

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4746

Appeal PA23-00646

Huron Perth Healthcare Alliance

October 16, 2025

Summary: An individual made a request under the *Freedom of Information and Protection of Privacy Act* for all contracts relating to a specified Request for Proposal for non-emergency patient transport services. After notifying a third party of the request, the institution granted the requester full access to the schedule of an agreement. The third party appealed the institution's decision on the basis that the pricing information in the schedule is third party information that should be exempt from disclosure pursuant to section 17(1) of the *Act*.

In this order, the adjudicator finds that section 17(1) does not apply to the pricing information and upholds the institution's decision to disclose the schedule to the requester in full.

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

Orders Considered: Order PO-3830.

OVERVIEW:

[1] The Huron Perth Healthcare Alliance (HPHA) received a request pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the following:

All contracts, including all amendments and pricing, awarded to and signed pursuant to [a specified Request For Proposal (RFP)] for Non-Emergency Patient Transport, issued October 22, 2022.

[2] After identifying two agreements responsive to the request, the HPHA notified two affected parties under section 28(1) of the *Act* to obtain their views regarding the disclosure of the records. Both parties provided responses to the HPHA.

[3] The HPHA subsequently issued a decision granting partial access to the agreements, citing section 17(1) (third party information) to deny access to some information.

[4] The requester appealed the HPHA's decision to the Information and Privacy Commissioner of Ontario (IPC).

[5] During mediation, the requester confirmed that she was seeking access to only the pricing information that was withheld from Schedule H of the two agreements. As a result, any other information that was withheld pursuant to section 17(1) is not at issue.

[6] At the requester's request, the mediator sought the affected parties' consent to the disclosure of the pricing information and successfully obtained consent from one affected party. The HPHA subsequently disclosed the pricing information contained in Schedule H of one of the agreements (related to this affected party) pursuant to the consent.

[7] The requester confirmed that she was continuing to seek access to the pricing information in Schedule H of the remaining agreement. As mediation did not resolve the appeal, the file was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*. I decided to conduct an inquiry and sought representations from the HPHA and the remaining affected party.

[8] During the inquiry, the HPHA advised that it no longer had concerns about the disclosure of the pricing information in the remaining Schedule H and no longer claims that section 17(1) applies to exempt it from disclosure.

[9] In light of its new position, the HPHA issued a revised decision to both the requester and the affected party indicating that it was granting full access to Schedule H of the remaining agreement. The affected party appealed the HPHA's revised decision as it continues to object to the disclosure of the pricing information in the schedule.

[10] I sought representations from the affected party, now the third party appellant¹, as well as the HPHA. I did not receive representations from the affected party and received limited representations from the HPHA.

[11] In this order, I find that section 17(1) does not apply to the pricing information that was withheld from Schedule H of the remaining agreement. I uphold the HPHA's

¹ As the party appealing the HPHA's revised decision, the affected party (or the third party appellant) bears the onus of demonstrating that the information should not be disclosed.

revised decision to disclose the schedule to the requester in full and dismiss the appeal.

RECORDS:

[12] At issue is the pricing information found in portions of pages 48-49 (Schedule H) of an agreement.

DISCUSSION:

[13] The sole issue in this appeal is whether the mandatory exemption at section 17(1) of the *Act* applies to the pricing information in Schedule H of the agreement at issue.

[14] The purpose of section 17(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

[15] Section 17(1) states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

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

(d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

Representations

[16] The HPHA submits that it no longer believes that the pricing information in the

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.

remaining schedule satisfies the test under section 17(1) of the *Act* and in accordance with its revised decision, it is now prepared to disclose it to the requester.

[17] Although the third party appellant did not submit representations, it objected to the disclosure of the withheld information when notified by the HPHA and when contacted by the mediator. In correspondence with the HPHA, the third party appellant indicated that disclosure of the pricing information would have a material impact on its competitive position, particularly given the close-knit industry that it operates in.

Analysis and findings

[18] In order for section 17(1) to apply, the party resisting 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 17(1) will occur.

Part 1: Type of information

[19] Previous IPC orders have found that agreements with pricing information contain commercial and financial information as contemplated by section 17(1) of the *Act*.⁴ The IPC has defined commercial and financial information as follows:

Commercial information is information that relates only to the buying, selling or exchange of merchandise or services. This term can apply to commercial or non-profit organizations, large or small.⁵ The fact that a record might have monetary value now or in future does not necessarily mean that the record itself contains commercial information.⁶

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.⁷

⁴ See, for example, Orders PO-3830, PO-3761, and PO-3757. See also Orders PO-4556 and PO-4387, which deal with agreements that fall outside of the patient care context.

⁵ Order PO-2010.

⁶ Order P-1621.

⁷ Order PO-2010.

[20] Based on my review of Schedule H, I agree that it contains both commercial and financial information. I find that the schedule contains commercial information because it forms part of an agreement about the buying and selling of non-emergency patient transport services. I also find that the schedule contains financial information. None of the parties appear to dispute that the withheld information consists of pricing information, which on its face relates to money and its use or distribution.

[21] As a result, I find that the remaining Schedule H contains commercial and financial information as contemplated by section 17(1) and that part one of the test has been met.

Part 2: Supplied in confidence

Supplied

[22] The requirement for the information to have been “supplied” to the institution reflects the purpose in section 17(1) of protecting the informational assets of third parties.⁸

[23] 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.⁹

[24] 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 17(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.¹⁰

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

1. The “inferred disclosure” exception, which 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.¹¹
2. The “immutability” exception, which 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.¹²

⁸ Order MO-1706.

⁹ Orders PO-2020 and PO-2043.

¹⁰ This approach was approved by the Divisional Court in *Boeing Co.*, cited above, and in *Miller Transit Limited v. Information and Privacy Commissioner of Ontario et al.*, 2013 ONSC 7139 (CanLII) (*Miller Transit*).

¹¹ Order MO-1706, cited with approval in *Miller Transit*, cited above at para. 33.

¹² *Miller Transit*, cited above at para. 34.

[26] The third party appellant does not directly address whether the information at issue was supplied to the HPHA in confidence.

[27] As previously indicated, the IPC generally treats the contents of a contract between an institution and a third party 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.¹³

[28] I previously found that the information at issue consists of pricing information for services that the third party appellant is offering to the HPHA, which appears in the context of a schedule to an agreement. I note that the original request was for contracts relating to an RFP for non-emergency patient transport services and that none of the parties appear to dispute that Schedule H forms part of a contract. As a result, I find that the pricing information at issue constitutes contract provisions that were mutually generated rather than “supplied” as contemplated by section 17(1) of the *Act*.

[29] The general rule that the contents of a contract between an institution and a third party will not normally qualify as having been “supplied” under section 17(1) is subject to two exceptions. The parties do not provide representations on the application of either of the “inferred disclosure” or the “immutability” exceptions, and I find that they do not apply. There is no evidence before me to suggest that disclosure of the pricing information would permit someone to make accurate inferences about underlying non-negotiated confidential information supplied by the third party appellant to the HPHA, or that the schedule contains non-negotiable information supplied by the third party appellant.

[30] Specifically, I do not have any information on what underlying non-negotiated confidential information the third party appellant may have supplied to the HPHA or what inferences, if any, can be drawn from the disclosure of the pricing information. Furthermore, pricing information does not appear to fall into the category of “non-negotiable” information as contemplated by the “immutability” exception. In my view, the prices of specific services, as outlined in the schedule of an agreement, appear to constitute information that is, on its face, subject to negotiation between the parties.

[31] Finally, I note that previous IPC orders have considered whether information in agreements relating to RFPs pertaining to non-emergency patient transportation services qualify for exemption under section 17(1) of the *Act*. For example, in Order PO-3830, the adjudicator found that while pricing information in an appendix to a Contract for Service constitutes both commercial and financial information, the section 17(1) exemption did not apply as the information was “negotiated” rather than “supplied”. I agree and adopt the reasoning of these past orders in the context of this appeal.¹⁴

[32] Having found that the pricing information in Schedule H was not “supplied” by the third party appellant to the HPHA, I conclude that part two of the section 17(1) test has

¹³ See, for example, Orders PO-4662, PO-4565, and PO-4536.

¹⁴ See also Orders PO-3761, PO-3757, PO-3759, PO-3754, and PO-3753.

not been met. As all three parts of the test must be met for the exemption to apply, it is not necessary for me to consider the “in confidence” component of part two of the test or part three of the test.

[33] In conclusion, I find that the information at issue is not exempt from disclosure pursuant to section 17(1) of the *Act*. I uphold the HPHA’s decision to disclose Schedule H to the requester in its entirety and dismiss the appeal.

ORDER:

1. I uphold the HPHA’s decision and dismiss the appeal.
2. I order the HPHA to disclose Schedule H to the requester in full by **November 20, 2025**, but not before **November 15, 2025**.
3. In order to verify compliance with order provision 2, I reserve the right to require the HPHA to provide me with a copy of the record disclosed to the requester as a result of order provision 2.

Original Signed by: _____

Anda Wang
Adjudicator

October 16, 2025 _____