

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4669

Appeal MA22-00103

Toronto Transit Commission

June 19, 2025

Summary: The TTC received a request for access to training course material involving new hire subway operators, maintenance, and communications systems. The TTC located responsive information and issued a decision withholding some of the information in a training manual because it was third party information (exemption at section 10(1)). The TTC also fully withheld other information because of economic interests in the information (exemption at section 11(a)) and also withheld the same information because of a threat to safety or health (exemption at section 13).

In this order, the adjudicator upholds the TTC's decision and finds that the exemption at section 10(1) applies to the record for which it is claimed. He also upholds the TTC's decision that section 11(a) applies to the remaining information, in part. He finds that the same information that is not exempt under section 11(a) is also not exempt under section 13 and orders it to disclose this information to the appellant.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 10(1), 11(a) and 13.

Orders and Investigation Reports Considered: Orders P-393, P-1281, PO-2166 and PO-2724.

OVERVIEW:

[1] The Toronto Transit Commission (the TTC) received a request, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for access to training

course materials involving new hire subway operators, maintenance, and communication systems. The requester specified the records should include handbooks, handouts, lecture notes, study guides and slides.

[2] The TTC identified responsive records and denied the requester access to the records in full. The TTC claimed that the information was exempt from disclosure under section 11(a), 11(c), 11(f) (economic and other interests) and section 13 (threat to health and safety) of the *Act*. The TTC grouped the responsive records into four categories.

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

[4] During the mediation stage of the appeals process, the TTC notified an affected third party of the request and sought its views on the disclosure of a record that appeared in one of the four record groups. The affected party consented to the disclosure of some of the information in this record. The TTC issued a revised decision addressing only this record, indicating that it would release portions to the appellant but withheld the remainder of the record claiming it was exempt under section 10(1) (third party information). As the appellant indicated that he was interested in pursuing access to the remaining information, section 10(1) was added to the scope of the appeal.¹

[5] Further mediation was not possible, and the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct a written inquiry under the *Act*. The adjudicator originally assigned to this appeal decided to conduct an inquiry and sought representations from the TTC, the affected party and the appellant. Upon being assigned as adjudicator in this appeal, I continued the inquiry seeking additional representations.

[6] In its representations, the TTC clarified that it was no longer relying on section 11(c) or 11(f) to withhold information in the records and therefore these exemptions were removed from the scope of the appeal.

[7] In this appeal, I uphold the TTC's decision that section 10(1) applies to the withheld information in Group RVT040, record 6. I also uphold the TTC's decision that section 11(a) applies to the remaining information, in part. For the information that I find the section 11(a) exemption does not apply, I also find that the section 13 exemption does not apply. The TTC will be ordered to disclose this information to the appellant.

RECORDS:

[8] The TTC grouped the responsive records into four categories (2,817 pages in total), identified as follows:

¹ The TTC no longer relied on section 11 or section 13 to withhold this information.

- RVT022 (7 records)
- RVT040 (6 records, record 6 was partially disclosed)
- SUB003 (13 records)
- SUB004 (8 records).

ISSUES:

- A. Does the mandatory exemption at section 10(1) for third party information apply to the withheld portions of record 6 in group RVT040?
- B. Does the discretionary exemption at section 11(a) for economic and other interests of the institution apply to the records?
- C. Does the discretionary exemption at section 13 regarding a threat to safety or health apply to the records?
- D. Did the institution exercise its discretion under section 11(a)? If so, should the IPC uphold the exercise of discretion?

DISCUSSION:

Issue A: Does the mandatory exemption at section 10(1) for third party information apply to the withheld portions of record 6 in group RVT040?

[9] The purpose of section 10(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,² where specific harms can reasonably be expected to result from its disclosure.³

[10] The TTC refers to section 10(1)(a) and 10(1)(c) to withhold information in a document referred to as record 6 in group RVT040. This record is the ATC Carbone

Equipment and Operation Manual (the manual). (ATC refers to Automatic Train Control.)

[11] The relevant parts of section 10(1) state:

² *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.*).

³ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

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;

...

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

[12] For section 10(1) to apply, the party arguing against disclosure 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
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 1 of the section 10(1) test: type of information

[13] The IPC has described the types of information protected under section 10(1), including:

Technical information is information belonging to an organized field of knowledge in the applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. Technical information usually involves information prepared by a professional in the field, and describes the construction, operation or maintenance of a structure, process, equipment or thing.⁴

[14] The TTC, the affected party, and the appellant agree that the withheld information in the manual consists of technical information.⁵ The affected party explains that the technical information in the record relates to operation and maintenance of the automatic train control subsystems equipment of TTC's subway vehicles and provides specific details

⁴ Order PO-2010.

⁵ The parties also argued that the information is trade secret. Because I accept that the information is technical information, I do not need to address these arguments.

about the ATC system installed by it.

[15] The affected party explains that the manual contains technical information related to operation and maintenance of the automatic train control subsystems equipment of TTC's subway vehicles. They submit that the withheld information in the manual fits the definition of technical information as it provides specific details about the ATC system installed by it and prepared by its engineers that are experts in signaling and signaling maintenance fields as it relates to its proprietary signaling system.

[16] After reviewing the withheld information, I agree that it is technical information as defined under the *Act*. As stated above, for information to be considered "technical" it must belong to an organized field of knowledge in the applied sciences or mechanical arts. Also, the technical information at issue involves information prepared by a professional in the field and describes the operation and maintenance of the subway vehicles.

[17] Therefore, the first part of the test is met.

Part two of the section 10(1) test: "supplied in confidence"

[18] The requirement that the information have been "supplied" to the institution reflects the purpose in section 10(1) of protecting the informational assets of third parties.⁶

[19] 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.⁷

[20] The party arguing against disclosure must show that the party supplying the information expected the information to be treated confidentially, and that their expectation is reasonable in the circumstances. This expectation must have an objective basis.⁸

[21] Relevant considerations in deciding whether an expectation of confidentiality is based on reasonable and objective grounds include whether the information:

- was communicated to the institution on the basis that it was confidential and that it was to be kept confidential,
- was treated consistently by the third party in a manner that indicates a concern for confidentiality,

⁶ Order MO-1706.

⁷ Orders PO-2020 and PO-2043.

⁸ Order PO-2020.

- was not otherwise disclosed or available from sources to which the public has access, and
- was prepared for a purpose that would not entail disclosure.⁹

[22] The TTC explains that although it worked collaboratively with the third party to create the manual, the third party directly supplied the specific information at issue to the TTC. The TTC also explains that it had a contract with the third party to update and install ATC systems in the subway. As part of this contract, the third party was to supply the TTC with content for the training manual on the ATC. Therefore, the TTC believes that the requirements for “supplied” as recognized by under section 10(1) have been met.

[23] The TTC submits that it has never disclosed its training documents for any of its vehicles due to the proprietary information contained within them and confirms that it only used the manual for the purpose in which it was given, the training of its operations employees. It notes that on page three of the record at issue, there is a “notice of confidential information” written by the affected party and provided to the TTC. The TTC submits that the inclusion of the confidentiality notice within the manual signals that the TTC clearly understood the third party’s explicit expectation of confidentiality of the contents of the manual.

[24] The affected party submits that it supplied the manual to the TTC as part of its contractual obligations. It refers to the preface included in the manual with a notice of confidential information. The affected party submits that when it provided the manual to the TTC as part of its contractual obligations, it had an expectation that the information would be kept confidential and would only be used for the purposes specified in the contract. It notes that by redacting the manual and providing part of the information to the appellant, it has already compromised on its expectations of confidentiality.

[25] The appellant notes that the TTC states that the manual in question was developed jointly with the affected party. He submits that given the record was mutually generated it would not meet the ordinary definition of “supplied.” The appellant submits that even if the information was supplied, the parties have not demonstrated that it was supplied in confidence. He notes that the TTC and the affected party reference a notice of confidential information and submits that this is directed to the user of the manual and is not about the supply of information by the affected party to the TTC. The appellant submits that this alone cannot support the claim that the information was “supplied in confidence.”

Finding

[26] I accept the TTC and affected party’s submissions that the information that was

⁹ Orders PO-2043, PO-2371 and PO-2497, upheld in *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

withheld from the appellant on the basis of section 10(1) was supplied to the TTC by the affected party.

[27] In Order P-393, the adjudicator found that to satisfy the “supplied” requirement of the test, it must be demonstrated that the information contained in the record was originally supplied by the affected party. The adjudicator found that the format in which the information is presented is not determinative of the issue of whether it was supplied. The adjudicator found that the fact that the information at issue was subsequently incorporated into a record created by the institution did not alter the fact that it was originally supplied by the affected party.

[28] I accept the reasoning in Order P-393 and adopt it for this appeal. I find that the information at issue was supplied by the affected party despite the TTC taking that information and formatting it into the manual. The “supplied” part of the test is met.

[29] I also find that the information was supplied by the affected party to the TTC “in confidence.” In my view, the affected party has established that when supplying its information it expected that information to be treated confidentially, and that expectation was reasonable in the circumstances. After reviewing the preface in the manual with a notice of confidential information, it is clear that the affected party had a continuing expectation that the information it supplied to the TTC was confidential and would remain so. Further, the confidentiality notice includes any TTC employees who received the information in the manual ensuring that the information would remain confidential.

[30] Therefore, I find that the second part of the test is met.

Part three of the section 10(1) test: harms

[31] Parties resisting disclosure of a record cannot simply assert that the harms under section 10(1) are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 10(1) are self-evident and can be proven simply by repeating the description of harms in the *Act*.¹⁰

[32] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.¹¹ However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the

¹⁰ Orders MO-2363 and PO-2435.

¹¹ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

information.¹²

[33] Sections 10(1)(a) and (c) seek to protect information that could be exploited in the marketplace.¹³

Representations

[34] The affected party submits that disclosure of the withheld information would prejudice significantly its competitive position. It notes that the withheld information in the manual represents its technical know-how, including that of its affiliates, and/or its subcontractors, related to the operation and maintenance of the relevant equipment and is part of their intellectual property. The affected party states that the development of intellectual property in the signaling transportation industry typically demands a significant investment of time and money by companies which in turn license it to clients in exchange for payment. It states that creation and commercialization of intellectual property is the core business of technology companies such as itself. Therefore, it submits that if this intellectual property is left unprotected and is disclosed to, for instance, its competitors or competitors of its subcontractors, it may prejudice their competitive position.

[35] The affected party notes that, even if the disclosure is not directly made to its competitors, once the information is disclosed to a third party and is considered public information and may be further disclosed to anyone without any limitation or obligation of confidentiality.

[36] The affected party submits that disclosure of its proprietary information would affect their competitive advantage which would significantly interfere with contractual or other negotiations. The affected party provides an example from the withheld information of schematics and product information showing the details of its “unique and proprietary” technical solution, and the technical processes and tools developed by it to operate and maintain the signaling system.¹⁴

[37] The affected party states that given the significant investment of time and money required to develop the intellectual property, if the information is left unprotected, a third-party applicant could use this information to advance its business without investing any human or financial resources on research and development and would also profit from the refinement of the third party’s technology based on its own experience in numerous projects. The affected party submits that this would, undoubtedly, result in undue gain to anyone that received its proprietary information and in undue loss to the affected party

¹² *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

¹³ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

¹⁴ The third party referenced an excerpt from the withheld information that was not provided to the appellant.

and/or its subcontractors.

[38] The affected party states that free exchange of information between its engineers and TTC employees is essential for the safe provision of service to the TTC's passengers. It notes that as experts in its own proprietary signaling system, it provided the TTC with all the elements necessary for the operation and maintenance of the ATC systems through the manual. As a result, it notes that the TTC was able to train its staff based on the information contained in the manual and with the affected party's assistance when necessary. The affected party suggests that without the manual, TTC would not have the necessary information to operate and maintain its transit system, which it submits would be harmful to the passengers in Toronto.

[39] The TTC notes that the affected party does not hold a monopoly within the transit signaling business, which means that the release of their proprietary information could give competitors an insight into their product providing them an unfair advantage and give them the opportunity to replicate the affected party's systems and equipment by utilizing the technical information and drawings contained within the manual.

[40] The TTC notes that the IPC has recognized that the release of this type of information could prejudice the competitive interest of an organization, and result in undue financial loss.¹⁵

[41] The appellant submits that the TTC and the affected party provided only generalized statements of harms and suggests that it remains unclear how the affected party will be harmed from disclosure of the withheld information. The appellant notes that the affected party is a provider of signalling technology to the TTC. He submits that the records contain information on the maintenance and usage of this technology to employees of an organization that already purchased and implemented the technology. The appellant suggests that it seems improbable that this information would be useful to harm the affected party's economic interests or its competitive position because the information is only useful to those who have already acquired the product.

[42] The appellant suggests that the TTC and affected party's representations speak to general notations about competitors using information in these records, and questions how they could use this "vendor specific" information.

[43] The appellant submits that for the affected party's competitive position to be in jeopardy, it must have a competitor in supplying training materials to their customers. He states neither the affected party nor the TTC have demonstrated that there is a competitor for supplying these training materials to transit agencies who purchase the ATC system used by the TTC. The appellant also suggests that while the withheld information may contain the affected party's intellectual property, that alone is not a relevant fact in determining that their competitive position may be harmed.

¹⁵ The TTC refers to Orders PO-1818 and PO-2018.

[44] The appellant notes that the third party exemption can only be invoked if the information is not already made public. He suggests that much of the withheld information could be already in the public domain. The appellant refers to the following past events where he suggests that similar type of information is already in the public domain:

- That detailed schematics of tracks and signaling systems for New York City's metro Transit Authority were released publicly as part of an investigation into a fatal incident in 2015 demonstrating that technical information has been released for other jurisdictions without endangering safety
- That internal procedures for operators of the New York metro system were also released as part of the investigation in 2015, demonstrating that technical information of subway systems has been released for other jurisdictions
- That many of the TTC's internal operations and procedures has been revealed in the TTC's public radio feeds or is in its archives where these recordings are available for download
- That the Wikipedia page for TTC's signaling system means that the content of the training materials concerning signaling is likely already public
- That a publicly available PDF on the TTC's signalling system suggests that the content of the training material concerning signalling is likely already public
- That patent application information for the affected party's signaling system reveal many technical details and are already public
- That an introductory handbook on communications-based train control released by the Indian Ministry of Railways demonstrates that technical information on the ATC system has been made public

[45] As noted, the parties provided reply representations which were considered but will only be referred to in my analysis on an as needed basis.

Analysis and finding

[46] As set out below, I find that the exemption at section 10(1) applies to exempt the withheld information in the manual.

[47] In my view, the affected party has provided me with the kind of evidence that demonstrates that disclosure of the withheld information could reasonably be expected to result in significant prejudice to its competitive position and an undue loss to it along with a corresponding gain to its competitors. After reviewing the representations along with the severed information in the record, I accept that the withheld information consists of the affected party's technical know-how related to the operation and maintenance of

the relevant equipment. This information is part of the affected party's intellectual property and is the information that is withheld in the manual.

[48] The affected party illustrates its position by pointing to specific parts of the withheld information that show the details of one of its technical solutions. I accept that this information is an example of the technical processes and tools developed by the affected party to operate and maintain the signalling system, and I accept that it illustrates a solution or methodology that is unique and proprietary and is representative of the sort of information that was redacted from the manual. The affected party explains, which is supported by the TTC, that its core business is the creation and commercialization of this sort of intellectual property and therefore, disclosure could significantly prejudice its competitive position if competitors were able to access the information.

[49] In Order PO-2018, the information at issue was definitions found in a schedule that describe processes or systems used by the third party. The adjudicator found that the third party exemption applied to this information noting prior adjudication orders (such as PO-1818) that accepted that harm within the meaning of section 17(1) (the provincial equivalent to section 10(1)) can be reasonably expected to ensue from the disclosure of this sort of business methodologies. The adjudicator accepted that disclosure of this information could reasonably be expected to lead to harm to its competitive position.

[50] I adopt this analysis from PO-2018. I accept that the affected party's development of its intellectual property represents a significant investment of its time and represents the affected party's technical know-how relating to the operation and maintenance of the relevant equipment. If the affected party's business methodologies are disclosed, it could reasonably be expected to significantly prejudice its competitive position and result in undue loss to the affected party. Competitors could utilize this information to advance their business therefore profiting from the information by replicating the affected party's intellectual property, resulting in undue loss to the affected party. As noted, the affected party does not hold a monopoly within the transit signaling business, which means that the release of their proprietary information could give competitors insight into their products providing them an unfair advantage and give them the opportunity to replicate the affected party's systems and equipment by utilizing the technical information and drawings contained within the manual.

[51] Regarding the appellant's argument that the affected party has not demonstrated that there is a competitor for supplying these materials to transit agencies who purchase the third party's solutions, the information at issue is not the manual itself, but the parts of the manual where the affected party's intellectual property appears. As discussed, I find the withheld contents of the manual are proprietary to the affected party the disclosure of which would affect its competitive interests in the transit signals industry.

[52] Further, I have reviewed the various sources the appellant points to suggesting

that this sort of information has been released in the past. After comparing this information with the withheld information in this appeal, I do not agree that the withheld information has already been made public, including the information relating to the affected party's patent applications.

[53] As a result, I find that the third part of the test has been met. As all parts of the test are met, I find that the exemption at section 10(1) applies to exempt the relevant information from disclosure.

Issue B: Does the discretionary exemption at section 11(a) for economic and other interests of the institution apply to the records?

[54] The purpose of section 11 is to protect certain economic and other interests of institutions. It also recognizes that an institution's own commercially valuable information should be protected to the same extent as that of non-governmental organizations.¹⁶ The TTC submits that the exemption at section 11(a) applies to the remaining withheld information.

[55] Section 11(a) states:

A head may refuse to disclose a record that contains,

(a) trade secrets or financial, commercial, scientific or technical information that belongs to an institution and has monetary value or potential monetary value;

[56] The purpose of this section is to permit an institution to refuse to disclose information where its disclosure would deprive the institution of its monetary value.¹⁷

[57] For section 11(a) to apply, the TTC must show that the information:

1. is a trade secret, or financial, commercial, scientific or technical information,
2. belongs to the TTC, and
3. has monetary value or potential monetary value.

Part 1: type of information

[58] The types of information listed in section 11(a) have been discussed in prior orders:

¹⁶ *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (the Williams Commission Report) Toronto: Queen's Printer, 1980.

¹⁷ Orders M-654 and PO-2226.

Trade secret includes information such as a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which:

- (a) is, or may be used in a trade or business,
- (b) is not generally known in that trade or business,
- (c) has economic value from not being generally known, and
- (d) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.¹⁸

Technical information is information belonging to an organized field of knowledge in the applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. Technical information usually involves information prepared by a professional in the field, and describes the construction, operation or maintenance of a structure, process, equipment or thing.¹⁹

Representations, analysis and findings

[59] The TTC submits that the information it withheld under section 11 contains technical and trade secret information about how to operate subway vehicles within the TTC.

[60] The TTC submits that the technical information contained within the records at issue includes topics such as:

- Descriptions of the TTC communication systems
 - Troubleshooting techniques and repair checklists
 - Preventative maintenance and overhaul instructions
- Communication equipment technical descriptions manual
 - Highly technical overview of all components of the communications systems within the TTC subway vehicle
 - Includes labelled diagrams
- Key elements of the subway system

¹⁸ Order PO-2010.

¹⁹ Order PO-2010.

- Information about transit control and yard control
- Train basics
- How trains move
- Emergency brake systems.

[61] The TTC submits that all the information in the training records was organized and developed by a team within the TTC training department. The training team is responsible for training operators and are experts in the areas of subway operations, safety, and communication. The TTC trainers are noted to be former frontline employees with significant experience with one or more specialized technical areas of TTC operations. The TTC notes that the trainers work to develop the training materials, guided by their hands-on experiences and also conduct the training sessions providing expert knowledge directly to new operators.

[62] The TTC states that the records at issue containing both technical and trade secret information is of monetary value to the TTC. It notes that the technical information includes specifics around engineering, operations, and safety information that is essential for operators to carry out their daily work. It states that this information is considered technical due to the level of detail outlined in the manuals about specific equipment, such as technical drawings of machines and vehicles. The TTC notes that the records also outline specific processes, such as the operation and maintenance of various components of the subway vehicle. The TTC asserts that this type of information constitutes the technical and trade secret information of the TTC as recognized under section 11.

[63] The appellant does not dispute that the withheld information contains technical information but argues that the entire record is not technical information. He points to information such as agendas and general course materials that would not be considered technical information.

[64] In reply, the TTC provided a chart with more details about the information that it says is technical or trade secret information. According to the chart the TTC claims that all the withheld information is technical information with some information also consisting of trade secret to the TTC Operations Training Centre.

[65] In sur-reply, the appellant concedes that the records would contain technical information but asserts that the TTC can only apply this exemption to information that contains technical information. He suggests that the records would also contain non-technical components, such as procedures involved in training staff.

[66] The appellant also suggests that making reasonable inferences of the content of the records, it is unlikely that the whole of the records meet the section 11(a) exemption. He submits that access to the table of contents, headers or some introductory text, at the very least, should have been released as these could not harm the cited economic

interests. The appellant suggests that, even if trivial, such contents can be easily severed and released. The appellant refers to section 4(2) of the *Act* and submits that the TTC must disclose as much of the record as can reasonably be severed. He notes that the exemption under section 11 is discretionary, and it seems extraordinary to claim that every part of the records should be exempted from disclosure.

Analysis and finding

[67] Based on my review of the withheld information and the representations of the parties, I find that the information in the withheld records consist of technical information because it includes specifics around engineering, operations, and safety information. This information is technical due to the level of detail outlined in the manuals about specific equipment, such as technical drawings of machines and vehicles. As confirmed by the TTC this information was organized and developed by the TTC training department who are experts in the area of subway operations, safety and communications. I have reviewed the withheld information and agree that the technical information includes descriptions of the TTC communication systems, communication equipment technical descriptions manual, key elements of the subway system.

[68] The TTC has claimed that certain information is both technical information and trade secret in the SUB004 folder. After reviewing the information, I find that it is technical information including, specifics of the subway operators' job, including inspections, communications and how to run the vehicle. Also, I find that the layout and organization of the TTC subway operator's training program, including the various agendas, reveal technical information because it incorporates the information described above. Given that I find that this information is technical information, it is not also necessary to consider whether it is trade secret.

[69] While I find that most of information in the records contains technical information, there is information within some of the daily agendas that is clearly not technical information or trade secret. As submitted by the appellant an institution should disclose as much of a record as can be reasonably severed. I will order the TTC to provide this information to the appellant subject to my finding under section 13 which is also claimed for this information. However, I find that the remainder of the withheld information is technical information, and the first part of the test has been met.

Part 2: belongs to

[70] For information to "belong to" an institution, the institution must have some proprietary interest in it, either:

- "intellectual property" in the information, such as copyright, trade mark, patent or industrial design, or
- another type of proprietary interest that the law says could be damaged if another party were to misappropriate the information.

[71] The type of information “belonging” to an institution is information that has monetary value to the institution because it has spent money, skill or effort to develop it. Some examples are trade secrets, business-to-business mailing lists,²⁰ customer or supplier lists, price lists, or other types of confidential business information. If this information is consistently treated in a confidential manner, and its value to the institution comes from its not being generally known, the information will be protected from misappropriation by others.²¹

[72] The TTC submits that the records belong to it as the information pertains to its systems, equipment and processes. It notes that it spent a significant amount of time and money to develop the materials.

[73] The appellant does not dispute that the information at issue under this exemption belongs to the TTC.

[74] After considering the parties representations, I find that the information at issue belongs to the TTC. The TTC’s submissions support that it spent a significant amount of time and money developing the training material which was both developed by it and purchased by the TTC for use.

[75] Therefore, the second part of the test has been met.

Part 3: monetary or potential monetary value

[76] To have “monetary value,” the information itself must have an intrinsic value. The mere fact that the institution spent money to create the record does not mean it has monetary value for the purposes of this section.²² Nor does the fact, on its own, that the institution has kept the information confidential.²³

Representations

[77] The TTC points to the significant cost to create these manuals and the continual cost to keeping them up to date with its current systems, procedures and infrastructure advancements making them well established resources. It notes that these records were created by subject-matter experts, widely recognized as such, to the extent that they have been called to testify as experts in various court and tribunal hearings. It notes that the development of its subway operator training documents is the direct result of the expenditure of time, money, and the utilization of the extensive knowledge of its expert training team.

²⁰ Order P-636.

²¹ Order PO-1736, upheld on judicial review in *Ontario Lottery and Gaming Corporation v. Ontario (Information and Privacy Commissioner)*, [2001] O.J. No. 2552 (Div. Ct.); see also Orders PO-1805, PO-2226 and PO-2632.

²² Orders P-1281 and PO-2166.

²³ Order PO-2724.

[78] The TTC asserts that all of the documents that make up the TTC Subway Operator's training program have considerable value for the following reasons:

- a. They are part of the intellectual property of the TTC training department that is utilized to train new subway operators when they are hired.
- b. These documents contain significant trade secret and technical information that is proprietary to the TTC and its stakeholders, vendors, contractors and system suppliers holding significant monetary value to the TTC, as well as taxpayers, due to the substantial investment of public funding from the various levels of government.
- c. The TTC has ongoing investment of money, time and expertise to create, maintain, refine and update these manuals as subway operations change and adapt with new technologies and procedural advancements. Dozens of skilled TTC employees, subject-matter experts, and external contractors have spent time building what is the TTC training for subway operations.
- d. The records are valuable to other transit agencies, as it would allow them to replicate the training without incurring the costs. Additionally, these records would be valuable for any other competing company that has vested financial interest in obtaining detailed specs, diagrams, processes, troubleshooting, etc. of similar products that they can copy (e.g.: signaling, communications, subway vehicle manufacturers, etc.).

[79] The TTC also submits that the release of the training manuals could be utilized to compromise the integrity of its hiring/recruitment/training process.

[80] The appellant states that the TTC has not presented any evidence to show that the records have intrinsic monetary value, and regardless of whether the records contain technical information or trade secrets, it has not shown that the records have monetary value.

[81] The appellant suggests that to have "monetary value," the information itself must have an intrinsic value, that is the records themselves, or the information within, must have a value in their own right. He refers to Orders PO-3629 and MO-3508 which held that the effects of disclosure are not relevant to whether the records have intrinsic value, even if disclosure would result in economic loss or other harm to the organization. The appellant submits that the TTC submissions address the consequences of disclosure and the context of record development but do not show how the content of the records themselves has an intrinsic monetary value.

[82] The appellant states that even if the records have an "intrinsic monetary value," that is still not sufficient to establish section 11(a). Referring to Order PO-2226, he notes that the adjudicator found that "[i]n order to have intrinsic value in the context of section 18(1)(a) [the provincial equivalent to section 11(a)], the information at issue must have

value in not otherwise being known.” In Order PO-2226, the information at issue included the total value of a promissory note that the adjudicator notes was already known to the parties.

[83] Referring to Order PO-2226, the appellant argues that the monetary value does not just stem from the content of the records and market alone, but also from the records being kept confidential. Therefore, he suggests that the TTC must not only provide evidence that the records have monetary value but must also provide evidence that the release of these records would deprive the TTC of being able to realize that value. The appellant suggests that nothing in the TTC’s submission shows how disclosure would deprive them from earning a profit from these records or how disclosure will impact the value of the information.

[84] The appellant suggests that to have monetary value there must be a demand for this information outside the TTC which has not been shown. He states that the TTC also has not shown or offered any evidence that there is an existing or even a potential market for this information nor has it identified a single example of a willing buyer or an existing seller for the information.

[85] The appellant states that the TTC has not made any claim that they intend to sell these records or the information they contain for a profit and has not produced any evidence to indicate that they ever intended to use these records for anything other than its internal training program.

[86] The appellant suggests that the TTC’s own representations explicitly contradict that these records are of a commercial nature as it repeatedly claimed that these records are training materials, and they stated that “the only individuals who have access to these manuals are those who have specifically been hired to be subway operators.” The appellant suggests that throughout, the TTC asserts that the records are kept tightly controlled and confidential, not because they are a trade secret, but due to their highly sensitive nature; therefore, he suggests it is very unlikely they ever intended or intend to earn a profit from this information.

[87] The appellant notes that there is no exemption under the *Act* that allows an institution to withhold records because a cost was incurred to produce them. In the context of section 11(a) specifically, the appellant submits that simply incurring a cost to create and maintain a record does not give the information monetary value.

[88] In reply the TTC notes that it has had many inquiries to obtain its training programs by other transit agencies. It submits that releasing the records would reveal the best practices it has developed for that world class training, that can and has been monetized by that team.

[89] The TTC submits that the reality is that transit operations in Toronto is changing and the TTC is no longer responsible for the design, construction, development, and

maintenance of new subway lines. It notes that in 2019 the provincial government uploaded all new transit construction to Metrolinx and TTC will be the operators of these new subway lines but will no longer build and/or maintain these new subway lines. As a result, the TTC submits that the experience it has with the training of operators and operations is incredibly valuable to Metrolinx and other agencies with vested interest in the development of transit in the City of Toronto.

[90] The TTC notes that its highly skilled training department developed the training materials that are at issue in this appeal and that it is not just the content of the materials that has financial value to the TTC, but also how the program and materials were put together, organized, and assessed. It submits that other organizations are interested in how these materials were put together as the training programs have been recognized by its transit agency peers. The TTC states that it has had many offers and opportunities to collaborate with other organizations to design training materials.

[91] Currently, the TTC states that it is being paid by Metrolinx to develop training documents for the Eglinton Crosstown Light Rail Transit Line (ECLRT) and the Finch-West Light Rail Transit Line (FWLRT). The TTC submits that opportunities for the development of new revenue streams for the TTC in relation to training development have begun to present themselves and releasing these materials would significantly hinder the TTC's ability to explore these revenue streams further.

[92] The appellant responded to the TTC's reply and notes that its mention of an agreement with Metrolinx is evidence that was not presented in its original representations. The appellant suggests that the TTC's mention of the agreement shows that when the TTC was presented with the opportunity to develop similar records for a profit, it did not.

[93] Regarding the work for Metrolinx, the appellant argues that the evidence presented by the TTC indicates that it is simply being paid for human resources to develop a new record. The appellant states that this arrangement possibly supports the commercial potential of leveraging TTC staff to develop training courses but suggests that it does not support that the existing records have monetary value.

[94] The appellant suggests that there may be potential to monetize the training department in the future, but that does not mean that records created in the past have monetary value. He states that the context of the records at issue in this appeal must be considered and the question is whether these very specific records already created have monetary value.

[95] The appellant states that these records were developed for a very narrow and specific purpose which casts doubt on the commercial potential of them. He states that the records are so specific and niche that even within the TTC each subway line requires its own tailored course created for it. The appellant suggests that while there may be a potential market for consulting services, the TTC has not shown the intrinsic monetary

value of the records' content or course structure.

[96] The appellant suggests that this interpretation could set a chilling precedent as no specialized government knowledge could be requested in TTC's framework from any agency, because there always exists the potential for the agency to be paid for the expertise of their staff. The appellant states that this is why the test for this exemption is so narrow, covering cases where information itself is the product.

Analysis and finding

[97] For the reasons that follow, I find that the relevant records have monetary or potential monetary value.

[98] After considering the parties' representations and reviewing the withheld information, I accept that the TTC invested a significant amount of time and money to create, update and maintain the withheld information.

[99] I agree with the appellant that simply because the institution incurred a cost to create the records does not mean they have monetary value for the purposes of this section.²⁴ Nor does the fact, on its own, that the information has been kept confidential.²⁵ However, I accept that this information would be valuable to other transit agencies, as it would allow them to replicate the training without incurring costs. I also accept the TTC's position that the information is valuable to other agencies who have a vested financial interest in obtaining the detailed information so it can be used at lower costs.

[100] I have considered the appellant's suggestion that I should not consider the TTC's evidence about Metrolinx in its reply. In my view, whether the records had value was an issue raised in the TTC's initial representations. Furthermore, the appellant was able to provide a response to this evidence, so he did not suffer any prejudice.

[101] After reviewing the records and the TTC's representations, I accept that the disclosure of the withheld information would reveal the best practices the TTC trainers have developed over time. The TTC suggests that it has had offers to develop training materials for other organizations and points to a current arrangement with Metrolinx to develop training materials.

[102] Given that the TTC's role in transit operations is changing, I accept that it will need to market itself in new ways and its expertise in the field, reflected in the records, is of value to the organization. This is evident with its contract with Metrolinx and the TTC anticipates other opportunities to develop new revenue streams which would be impacted if its training information in the records is disclosed. Although the appellant suggests that since the arrangement with Metrolinx is on a cost recovery basis it is simply a payment for services and Metrolinx is not purchasing or licensing a record that is already created,

²⁴ Orders P-1281 and PO-2166.

²⁵ Order PO-2724.

it is apparent that the TTC trainers would utilize their own information in the records for its training. The TTC confirms that the information is continually updated and maintained at its expense.

[103] The TTC has provided sufficient evidence to show that the records have monetary value or potential monetary value particularly in light of its current arrangement with Metrolinx. It is evident that because of their expertise, TTC trainers are already training other agencies. This expertise is evident in the withheld information which would clearly inform the trainers when developing training materials for other parties. In my view, this is precisely the kind of information that was envisioned in the exemption at section 11(a).

[104] As a result, I find that all three parts of the test are met and the exemption at section 11(a) applies to the withheld information. Given my findings, I will not also consider if this same information is exempt from disclosure under section 13.

Issue C: Does the discretionary exemption at section 13 regarding a threat to safety or health apply to the record found not to be exempt under section 18(a)?

[105] There is information that I have found is not exempt under section 11(a) because it is not technical information or trade secret. I will discuss if that limited information is exempt under section 13, which the TTC also claimed.

[106] Section 13 is meant to protect individuals from serious threats to their health or safety resulting from disclosure of a record. It states:

A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

[107] Parties resisting disclosure of a record cannot simply assert that the harms under section 13 are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 13 are self-evident and can be proven simply by repeating the description of harms in the *Act*.²⁶

[108] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.²⁷ However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the

²⁶ Orders MO-2363 and PO-2435.

²⁷ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

information.²⁸

[109] For section 13 to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to seriously threaten someone's safety or health. A person's subjective fear, or their sincere belief that they could be harmed, is important, but is not enough on its own establish this exemption.²⁹

Representations

[110] The TTC submits that it hired an external consultant to identify risks and vulnerabilities that expose the TTC to various kinds of security threats. It suggests that the recommendations provided in this document outlining the policies, procedures and projects that TTC should carry out to mitigate any potential threat and/or vulnerabilities.

[111] The TTC submits that along with the recommendations made by the external consultant, it has implemented mitigation strategies that limit the amount of information in the public domain regarding critical infrastructure such as maps, plans, diagrams, and operations manuals. The TTC notes that it has never shared access to its operation manuals with non-authorized individuals, and it only shares this information with individuals who have specifically been hired to be subway operators. The TTC illustrates that it has a very strict hold on these records and limits the disclosure of them to only those who need them for their work.

[112] The TTC submits that as one of the largest transit networks in North America the reality is that it is a major transportation organization which can be targeted for malicious activity. The TTC suggests that it must do what it can to protect critical transit infrastructure which includes not providing access to operations training manuals for its vehicles two non-authorized individuals. It submits that this the disclosure of this kind of information puts the TTC, its employees and passengers at risk.

[113] The TTC suggests that all of the withheld information is exempt, including any diagrams, instructions, signals explanations, communications explanations, etc.- that could be utilized to compromise the subway system, and endanger the lives of all TTC employees and passengers.

Finding

[114] After reviewing the limited information that remains at issue, information that was not found to be technical or trade secret under section 11(a), I do not agree that this remaining information is exempt from disclosure by section 13(1).

²⁸ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

²⁹ Order PO-2003.

[115] I do not agree that this information contains the kind of information that would be exempt by section 13(1). This information does not address the kind of information the TTC indicates it wants to protect including, instruction manuals on how the subway works, how to operate the subway and how to troubleshoot problems. In my view, an individual who obtained this information could not use it to seriously compromise and endanger the lives of all individuals in the subway. Instead, the information I find is not exempt includes general information, much of it in duplicate, and information that is already known to the public.

[116] As a result, I find that section 13(1) does not apply to this information, and I will highlight this information for the TTC and order it to disclose it to the appellant.

Issue D: Did the institution exercise its discretion under section 11(a)? If so, should the IPC uphold the exercise of discretion?

[117] The section 11(a) exemption is discretionary, meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, I may determine whether the institution failed to do so.

[118] In addition, the IPC may find that the institution erred in exercising its discretion. This can occur, for example, if the institution does so in bad faith or for an improper purpose, takes into account irrelevant considerations, or fails to consider relevant ones. In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.³⁰ The IPC cannot, however, substitute its own discretion for that of the institution.³¹

Representations, analysis and findings

[119] The TTC submits that when it exercised its discretion under section 11(a) it considered its responsibilities as they relate to transparency of public institutions, and the importance of access to information that allows for public scrutiny of spending and operations where needed. The TTC states that the biggest consideration for the records was protection of its proprietary information. It notes that it has the right to protect its financial interests as recognized under section 11.

[120] The TTC submits that it exercised its discretion in good faith and for appropriate reasons. It states that it has no interest in unnecessarily withholding information and believes in being transparent and open about its activities.

[121] The TTC states that it considered many of the relevant considerations in order to ensure that it was exercising its discretion. It considered the value of the records to the TTC and its stakeholders. It notes that an important consideration was the historic

³⁰ Order MO-1573.

³¹ Section 43(2) of the *Act*.

practice to never disclose copies of operator training materials and submit that its consistent handling and practice as it relates to disclosure of these records is an important factor for this appeal.

[122] The TTC states that it did not consider any irrelevant consideration in its decision.

[123] The appellant suggests that much of the TTC's representations deal with matters that are irrelevant to the *Act*. He states that its representations are evidence of all of the irrelevant considerations that were factored into the request. The appellant points to a delay in the TTC's response to his request and suggests that its lack of support for its claims in its representations suggest that the TTC did not actually consider these exemptions or properly reviewed the records in a meaningful way before making its decision to exercise its discretion.

[124] After considering the representations of the parties and the circumstances of this appeal, I am satisfied that the TTC did not err in its exercise of discretion with respect to its decision to deny access to the withheld information under section 11(a) of the *Act*. The TTC provided sufficient evidence to show that the records had monetary or potential monetary value.

[125] I am satisfied that the TTC exercised its discretion and in doing so considered only relevant factors. I am also satisfied that it did not exercise its discretion in bad faith or for an improper purpose. Accordingly, I uphold the TTC's exercise of discretion.

ORDER:

1. I uphold the TTC's decision that the exemption at section 10(1) applies to Record 6 in records group RVT040.
2. I partially uphold the TTC's decision that the exemption at section 11(a) applies to the withheld information.
3. I do not uphold the TTC's decision that the exemption at section 13 applies to the information that is not exempt by section 11(a), and I order the TTC to provide the highlighted information to the appellant.
4. I order the TTC to disclose the information indicated in order provision 3 to the appellant by July 21, 2025.
5. To verify compliance with the order, I reserve the right to require the TTC to provide me with a copy of the records disclosed to the appellant upon request.

Original Signed by: _____

Alec Fadel
Adjudicator

June 19, 2025 _____

