

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4694

Appeal MA23-00011

Regional Municipality of Waterloo

September 17, 2025

Summary: The Regional Municipality of Waterloo received a request for access to the complete submission a company had sent in response to a Request for Proposals for an e-scooter and e-bike share program. The municipality located the responsive records, notified the company, and issued a decision withholding all the records as third party information under section 10(1) of the *Act*. In this order, the adjudicator upholds the municipality's decision, in part. He finds that some of the records at issue – business references, letters of support and a checklist of questions asked by the municipality – do not meet the three-part test for exemption under section 10(1) and he orders them disclosed to the appellant.

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

Orders and Investigation Reports Considered: Orders P-1621, PO-1805, PO-2010, PO-2018, PO-2020, PO-2043, PO-2184, PO-2371, PO-2435, PO-2497, M-1106, MO-1706, MO-1847, MO-2363 and MO-3093.

Cases Considered: *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.); *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC); *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23; *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (*CanLII*); *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

OVERVIEW:

[1] The Regional Municipality of Waterloo (the municipality) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the winning company's "complete submission and any related Appendices" with respect to a Request for Proposals (the RFP) to provide an e-scooter and e-bike share program.

[2] After identifying 90 pages of responsive records and notifying the company as the affected party, the municipality issued an access decision. Relying on sections 10(1) (third party information) and 14(1) (personal privacy), the municipality denied access in full to the responsive records.

[3] The requester (now the appellant) appealed the municipality's access decision to the Information and Privacy Commissioner of Ontario (the IPC). The IPC attempted to mediate the appeal. At mediation, the appellant advised that he was not seeking access to personal information. As a result, section 14(1) and the information withheld under it¹ were removed from the scope of the appeal. Mediation did not fully resolve the appeal and the appeal moved to adjudication, where an adjudicator may conduct an inquiry under the *Act*.

[4] An IPC adjudicator began an inquiry, during which representations were exchanged between the appellant, the company and the municipality in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*. The appeal was then assigned to me to complete the inquiry. After reviewing the parties' representations, I determined that I did not need to hear from them further before making my decision.

[5] In this order, I uphold the municipality's decision to withhold some of the responsive records under section 10(1). However, I find that other information in the records does not qualify for exemption, and I order it disclosed.

RECORDS:

[6] The following three records are at issue:

1. Pages 1 to 51 and 60 to 68 of the winning company's Response to the RFP.
2. Appendix A – Mandatory Requirements Checklist found at pages 69 to 76.
3. Follow-up Questions for [company] Technical Proposal found at pages 77 to 90.

¹ At pages 52 to 59 of the responsive records.

DISCUSSION:

[7] The sole issue in this appeal is whether the mandatory third party information exemption at section 10(1) applies to the records. The purpose of section 10(1) is to protect 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

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

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,

(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.

[9] For section 10(1) to apply, the municipality and the company – the parties 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: type of information

[10] The parties all agree that the records contain commercial information, one of the six types of information listed in section 10(1). IPC orders have defined this type of

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.

information as follows:

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.⁴ The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.⁵

[11] I have reviewed the responsive records and I am satisfied that all the information in them fits within the definition of commercial information as part of a detailed proposal for the provision of goods and services to the municipality. The records are all contained in the company's bid to win a competitive procurement and enter into a commercial arrangement to provide an e-scooter and e-bike share program. Accordingly, I find that Part 1 of the three-part test for exemption under section 10(1) of the *Act* has been satisfied.

Part 2: supplied in confidence

[12] Part 2 of the three-part test has two components: the company must have "supplied" the information to the municipality, and must have done so "in confidence," either implicitly or explicitly. The requirement that the information was "supplied" to the institution reflects the purpose in section 10(1) of protecting the information of third parties.⁶

[13] 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 that third party.⁷

[14] To satisfy the "in confidence" component, the party resisting disclosure must establish that the supplier of the information had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.⁸

[15] 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

⁴ Order PO-2010.

⁵ Order P-1621.

⁶ Order PO-2010.

⁷ Orders PO-2020 and PO-2043.

⁸ Order PO-2020.

- treated consistently by the appellant 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.⁹

Representations of the parties

[16] The municipality submits that the company's RFP response was supplied in confidence and is part of a "competitive and blind process where details of submissions were not shared amongst competitors." The company makes similar representations.

[17] The appellant does not address this issue in his submissions.

Analysis and finding

[18] Having reviewed the responsive records, I am satisfied that most of them were supplied by the company with a reasonably held expectation of confidentiality. Specifically, I find that the information in pages 1 to 51, 60 to 68, and 77 to 90 was supplied in confidence by the company and meets Part 2 of the test for exemption under section 10(1).

[19] However, I am not satisfied that all the information found at pages 69 to 76, the "Appendix A – Mandatory Requirements Checklist," meets the test of being supplied in confidence. The checklist is a table that the municipality required proponents to complete and submit. It contains a list of 48 questions, and it is found in the publicly issued RFP.

[20] The table has four columns. Column 1 identifies the mandatory requirements the questions referenced. Column 2 contains specific questions the municipality asks all proponents to answer. Column 3 has to be filled in by a proponent with a "yes" or "no" to the question in Column 2. Column 4 permits the proponent to include a comment with their answer.

[21] The text in the headings to Columns 1 to 4, and the text in Columns 1 and 2, is general information that the municipality provided to all proponents. This information was not supplied in confidence by the company, and it does not meet Part 2 of the test. As this text does not meet the test of being exempt under section 10(1), I will order it disclosed.

[22] The content in Columns 3 and 4 is information that the company supplied in confidence; it satisfies Part 2 of the three-part test.

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

Part 3: harms

[23] The last part of the section 10(1) test addresses harms from disclosure: the prospect of disclosure of the record must give rise to a reasonable expectation that one of the specified harms will occur. The failure of a party resisting disclosure to provide detailed and convincing evidence will not necessarily defeat the claim for exemption where harm can be inferred from 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*.¹⁰

[24] In applying section 10(1) to government contracts, the need for public accountability in the expenditure of public funds is an important reason behind the need for “detailed and convincing” evidence to support the harms outlined in section 10(1).¹¹

[25] Sections 10(1)(a) and (c) seek to protect information that could be exploited in the marketplace,¹² while section 10(1)(b) seeks to prevent similar information from no longer being supplied by private sector organizations to institutions.

[26] To establish the section 10(1)(a) to (c) exemptions, the parties resisting disclosure of the information must provide evidence that disclosure could reasonably be expected to:

- prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- 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;
- result in undue loss or gain to any person, group, committee or financial institution or agency.

Representations of the parties

[27] The company submits that disclosing any portion of the records could reasonably be expected to prejudice significantly its competitive position. It submits that e-scooter and e-bike sharing is a new and very competitive industry, in which it is a leader, and disclosing seemingly basic details of its RFP response would eliminate its competitive advantage over others. It submits disclosure would reveal its unique technology to its competitors and provide them a “roadmap” to copy when bidding on future municipal contracts. The municipality submits that in making its decision to deny access it relied on these same grounds. Additionally, it submits that disclosing the “business references” in the company’s RFP response could reasonably be expected to result in such references

¹⁰ Order PO-2435.

¹¹ Order PO-2435.

¹² Orders PO-1805, PO-2018, PO-2184 and MO-1706.

no longer being supplied to the municipality.

[28] The appellant submits that no harm to the company could occur as its information is already in the public domain. The appellant does not address whether any harm would result to the municipality if “business references” were disclosed.

Analysis and finding

[29] To establish the harms specified in section 10(1)(a), (b) or (c), the municipality and company, the parties resisting disclosure, must provide detailed evidence about the risk of harm if the record is disclosed showing that the risk of harm is real and not just a possibility.¹³ 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 information.¹⁴

[30] The company and the municipality describe how disclosure of the company’s unique technology and business strategies will eliminate its competitive advantage when competing on future contracts. While not citing the specific provision on which they rely in section 10(1), the risk of harm they raise is addressed in section 10(1)(a): whether the disclosure of the information at issue could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

[31] The company cannot rely solely on the fact that disclosure of the information at issue might lead to a more competitive bidding process in the future to establish the necessary harm. However, from my review of the responsive records, I am satisfied that disclosure of some of the information at issue meets the section 10(1)(a) harms test. Disclosure of the very detailed proprietary technical information in the company’s responses to the Follow-up Questions for [company] Technical Proposal found at pages 77 to 90 could reasonably be expected to be used by a competitor to undermine the company in future RFPs. I accept that the use of this information, the technical roadmap information, by a competitor in a future competitive process could reasonably be expected to prejudice significantly the company’s competitive position or interfere significantly with its contractual or other negotiations. Additionally, I accept that the same risk of harm exists with the company’s detailed business and operational strategies, intertwined with its proprietary technical information, in pages 1 to 40 and 61 to 68 of the company’s RFP response. I find that the harm in section 10(1)(a) has been established for these pages of the records. As a result, it is not necessary for me to consider the other harms in sections 10(1)(b) and (c).

¹³ *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 (CanLII), [2012] 1 S.C.R. 23.

¹⁴ *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.

[32] I am not satisfied, however, that the exemptions in section 10(1)(a), (b) or (c) apply to the business references or the letters of support in the company's RFP response and, for the reasons set out below, I order them disclosed.

Business references and letters of support

[33] Question 11 in the "Appendix A – Mandatory Requirements Checklist," which was answered by the company at pages 69 to 71, asked the company to provide at least three business references for work assignments that were similar in type, scope, size and/or value to the work requested in the municipality's RFP. The question asked for the name, title, organization, and business contact information of the referees; it did not ask the company to include any description or details about its work for them.

[34] Relying on Order M-1106, the municipality submits that these business references should not be disclosed. The adjudicator in Order M-1106 found that the disclosure of what referees said in the evaluation process could jeopardize the supply of open and honest references because, in future, potential referees would be dissuaded from making any comments that could be released to the affected party. This could result in the refusal of third parties to supply business references in the future or could result in the supply of incomplete, inaccurate or ineffective references. A similar finding was made in Order MO-3093.

[35] The records at issue in Orders M-1106 and MO-3093 contain comments made by referees, and the summaries of those comments, in reference checks performed by a consultant and reported to an evaluation team. This is not comparable to the reference contact information the company provided that is found at pages 70 and 71 of the records at issue.

[36] Providing the name and contact information of a business reference is comparable to providing a letter of reference. As noted by the adjudicator in Order MO-1847 who considered some letters of reference, although the information in them was submitted in a competitive procurement, the letters did not contain particularly sensitive information. The adjudicator noted that, by definition, such letters reflect positively on the bidder as a bidder would not submit unfavourable information. The adjudicator found that, with such inherently complimentary information, it is reasonable to assume that this information would be actively disclosed by bidders, not carefully guarded in order to avoid competitive harm. He noted that, in such instances, when someone agrees to be a reference, providing a letter of reference is inconsistent with any expectation of confidentiality or any reasonable expectation of any sort of harm.

[37] Order MO-1847 held that, where it is mandatory to provide letters of reference, it is not reasonable to expect that a bidder would be dissuaded from selecting and providing references that are inherently supportive, complimentary and chosen specifically by the bidder.

[38] In this appeal, the letters of support from ten different organizations, found at pages 41 to 51, and 60 of the company's RFP response, were not mandatory. However, I am satisfied that they should be treated in the same way as the required business references.

[39] As with the letters of reference described in Order MO-1847, the letters of support at issue in this appeal do not contain commercially sensitive information and reflect positively on the company. When these organizations provided these letters to the company, the authors had no reasonable expectation of confidentiality and the company had no reasonable expectation of harm resulting from providing them.

[40] Disclosing the mandatory business reference contact information and the letters of support is different from disclosing substantive information collected in the evaluation stage of a procurement. I am not convinced that disclosing the information at issue in this appeal could reasonably be expected to result in similar information no longer being supplied to the municipality within the meaning of the section 10(1)(b) harm.

[41] With respect to the need to protect information that could be exploited in the marketplace, I am not persuaded that disclosure of this information could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons (the section 10(1)(a) harm), or organization or result in undue loss or gain to any person, group, committee or financial institution or agency (the section 10(1)(c) harm).

[42] I find that Part 3 of the three-part test for exemption under section 10(1) of the *Act* has not been satisfied for the business reference contact information and letters of support in the company's RFP response; this information should be disclosed.

ORDER:

1. I uphold the municipality's decision that the exemption in section 10(1)(a) applies to pages 1 to 40, 61 to 68, and 77 to 90.
2. I do not uphold that the exemptions in sections 10(1)(a), (b) or (c) apply to pages 41 to 51, and 60. I order the municipality to provide this information to the appellant.
3. I do not uphold that the exemptions in sections 10(1)(a), (b) or (c) apply to all of pages 69 to 76. These exemptions do not apply to the answer to Question 11 (at pages 69 to 71), the headings of Columns 1 to 4, or the content in Columns 1 and 2. I order the municipality to disclose this information to the appellant.
4. I order the municipality to disclose the information indicated in order provisions 2 and 3 to the appellant by **October 22, 2025** but not before **October 17, 2025**.

5. To verify compliance with the order, I reserve the right to require the municipality to provide me with a copy of the records disclosed to the appellant upon request.

Original Signed by: _____

Jonathan Batty
Adjudicator

September 17, 2025