Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4663

Appeal MA24-00103

City of Ottawa

June 10, 2025

Summary: The City of Ottawa received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to a specified report. The city issued a decision granting partial access, relying on section 10(1) to withhold some information.

An affected party appealed the decision on the basis that section 10(1) applies to the information the city is prepared to disclose.

In this order, the adjudicator finds that the information that is at issue is not exempt under section 10(1). She orders the city to disclose the information in accordance with the city's final decision and dismisses the appeal.

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

OVERVIEW:

[1] On August 8, 2021, an Ottawa Light Rail Transit (OLRT) commuter train derailed about 90 metres out of a train station.

[2] In this context, a reporter made a request, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), to the City of Ottawa (the city) for access to the following:

> Alstom's original report regarding the LRT Line 1 following the July to August 2023 shutdown, cited in "LRT Disruption – Root Cause Review" (ACS2023-TSD-ENG-0020) under the heading "Alstom's Recommendations for a Sustainable Solution."

[3] After the city notified two affected parties of the request and sought their views regarding disclosure of the information, the city granted access, in part, to the responsive record (the report), relying on section 10(1) (third party information) and section 15(a) (information published or available to the public)[1] to withhold information.

[4] Dissatisfied with the city's decision, one of the affected parties (now the appellant) appealed the city's decision to disclose some of the information to the requester to the Information and Privacy Commissioner of Ontario (IPC). A mediator was assigned to explore the possibility of resolution.

[5] During mediation, the city issued a revised decision relying on section 10(1) to withhold some more information in the report.

[6] The requester advised that he remains interested in pursuing access to the information the city intended to disclose and raised the application of the public interest override in section 16 of the *Act*. As such, section 16 was added to the scope of the appeal.[2]

[7] As a mediated resolution was not reached, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I commenced an inquiry in which I sought and received representations from the parties about the issues in the appeal.[3]

[8] For the reasons that follow, I find that the information at issue is not exempt under section 10(1) and order it disclosed to the requester.

RECORDS:

[9] The information at issue is contained in a report, specifically the information the city is prepared to disclose on pages 1-44, 96 and 235.[4]

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[1] The requester did not appeal the city's decision to withhold some of the information in the report. As such, the information withheld under section 15(a) is not at issue in this appeal.
[2] As a result of my finding on section 10(1), I did not need to consider the possible application of section 16 in this order.
[3] Portions of the appellant's representations were withheld in accordance with the confidentiality criteria in the IPC's *Practice Direction Number 7* and section 7 of the IPC's *Code of Procedure*.
[4] As set out in the city's final decision of July 2, 2024.

DISCUSSION:

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

[11] The appellant claims that the mandatory exemption at sections 10(1)(a), (b) or (c) of the *Act* applies to pages 1-44, 96 and 235 and that therefore they should not be disclosed.

[12] The purpose of section 10(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,[5] where specific harms can reasonably be expected to result from its disclosure.[6]

[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,
>
> > (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] For section 10(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;

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

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[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.

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.

[15] All three parts of the three-part test must be met to establish the exemption. Because I find below that the appellant has not established part 3 of the three-part test, it is not necessary for me to consider parts 1 and 2 of the test.

[16] 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.[7]

[17] 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.[8] 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.[9]

Representations of the parties

[18] The appellant submits that the information at issue clearly satisfies part 3 of the three-part test. It submits that disclosure of the information at issue could reasonably be expected to prejudice it and its contractual partners (including Alstom) by revealing confidential commercial and technical information about Alstom's service delivery model. The appellant also submits that it and Alstom are involved in ongoing disputes with the city in relation to the Ottawa light rail transit project and, therefore, disclosure of the information at issue could further prejudice it and Alstom's positions in the course of those disputes.

[19] The city submits that the appellant has not satisfied part 3 of the three-part test. It submits that the appellant has not provided any evidence of harms. Moreover, the city submits that the appellant's representations do not contain detailed or convincing evidence of harm that already has occurred or will occur as a result of the disclosure of the information at issue.

[20] The requester submits that the appellant has not satisfied part 3 of the three-part test. He submits that the appellant has not provided detailed evidence about the risk of

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[7] *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.
[8] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, cited above.
[9] Order PO-2435.

harm if the information at issue is disclosed but has merely asserted that it would be prejudiced as disclosure of the information could reveal "confidential commercial and technical information about Alstom's service delivery model." The requester submits that the appellant has not shown how disclosure of the information could prejudice its interests.

[21] The requester also submits that the appellant has not provided detailed evidence to explain how the disputes would be prejudiced by the disclosure of the information at issue or how the information at issue is relevant to those disputes. He submits that as the city has access to the information at issue, he does not see how the appellant's position in the disputes with the city could be prejudiced by its disclosure.

Analysis and Findings

[22] To find that any of the section 10(1) harms could reasonably be expected to result from disclosure of the information at issue, I must be satisfied that there is a reasonable expectation of the specified harm. I can reach this conclusion either based on the representations made by the parties and/or on my review of the information at issue.

[23] Based on the representations of the parties and my review of the information at issue, I find that the appellant has not established that disclosure of the information at issue could reasonably be expected to prejudice significantly the competitive position or significantly interfere with the contractual or other negotiations of the appellant (section 10(1)(a)), result in similar information no longer being supplied to the ministry (section 10(1)(b)), or result in undue loss or gain to the appellant or any other entity (section 10(1)(c)).

[24] The appellant's representations are brief. It argues generally that it could reasonably be expected to suffer harms if the information at issue is disclosed. Specifically, the appellant argues that it (and its contractual partners, including Alstom) could reasonably be expected to be prejudiced by disclosure of the information because it would reveal confidential commercial and technical information about Alstom's service delivery model.

[25] The appellant also argues that it and Alstom are involved in ongoing disputes with the city in relation to the Ottawa light rail transit project and, therefore, disclosure of the information at issue could further prejudice it and Alstom's positions in those disputes.

[26] I find that the appellant's representations fall short of the sort of detailed evidence that is required to establish part 3 of the test for section 10(1) to apply. The appellant does not provide detailed evidence of how disclosure of Alstom's service delivery model would impact its competitive position or significantly interfere with its contractual or other negotiations. Instead, the appellant's representations amount to the speculation of possible harms. From my review of the information at issue and the appellant's representations, I am unable to conclude that disclosure of the information at issue could

reasonably be expected to result in any of the stated harms in section 10(1).

[27] With respect to the ongoing disputes between the appellant and the city, the appellant has not provided any evidence of how disclosure of the information at issue could further prejudice it and/or Alstom's position in those disputes. As noted by the requester, the city is currently in possession of the information at issue.

[28] In sum, in the absence of any detailed evidence from the appellant and based on my review of the information at issue itself, I do not accept that the disclosure of the information at issue could be reasonably expected to result in the harms set out in sections 10(1)(a), (b), or (c) of the *Act*. As a result, I find that the appellant has failed to establish that part 3 of the section 10(1) test has been met.

[29] All parts of the three-part test must be met for the mandatory exemption at section 10(1) to apply. Since the appellant has not established part 3 of the section 10(1) test, I find that section 10(1) does not apply to exempt the information at issue in this appeal from disclosure.

[30] In sum, I have found that section 10(1) does not apply to the information at issue, and I will uphold the city's decision to disclose it.

ORDER:

1. I uphold the city's decision to disclose the information at issue to the requester, in accordance with its final decision, by **July 15, 2025** but not before **July 8, 2025** and dismiss the appeal.

2. With respect to provision 1, I reserve the right to require the city to provide me with a copy of the information ordered disclosed to the requester.

Original Signed by: June 10, 2025

Lan An
Adjudicator