

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4702

Appeals MA22-00342 & MA23-00075

Peel District School Board

October 2, 2025

Summary: In response to a request, the Peel District School Board (the board) decided to disclose most of the contents of a contract between itself and a plumbing company as well as several purchase orders submitted by that company for the work it carried out. However, the board also decided to withhold some information from these records, such as the hourly rates charged by the plumbing company and the plumbing company's banking information, under the exemption for third party information in section 10(1) of the *Act*. Both the plumbing company and the requester appealed the board's decision.

In this order, the adjudicator upholds the board's decision to disclose most of the contents of the records and to withhold some information, including the hourly rates and banking information, under section 10(1).

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

Cases Considered: *Miller Transit Limited v. Information and Privacy Commissioner of Ontario et al.*, 2013 ONSC 7139 (CanLII); *Shannex Inc. v. Nova Scotia (Health and Wellness)*, 2019 NSSC 24 (CanLII).

OVERVIEW:

[1] This order addresses appeals from two different parties who disagreed with the Peel District School Board's (the board's) decision to disclose to a requester most of the contents of a contract between the board and a plumbing company, and purchase orders

submitted by that company.

[2] The plumbing company filed an appeal (Appeal MA22-00342) of the board's decision with the Information and Privacy Commissioner of Ontario (IPC) because it believes that the records are exempt from disclosure in their entirety under the mandatory exemption for third party information in section 10(1) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester also filed an appeal (Appeal MA23-00075) because it objects to the board's decision to withhold some parts of the records under section 10(1).

[3] By way of background, the requester submitted an access request to the board under the *Act* for the following records:

1. A copy of any service contract or contracts between the board and [name of plumbing company],
2. Any correspondence between the board and [name of plumbing company] related to the assignment of a service contract between the board and [name of another company] to [name of plumbing company],
3. Any bid documents submitted by [name of plumbing company] to the board, and
4. Copies of any service requests or purchase orders issued by the board to [name of plumbing company].

[4] In response, the board located responsive records, including the contract between itself and the plumbing company and purchase orders. The board notified the plumbing company about the access request, and the company submitted representations in which it claimed that the section 10(1) exemption applies to all of the records. The board then sent decision letters to both the requester and the plumbing company which stated that it had decided to disclose the records, but that some information would be withheld under section 10(1) and the mandatory personal privacy exemption in section 14(1) of the *Act*.

[5] Both the plumbing company and the requester appealed the board's decision to the IPC. A mediator was assigned to both appeals to determine if the issues in dispute could be resolved.¹ At the conclusion of mediation, the only issue that remained to be decided was whether section 10(1) applies to the records.

[6] Because these appeals were not resolved in mediation, they were moved to adjudication, where an adjudicator may conduct an inquiry to review an institution's access decision. The adjudicator initially assigned to these appeals sought and received representations from the board, the plumbing company and the requester. These appeals

¹ During mediation, the requester stated that it is not seeking access to the records containing personal information that the board withheld under section 14(1). As a result, that exemption and pages 22-48 of the records are no longer at issue in these appeals.

were then transferred to me to complete the inquiries. I determined that it was not necessary to seek additional information from the parties before making my decision.

[7] In this order, I uphold the board's decision to disclose most of the contents of the records and to withhold parts of them under section 10(1) of the *Act*.

RECORDS:

[8] The records at issue in these appeals are set out in the following chart:

General description of record	Page number(s)	Board's decision	Exemption(s) claimed
Contract award letter	1-3	Disclose in full	None
Appendix A	4-13	Disclose in full	None
Appendix B	14-16	Disclose in full	None
Appendix C	17-19	Page 17 – Disclose in full Pages 18-19 – Withhold in full	Section 10(1)
Appendix D	20	Disclose in full	None
Appendix E	21	Disclose in part	Section 10(1)
Purchase orders	49-153	Disclose in full, except for information on pages 49-50	Section 10(1)

DISCUSSION:

[9] The sole issue to be decided in these appeals is whether section 10(1) of the *Act* applies to the records.

[10] The purpose of section 10(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,² where specific

² *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, 2005 CanLII 24249 (ON SCDC).

harms can reasonably be expected to result from its disclosure.³

[11] In its representations, the board specifies that it withheld parts of the records under sections 10(1)(a) and (c) of the *Act*. The plumbing company also cites the wording of these provisions in support of its position that no portions of the records should be disclosed. These provisions 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, 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;

...

[12] For section 10(1) to apply, the parties arguing against disclosure (the board and the plumbing company) 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

[13] To satisfy part 1 of the section 10(1) test, the parties resisting disclosure must establish that the records reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information.

[14] For the reasons that follow, I find that the records reveal commercial and financial information.

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

[15] Both the board and the plumbing company submit that disclosing the records would reveal the plumbing company's trade secrets, commercial information and financial information. The plumbing company also claims that the records contain technical information. The requester's representations do not address whether disclosing the records would reveal the types of information listed in the section 10(1) exemption.

[16] In my view, part 1 of the section 10(1) test is easily met because the records reveal, at a minimum, commercial and financial information.

[17] "Commercial information" is information that relates only to the buying, selling or exchange of merchandise or services.⁴ The contract award letter and its appendices (pages 1-21) constitute the contract between the board and the plumbing company for the provision of plumbing services. Under this contract, the board is buying plumbing services from the company. The contract also contains the plumbing company's banking information (page 21), which relates to the buying and selling of financial services. I find that all of this information is "commercial information."

[18] "Financial information" is information relating to money and its use or distribution. The record must contain or refer to specific data. Some examples include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.⁵ There is specific information expressed in dollar amounts in Appendix C of the contract (pages 18-19), and the purchase orders, including the grand totals that the plumbing company charged the board for specific work (pages 49-153) and the hourly rate charged (pages 49-50). I find that this information is "financial information."

[19] In summary, I find that the parties resisting disclosure have satisfied part 1 of the section 10(1) test.

Part 2: supplied in confidence

[20] To satisfy part 2 of the section 10(1) test, the parties resisting disclosure must establish that the information was "supplied" to the board "in confidence implicitly or explicitly" by the plumbing company.

[21] Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.⁶

[22] In order to satisfy the "in confidence" component of part two, the parties resisting disclosure must establish that the supplier of the information had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was

⁴ Order PO-2010.

⁵ Order PO-2010.

⁶ Orders PO-2020 and PO-2043.

provided. This expectation must have an objective basis.⁷

[23] For the reasons that follow, I find that most of the contents of the contract between the board and the plumbing do not meet part 2 of the section 10(1) test because they were not “supplied” to the board. However, I find that the financial information on pages 18-19 of the contract, the commercial information on page 21 of the contract, and the financial information in the purchase orders (e.g., pages 49-50) meet part 2 of the section 10(1) test, because they were supplied in confidence to the board.

Contract between board and plumbing company

[24] It is well established in IPC orders and court decisions that the contents of a contract between an institution and a third party will not normally qualify as having been “supplied” for the purpose of section 10(1). Contractual provisions are generally treated as mutually generated, rather than “supplied” by the third party, even where the contract is preceded by little or no negotiation or where it reflects information that originated from one of the parties.⁸

[25] Given that all three parts of the section 10(1) test must be met for this exemption to apply, contracts between an institution and a third party are not normally exempt from disclosure under section 10(1), because the “supplied” part of the test is not met. Unless other exemptions apply, such contracts are generally deemed to be accessible to the public under the *Act*. This approach is consistent with the transparency intent of the *Act* and recognizes that public access to information contained in government contracts is essential to government accountability for expenditures of public funds.⁹

[26] There are two exceptions to this general rule:

1. the “inferred disclosure” exception. This exception applies where disclosure of the information in a contract would permit someone to make accurate inferences about underlying non-negotiated confidential information supplied to the institution by a third party.¹⁰

⁷ Order PO-2020.

⁸ This approach has been upheld by the Divisional Court in numerous decisions, including *Boeing Co.*, *supra* note 2, and in *Miller Transit Limited v. Information and Privacy Commissioner of Ontario et al.*, 2013 ONSC 7139 (CanLII). See also *Grant Forest Products Inc. v. Caddigan*, 2008 CanLII 27474; *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005; *Corporation of the City of Kitchener v. Information and Privacy Commissioner of Ontario*, 2012 ONSC 3496 (CanLII); *HKSC Developments L.P. v. Infrastructure Ontario and Information and Privacy Commissioner of Ontario*, 2013 ONSC 6776 (Can LII); and *Aecon Construction Group Inc. v. Information and Privacy Commissioner of Ontario*, 2015 ONSC 1392 (CanLII).

⁹ *Miller Transit*, *ibid.*, at para. 44.

¹⁰ Order MO-1706, cited with approval in *Miller Transit*, *supra* note 8 at para. 33.

2. the “immutability” exception. This exception applies where the contract contains non-negotiable information supplied by the third party. Examples are financial statements, underlying fixed costs and product samples or designs.¹¹

[27] Even if these exceptions apply to information in a contract and such information is found to have been “supplied” to the institution under part 2 of the section 10(1) test, it must still be determined whether this information was supplied “in confidence, implicitly or explicitly” to meet part 2 of the section 10(1) test. If part 2 of the test is met, it must then be determined whether disclosing such information could reasonably be expected to lead to the harms set out in section 10(1), in accordance with part 3 of the test.

[28] In its representations, the plumbing company does not address previous IPC orders and court decisions that have found that the contents of a contract between an institution and a third party will not normally qualify as having been “supplied” for the purpose of section 10(1), nor does it address whether the two exceptions to this general rule apply. Instead, it simply claims that its bid submission documentation, which is appended to the contract letter, particularly Appendices B to E, was “supplied” to the board in confidence.

[29] I do not find the plumbing company’s argument to be persuasive. The contract award letter and its appendices constitute the contract between the board and the plumbing company for the provision of plumbing services. Once the board accepted the plumbing company’s bid, elements of that bid were incorporated into that contract, specifically in the appendices.

[30] I find, therefore, that most of the contents of the contract between the board and the plumbing company, which include the contract award letter and the appendices (pages 1-17, 20 and part of page 21), were mutually generated, rather than “supplied” by the plumbing company for the purposes of section 10(1). Because these parts of the contract were not “supplied” to the board by the plumbing company, part 2 of the section 10(1) test has not been met. Given that all three parts of the section 10(1) test must be met for this exemption to apply, these parts of the contract cannot be found to be exempt from disclosure under section 10(1) and must be disclosed to the requester.

[31] However, the board claims that the “inferred disclosure” and “immutability” exceptions apply to the limited and specific information on pages 18-19 (Appendix C) and 21 (Appendix E). In particular, the board submits that:

- The financial information on pages 18-19 fits within the “inferred disclosure” exception, because disclosing it would allow for accurate inferences to be made with respect to non-negotiated confidential information submitted to the board by the plumbing company.

¹¹ *Miller Transit*, *supra* note 8 at para. 34.

- The plumbing company's banking and other related information on page 21 fits within the "immutability exception" because it was supplied to the board as part of the contract but was not negotiated information. This information clearly falls under the "immutability" exception.

[32] I have reviewed the information that the board decided to withhold on pages 18-19 and 21 and agree that this information was "supplied" for the purposes of section 10(1) because it falls within the "inferred disclosure" and "immutability" exceptions.

[33] In my view, disclosing the specific type of financial information on pages 18-19 would permit someone to make accurate inferences about underlying non-negotiated confidential information supplied to the board by the plumbing company in its bid. In addition, the commercial and other related information on page 21 of the contract, which includes the plumbing company's banking information, is clearly non-negotiable information supplied by the plumbing company to the board. I find, therefore, that the "immutability" exception applies to that information.

[34] In summary, I find that the information that the board decided to withhold on pages 18-19 and 21 of the contract was "supplied" to the board by the plumbing company. In addition, I am satisfied that the plumbing company had a reasonable expectation that this information would be kept confidential when it supplied this information to the board, which means that it was supplied "in confidence implicitly or explicitly."

[35] I find, therefore, that part 2 of the section 10(1) test is met for the information on pages 18-19 and 21 of the contract. I will assess below whether this information meets the harms requirements in part 3 of the section 10(1) test.

Purchase orders

[36] The records at issue also include several purchase orders (pages 49-153) that the plumbing company submitted to the board for services that it provided at various properties.

[37] I am satisfied that the plumbing company "supplied" the information in these purchase orders to the board and had a reasonable expectation of confidentiality with respect to some of the financial information in these records, particularly the hourly rate charged by its plumbers, which appears on pages 49-50. This means that this information was supplied "in confidence implicitly or explicitly."

[38] I find, therefore, that part 2 of the section 10(1) test is met for this information. I will assess below whether this information meets the harms requirements in part 3 of the section 10(1) test.

Part 3: harms

[39] The information that met the first two parts of the section 10(1) test is the financial information on pages 18-19 of the contract, the commercial information and other related information on page 21 of the contract, and the financial information in the purchase orders, particularly on pages 49-50. The parties resisting disclosure of all or parts of the records (the plumbing company and the board) appear to be relying on the harms set out in sections 10(1)(a) and (c) of the *Act*.

[40] Under section 10(1)(a), the board must refuse disclosure of this information if disclosing it 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. Under section 10(1)(c), the board must refuse disclosure of this information if disclosing it could reasonably be expected to result in undue loss or gain to any person, group, committee or financial institution or agency.

[41] The 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.¹²

[42] Parties should provide detailed evidence to demonstrate the harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.¹³ 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*.¹⁴

[43] For the reasons that follow, I find that the information on pages 18-19 and 21 of the contract and on pages 49-50 of the purchase orders is exempt from disclosure under sections 10(1)(a) and (c) of the *Act*.

[44] The plumbing company cites the case of *Shannex Inc. v. Nova Scotia (Health and Wellness)*,¹⁵ where the Supreme Court of Nova Scotia considered whether the third party information exemption in section 21(1) of that province's *Freedom of Information and Protection of Privacy Act*¹⁶ applied to information that a successful bidder submitted to the provincial government to construct and build nursing homes. This information included budget summaries and *per diem* rates, for each of the appellant's nursing

¹² *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.

¹³ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, cited above.

¹⁴ Order PO-2435.

¹⁵ 2019 NSSC 24 (CanLII).

¹⁶ SNS 1993, c 5.

homes.

[45] The court found that such information was exempt from disclosure under section 21(1) and stated:

I agree that the information, were it disclosed, could “reasonably be expected to harm significantly the competitive position of the appellant, or result in undue financial harm to the appellant”, as is required by the statute. I accept that the release of the information sought could allow a competitor to effect calculations to determine Shannex’s budgeted costs, and therefore allow Shannex to be undercut at future bidding competitions. This risk to the appellant’s financial health is, in my view, well within the scope proposed by our Supreme Court; that is, between “that which is probable and that which is merely possible”.¹⁷

[46] The plumbing company submits that the court’s findings are applicable to the type of information in the records at issue in these appeals.

[47] The requester disputes the plumbing company’s submission that the findings in the *Shannex* case are applicable here. It submits that the plumbing company’s submissions are speculative about the prospect of harm and that the *Shannex* decision relied on the fact that there was evidence of a competitive bid process, which does not appear to be the case here.

[48] The board submits that the harms contemplated by sections 10(1)(a) and (c) could reasonably be expected to transpire if the information on pages 18-19 and 49-50 were disclosed. Competitors would be reasonably able to determine the hourly rate charged by the winning bidder (the plumbing company) and consequently, could undercut its rates in future competitions.

[49] The board further submits that disclosing page 21 could reasonably be expected to result in undue loss for the plumbing company, in accordance with section 10(1)(c). Because this page of the records contains the plumbing company’s confidential banking information, disclosure could result in an undue loss or gain should another party use this information to access the plumbing company’s account and funds.

[50] It is not necessary to consider whether part 3 of the section 10(1) test is met for most of the contents of the contract between the board and the plumbing company (pages 1-17, 20 and part of page 21). As noted above, because these parts of the contract were not “supplied” to the board by the plumbing company, part 2 of the section 10(1) test has not been met. Given that all three parts of the section 10(1) test must be met for this exemption to apply, these parts of the contract cannot be found to be exempt from disclosure under section 10(1) and must be disclosed to the requester.

¹⁷ *Supra* note 15 at para. 52.

[51] The purchase orders (pages 49-153) contain information about the nature of the work performed and the grand totals that the plumbing company charged the board for that specific work. The board decided to disclose this information to the requester. In my view, it would be difficult for competitors to use this particular information to undercut the plumbing company in future bidding competitions in a manner that would prejudice "significantly" its competition position or result in an "undue" loss for it. I find as well that there is a clear transparency interest in disclosing the total costs that a public body pays to private companies for carrying out specific work, because such disclosure promotes accountability for the expenditure of public funds.

[52] I find, therefore, that disclosing most of the information in the purchase orders could not reasonably be expected to prejudice significantly the competitive position of the plumbing company, as required by section 10(1)(a) or result in an undue loss for the plumbing company and an undue gain for its competitors, as required by section 10(1)(c).

[53] However, I am satisfied that the parties resisting disclosure (the plumbing company and the board) have provided sufficient evidence to show that disclosing the financial information on pages 18-19 of the contract and pages 49-50 of the purchase orders, could reasonably be expected to lead to the harms set out in sections 10(1)(a) and (c) of the *Act*.

[54] I find that the plumbing company's competitors could use such information, including the hourly rates that it charges, to undercut it in future bidding competitions. In particular, disclosing such information could reasonably be expected to prejudice significantly the competitive position of the plumbing company, as required by section 10(1)(a) and result in an undue loss for the plumbing company and an undue gain for its competitors, as required by section 10(1)(c).

[55] I also agree that disclosing the plumbing company's commercial and other related information on page 21, which includes its banking information, could reasonably be expected to lead to the harms contemplated by section 10(1)(c) of the *Act*. Once such information is in the public domain as a result of disclosure through an access request under the *Act*, there is a risk that a criminal could use it to attempt to fraudulently access and steal money from the plumbing company's bank accounts. I find, therefore, that disclosing such information could reasonably be expected to result in an undue loss for the plumbing company as required by section 10(1)(c).

[56] In summary, I find that the information on pages 18-19 and 21 of the contract and on pages 49-50 of the purchase orders is exempt from disclosure under sections 10(1)(a) and (c) of the *Act*.

ORDER:

1. I uphold the board's decision to disclose most of the contents of the records and to withhold parts of them under section 10(1) of the *Act*. The appeals are dismissed.
2. I order the board to disclose a redacted version of the contract and purchase orders to the requester by **November 6, 2025**, but not before **October 31, 2025**. To be clear, in accordance with its access decision, the board must not disclose the financial information on pages 18-19, the commercial and other related information on page 21 (including the plumbing company's banking information), and the hourly rate charged by the plumbing company on pages 49-50. The board must also not disclose pages 22-48, which were not at issue in these appeals.
3. I reserve the right to require the board to provide me with a copy of the redacted records that it discloses to the requester, in accordance with order provision 2.

Original Signed by: _____

Colin Bhattacharjee
Adjudicator

October 2, 2025 _____