO-2018, PO-2184 and MO-1706.

> *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.[7] The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.[8]
>
> *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.[9]

Representations of the parties

[15] The appellant submits that the information at issue, by its nature, contains information that is commercial and financial in nature because it relates to the buying, selling or exchange of merchandise or services – in this case, the leasing and licensing of real property and related services – and financial information, such as price and financing. It also submits that this information is based on its assessment of the competition for providing services in Niagara Region. It further submits that it develops plans to optimize its use of its private property, how best to serve its clients, and what it prices its goods and services in a competitive market, which is commercial information.

[16] In response, the requester generally submits that the information at issue does not appear to be commercial or financial information.

Analysis and findings

[17] Having reviewed the parties' representations and the records themselves, including the information at issue, I find that the records, as a whole, contain commercial and financial information, as contemplated by section 17(1) of the *Act*.

[18] My review of the records reveals that, as a whole, they detail the commercial arrangements between the OLG and the appellant, a private organization, with respect to the leasing and licensing of the appellant's property and related services, in the form of a licence agreement and various letter agreements, which amend the terms of the licence agreement and a lease agreement, which is not at issue in this appeal. In particular, the records outline the terms of the appellant's provision of leasing and licensing services to the OLG, which constitute commercial information, and include provisions relating to payments between the parties for such services and information about a financing arrangement with another party, which constitute financial

---

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

information. Moreover, the information at issue are terms or parts of terms of the licence agreement and a lease agreement, as amended, which form part of these commercial arrangements between the OLG and the appellant.

[19] Accordingly, the information at issue contains commercial and financial information, as contemplated by section 17(1) of the *Act* and part one of the test has been met. I will now consider part two of the test, namely, whether the information at issue was supplied by the appellant to the OLG in confidence.

Part two: supplied in confidence

[20] 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.[10]

[21] 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.[11]

[22] 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.[12]

[23] 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.[13] 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.[14]

[24] 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

---

[10] Order MO-1706.
[11] Orders PO-2020 and PO-2043.
[12] 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*).
[13] Order MO-1706, cited with approval in *Miller Transit*, above at para. 33.
[14] *Miller Transit*, above at para. 34.

provided. This expectation must have an objective basis.[15]

[25] 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.[16]

Representations of the parties - Supplied

Appellant's representations

[26] The appellant submits that the information at issue was implicitly supplied in confidence, and was not negotiated with the OLG. It explains that the pricing, terms and renewal periods, and provisions that allocate risk and reward are part of the appellant's way of doing business – these are essential business policies that are applicable to relations and negotiations with other customers and potential customers, and not solely related to the specific agreements responsive to the request.

[27] It refers to the immutable exception for the non-negotiated confidential information supplied by the appellant as a third party to OLG. The appellant submits that its approach to negotiations and assessment of risks versus reward, which are part of its broader business approach and practices, were not the subject to any negotiations with OLG and these business practices transcend the information at issue. It also submits that it develops plans to optimize its use of its private property, how best to serve its clients, and what it prices its goods and services in a competitive market; any information with respect to those plans in the custody of the OLG were supplied to notify the OLG of its plans on a confidential basis.

Fees and rates

[28] The appellant submits that clauses 4.1(b) and (d) on pages 32 and 33 of the licence, clause F. on page 62 of the 1999 letter, paragraphs 1 and 2 on page 66 of the 2002 letter, and paragraphs 1 and 2 on page 69 and Schedule C on page 73 of the 2006 letter, which are concerned with fees and rates, were supplied to the OLG on a

---

[15] Order PO-2020.

[16] Orders PO-2043, PO-2371 and PO-2497; *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

confidential basis and are based on the appellant's assessment of the competition for providing services in the Niagara Region based on the relative negotiation and strategic strengths and weaknesses of its competitors.

A private financial matter between the appellant and another party

[29] The appellant also submits that it supplied the clause 1.1(l) definition on page 29 of the licence, which relates to a private financial matter between the appellant and another party, to the OLG in confidence for its information only and this information was never the subject of negotiations with the OLG. It explains that this information clearly falls into the category of being immutable because it was not mutually generated and not susceptible to change. It also explains that this information would result in inferred disclosure about the appellant's financial relationship with another party, separate and apart from the OLG and the records.

The appellant's proposed use and redevelopment of its property

[30] The appellant further submits that clause C. on page 61 of the 1999 letter, paragraph 7 on page 67 of the 2002 letter and paragraph 7 on page 70 of the 2006 letter, which are about the appellant's proposed use and redevelopment of its property, is immutable. It submits that this information was supplied to OLG in confidence for its own planning purposes and it was not a matter of any negotiations or agreements with the OLG, as reinforced by the wording of this information. It also explains that, given its consistent approach with respect to these provisions, it is clear that its proposed use and redevelopment of its property are immutable because they have not changed and these provisions have been fundamental to the appellant's plans for its property. It further explains that this information would result in inferred disclosure about the appellant's future plans for its property.

<u>Requester's representations</u>

[31] In response, the requester submits that information in contracts with public institutions is generally considered to have been negotiated, not supplied. With respect to the applicability of the immutability exception, it submits that information about prices, terms, renewal periods and indemnification, are not immutable and are often some of the most heavily negotiated aspects of an agreement.

Representations of the parties - Confidential

[32] The appellant submits that the records were implicitly confidential and were treated as such on a consistent basis by the appellant and the OLG. It explains that the OLG has maintained the confidentiality of such matters on a consistent basis, including in its relations with the appellant. It also explains that the OLG has consistently treated documents similar to the records as confidential, indicating that such documents were made available to proponents after they signed a non-disclosure agreement and had measures in place to ensure that the confidentiality was maintained for these documents. It is the appellant's understanding that the OLG has refused to release any

such records to requesters in the past.

[33] In response, the requester submits that the information at issue was not supplied in confidence. It submits that, to the extent that the appellant agues that any information in the licence is confidential, and that information is also found in or can be inferred from the 1996 Lease Agreement, which is available from public sources, as noted above in a footnote, then the appellant's argument should fail.

Analysis and findings

Supplied

[34] Having carefully reviewed the information at issue, as well as the parties' representations, I find that some of the information at issue was not supplied by the appellant to the OLG in confidence.

[35] As noted above, the IPC's approach to the "supplied" test and government contracts has been consistently upheld by the court. The provisions of a contract, in general, have been treated as mutually generated, rather than "supplied" by the third party, even whether the contract is preceded by little or no negotiation or where the final agreement reflects information the originated from a single party.[17]

[36] In Order MO-3175, the adjudicator summarized the desire of the courts to grant access to information contained in government contracts:

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

---

[17] 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*).

> agreements and specifically confirmed in *Miller Transit* and *Aecon Construction* that the approach is consistent with the intent of the legislation, which recognizes that public access to information contained in government contracts is essential to government accountability for expenditures of public funds.

[37] I adopt the IPC's approach to section 17(1), which has been repeatedly upheld by the Divisional Court, and I find that the information at issue in the records is a product of negotiations between the appellant and the OLG.

[38] I now consider whether the "immutability" or "inferred disclosure" exceptions apply to specific portions of the information at issue.

Fees and rates

[39] The following portions of the information at issue relate to fees and rates:

- Clauses 4.1(b) and (d) on pages 32 and 33 of the licence;
- Clause F. on page 62 of the 1999 letter;
- Paragraphs 1 and 2 on page 66 of the 2002 letter; and
- Paragraphs 1 and 2 on page 69 and Schedule C on page 73 of the 2006 letter.

[40] The appellant submits that the fees and rates in the withheld portions outlined above were not negotiated because they were based on its own assessment of the competition in the marketplace.

[41] In my view, the information at issue related to fees and rates does not contain the type of information contemplated by the immutability exception; nor do the appellant's representations provide sufficient evidence to demonstrate that such information was not susceptible of change. It is clear that OLG could have negotiated this information, even if it chose not to. The fact that the appellant's assessment of the competition in the market was used to determine the rates and fees it proposed to the OLG does not change the fact that such information was susceptible of change and could have been negotiated with the OLG. Moreover, the OLG had the option of not agreeing to the fees and rates proposed by the appellant and, for that matter, not entering into the agreements with the appellant. While the appellant's representations did not specifically address whether the inferred disclosure exception applies to the information at issue related to fees and rates, I have considered this exception based on a review of such information and I find that the inferred disclosure exception does not apply to such information.

[42] Accordingly, I find that the immutability exception does not apply to the information at issue related to fees and rates because it was mutually generated and not supplied by the appellant to the OLG. As part two of the test under section 17(1)

has not been met for this information, I will order it disclosed to the requester.

The appellant's proposed use and redevelopment of its property, and a private financial matter between the appellant and another party

[43] The following portions of the information at issue relate to the appellant's proposed use and redevelopment of its property and a private financial matter between the appellant and another party:

- Clause 1.1(l) definition on page 29 of the licence;
- Clause C. on page 61 of the 1999 letter;
- Paragraph 7 on page 67 of the 2002 letter; and
- Paragraph 7 on page 70 of the 2006 letter.

[44] The appellant submits that the above information was not the subject of negotiations with the OLG, not mutually generated and not susceptible to change. It also submits that this information was provided to the OLG for its own planning purposes and for its information only. It further submits that this information falls under the inferred disclosure exception because it would provide the requester with access to information about the appellant's future plans and its financial relationship with another party.

[45] I find that the above information falls within the immutability exception. Despite the general rule that information in a contract is negotiated and not supplied, I agree with the appellant that the immutability exception applies to the above information, as it is information that was not susceptible to change during the negotiation with the OLG, nor was it subject to any OLG agreement or negotiations. In light of this, I do not need to make a finding on whether the above information also falls within the inferred disclosure exception. However, I am persuaded by the appellant's representations that the information about the proposed use and redevelopment of its property and a private financial matter could permit accurate inferences to be made with respect to the appellant's property and financial position.

<u>Confidential</u>

[46] I also find that the above information was supplied in confidence by the appellant to the OLG. I accept the appellant's evidence that it supplied this information with a reasonable expectation of confidentiality and that it relied on the fact that the OLG has maintained the confidentiality of such information, in addition to other information, in its relations with the appellant and other parties. I note that the OLG has not submitted any evidence to dispute this, despite having been given the opportunity to do so.

[47] Therefore, I find that the following portions of the information at issue related to

the appellant's proposed use and redevelopment of its property and a private financial matter between the appellant and another party were supplied in confidence by the appellant to the OLG:

- Clause 1.1(l) definition on page 29 of the licence;
- Clause C. on page 61 of the 1999 letter;
- Paragraph 7 on page 67 of the 2002 letter; and
- Paragraph 7 on page 70 of the 2006 letter.

[48] As part two of the test for exemption under section 17(1) has been met for this information, I will continue my analysis of whether disclosure of this information (the information remaining at issue) could result in the harm contemplated by section 17(1) under part three of the test.

Part three: harms

[49] 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.[18]

[50] 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.[19] 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 17(1) are self-evident or can be proven simply by repeating the description of harms in the *Act.*[20]

[51] In applying section 17(1) to government contracts, the need for public accountability in the expenditure of public funds is an important reason behind the need for detailed evidence to support the harms outlined in section 17(1).

Representations of the parties[21]

[52] The appellant submits that the records contain confidential information that was and remains valuable to it and, if released, could depreciate its commercial and financial

---

[18] *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.
[19] *Ontario* (*Community Safety and Correctional Services*) *v. Ontario* (*Information and Privacy Commissioner*), cited above.
[20] Order PO-2435.
[21] I only summarize the parties' representations as they relate to the information remaining at issue.

interests, especially in a highly competitive environment, both with respect to competitors such as Niagara region.

[53] It explains that it operates in a highly competitive environment, both with respect to competitors located in Niagara region and in the United States, where information for larger-scale customers is valuable and kept confidential. It further explains that the OLG Modernization process has created competition as between casinos located in the Niagara region and those located in other areas in Ontario. It further explains that OLG's operational model is for the operators of the casinos to compete with each other – thus since 2012, the level of competition and the nature of that competition for third parties who supply goods and services has increased.

[54] The appellant submits that the protection of such confidential information is necessary to protect it, as a landlord from potential harm related to the municipal planning approval process (including but not limited to objections by other property owners in competition with the landlord) and with other businesses in a highly competitive tourism sector in Niagara.

[55] In response, the requester submits that the appellant has not clearly explained what harms would arise from disclosure of the information at issue in the licence and it is not sufficient to provide vague descriptions of a competitive market. It also submits that the appellant does not describe how the information at issue in the licence from 1996 would cause competitive harm 25 years later.

[56] With respect to the letter agreements, the requester submits that the appellant has not set out in any detail the harm that would arise from disclosure of the information at issue in these letters, many of which are quite dated.

Analysis and findings

[57] On my review of the information remaining at issue, I am not persuaded that disclosing the information remaining at issue could reasonably be expected to result in any of the harms outlined in section 17(1) of the *Act*.

[58] As noted above, the appellant, as the party resisting disclosure in this appeal, must provide sufficient evidence to establish the potential for harm.

[59] The appellant submits representations on the nature of its industry, describing its highly competitive nature and explains that releasing the information remaining at issue could result in the harms outlined in section 17(1) because its competitors would know its proposed use and redevelopment of its property and details about a private financial matter between the appellant and another party.

[60] My decision on whether the section 17(1) exemption applies to specific information in an agreement between a private corporation and an institution must be approached carefully, applying the tests developed by the IPC while appreciating the

commercial realties of the negotiation process and the nature of the industry in which the agreement occurs.[22] It is also important that each appeal must be considered independently, with a view to the evidence presented and the impact of other factors, such as the positions taken by the parties, the passage of time and the nature of the information remaining at issue.[23]

[61] While not determinative of the harms test under section 17(1), I cannot ignore the fact that the 1996 licence, the 1999 letter, the 2002 letter and the 2006 letter, (the letter of which amend the 1996 licence), are between 16 and 26 years ago. It is also my understanding that the licence agreement is no longer in effect. Based on my review of the information at issue, there is also a strong possibility that some of the information remaining at issue may also be contained in the 1996 lease agreement, which is publicly available.

[62] Previous IPC orders have found that the age of the records and the passage of time are relevant factors in determining whether disclosure of records could reasonably be expected to result in the types of harms described in section 17(1) of the *Act*, where the risk of competitive harm with disclosure of a record may lessen with the passage of time.[24] It is my view that the appellant has not provided sufficient evidence to establish that disclosure of information about the appellant's proposed use and redevelopment of its property and a private financial matter between the appellant and another party from between 1996 and 2006 could reasonably be expected to result in any of the harms described in section 17(1); the appellant has simply provided general representations, without explaining how disclosure of the information remaining at issue could result in such harm.

[63] Therefore, I find that there is a lack of sufficient evidence to establish that disclosure of the information remaining at issue could result in the harms contemplated by section 17(1) of the *Act* and I find that part three of the test has not been met. Accordingly, I will also order this information disclosed to the requester.

Conclusion on the section 17(1) exemption

[64] In summary, I find that the section 17(1) exemption does not apply to the information at issue in the records. In light of this, I will order the OLG to disclose the information at issue to the requester, namely, the withheld portions of the 1996 licence, as well as the 1999 letter, the 2002 letter and the 2006 letter. Given my findings that the section 17(1) exemption does not apply to the information at issue, I do not need to consider whether there is a compelling public interest in disclosure of the information at issue that clearly outweighs the purpose of the section 17(1) exemption.

[22] Order MO-1888.
[23] Order PO-2987.
[24] Orders PO-2774, PO-4000, MO-1781 and MO-2249-I.

ORDER:

1. I uphold the decision of the OLG to disclose the information at issue to the requester, and dismiss the appeal.

2. I order the OLG to disclose the information at issue to the requester in accordance with its access decision by **January 16, 2023** but not before **January 11, 2023**.

3. In order to verify compliance with this order, I reserve the right to require the OLG to provide me with a copy of the information disclosed to the requester.

Original Signed By: December 6, 2022

Valerie Silva
Adjudicator