

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4767

Appeal MA24-00027

City of Ottawa

February 18, 2026

Summary: The appellant sought access to two retail appraisal reports relating to the financing of the retail component of Lansdowne Park. The city denied access to the records, relying on the mandatory third party information exemption in section 10(1) of the *Act*. In this order, the adjudicator finds that section 10(1)(a) applies to the records at issue and dismisses the appeal.

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

Orders and Investigation Reports Considered: Orders MO-1450, PO-2435, PO-2018, PO-1889, and P-1621.

OVERVIEW:

[1] The City of Ottawa (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for “two Lansdowne retail appraisal reports that were done in 2014 and 2022.”

[2] Before issuing its decision, the city notified an affected third party (affected party) under section 21(1) of the *Act*, seeking its views on the disclosure of the requested records. The affected party objected to the disclosure of the records. The city subsequently issued an access decision denying access in full to the two appraisal reports, relying on the mandatory third party information exemption in section 10(1) of *Act*, specifically paragraphs (a), (b), and (c).

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

[4] As mediation did not resolve the appeal, the matter proceeded to adjudication. An IPC adjudicator conducted a written inquiry and received representations from the city, the affected party, and the appellant, which were shared in accordance with the IPC's *Code of Procedure and Practice Direction 7*.

[5] The appeal was then transferred to me to complete the inquiry. I determined that I did not require further representations from the parties.

[6] In this order, I find that the mandatory exemption at section 10(1)(a) of the *Act* applies to the records at issue and I uphold the city's decision.

RECORDS:

The records at issue are two retail appraisal reports, from 2014 and 2022, for the retail component of Lansdowne Park.

DISCUSSION:

[7] The sole issue to be determined in this appeal is whether the mandatory third party exemption in section 10(1)(a), (b) or (c) of the *Act* applies to the records at issue as claimed by the city. For the reasons that follow, I find that the records are exempt from disclosure under section 10(1)(a) and I consider only that exemption.¹

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

[9] For section 10(1)(a) to apply, the party arguing against disclosure, in this case the

¹ It is therefore unnecessary for me to consider whether sections 10(1)(b) and/or (c) also apply to the records

² Orders PO-1805, PO-2018, PO-2184 and MO-1706.

city and the affected party, 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 the harms specified in paragraph (a) of section 10(1) will occur.

Part 1 of the section 10(1)(a) test: type of information

[10] To satisfy part 1 of the section 10(1)(a) 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.

[11] The IPC has described the types of information protected under section 10(1) 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.³ The fact that a record might have monetary value now or in future does not necessarily mean that the record itself contains commercial information.⁴

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

[12] The city and the affected party submit that the records consist almost entirely of commercial and financial information, including analyses relating to rental rates, revenues, expenses, cash flows, yields, and the valuation of a commercial leasehold interest. The appellant does not dispute this characterization.

[13] Having reviewed the records, I am satisfied that they contain detailed commercial and financial analyses prepared for mortgage financing purposes, including valuation data and information relating to the affected party's commercial leasing operations. I therefore find that part 1 of the section 10(1)(a) test is met.

³ Order PO-2010.

⁴ Order P-1621.

⁵ Order PO-2010.

Part 2 of the test: supplied in confidence

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

[15] The party arguing against disclosure must establish that the individual 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

[16] In deciding whether an expectation of confidentiality is based on reasonable and objective grounds, relevant considerations 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,
- 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

Parties’ representations

[17] The city and the affected party submit that the appraisal reports were commissioned by the affected party in connection with mortgage financing and provided to the city pursuant to the Retail Lease. They submit that the reports reflect the affected party’s commercial and financial information and were not generated by or on behalf of the city. The appellant does not dispute that the reports were supplied.

[18] The city submits that the financial and commercial information in the appraisal reports was supplied to it in confidence by the affected party for due diligence and financing purposes. It notes that, while city staff periodically provide reports to committee and council, the detailed financial information in the appraisal reports is subject to contractual confidentiality obligations, and that the reports themselves include specific references to their confidential nature.

⁶ Order MO-1706.

⁷ Orders PO-2020 and PO-2043.

⁸ Order PO-2020.

⁹ Orders MO-2363 and PO-2435.

[19] The affected party submits that the appraisal reports were supplied to the city in explicit confidence pursuant to section 16.1 of the Retail Lease, for the limited purpose of facilitating the city's review of proposed mortgage financing. It relies on lease provisions defining information supplied by the affected party as "Confidential Information" and requiring it to be held in confidence, including sections 1.1 and 26.10,

[20] The appellant submits that the appraisal reports were not supplied to the city "in confidence" within the meaning of section 10(1)(a), or that any expectation of confidentiality was undermined by the affected party's conduct. Relying on IPC Order P-1621, she argues that confidentiality must be assessed based on how information is treated in practice, and not solely on contractual provisions or confidentiality markings. She points to statements made by the affected party's Chair at a May 2023 committee meeting referring to the existence and outcomes of independent appraisals, as well as to an email exchanged in mid-2023, which she interpreted as indicating that the affected party did not object to disclosure, and which she submits suggested that appraisal information would be referenced publicly. She submits that this conduct undermines any objectively reasonable expectation of confidentiality.

[21] In reply, the affected party submits that the Chair's committee remarks, when read in full and in context, were high-level references to the existence and outcome of independent appraisals obtained for financing purposes and not intended for public dissemination. It submits that the remarks did not disclose, or waive confidentiality over, the detailed contents of the reports, and that general references to the existence or broad conclusions of a record do not amount to a waiver of confidentiality. With respect to the email correspondence, the affected party submits that it expressly corrected any inference that it consented to disclosure, and that this exchange supports its position that the reports have consistently been treated as confidential.

Analysis and findings

[22] Having reviewed the records and the parties' representations, I am satisfied that the affected party supplied the appraisal reports to the city in confidence, with a reasonable expectation of confidentiality. This expectation is supported by the confidentiality provisions in the Retail Lease, including those requiring that information supplied by the affected party be held in confidence and identifying certain sublease-related financial information as "strictly confidential," as well as by the confidentiality statements, intended-user limitations, and restrictions on publication contained in the reports themselves. Although parties cannot contract out of the application of the *Act*, IPC orders have recognized that contractual confidentiality provisions are strong indicators that information was supplied in confidence.¹⁰ The evidence also indicates that the reports have been consistently treated as confidential by both the city and the affected party, and there is no evidence to suggest that the information has otherwise been disclosed or

¹⁰ Orders PO-3574, MO-2088, and PO-3937.

is publicly available.

[23] I am not persuaded that the affected party's public statements undermined this expectation. The Chair's remarks at the May 2023 committee were high-level references to the existence and outcome of appraisals obtained for financing purposes and did not disclose the detailed commercial or financial contents of the reports. IPC orders have distinguished between general references to the existence or broad conclusions of a record and disclosure of its confidential substance, finding that the former does not amount to a waiver of confidentiality.¹¹

[24] I reach the same conclusion with respect to the email correspondence relied on by the appellant. In an August 2023 email, the appellant stated that she understood from the affected party's response that it "had no objection to the release" of the appraisal reports and that the city had discretion to disclose them. In response, the affected party stated: "*Please do not assume we agree with those conclusions and our position should not be represented as such without our stating so clearly.*" This correspondence supports, rather than undermines, the conclusion that the appraisal reports continued to be treated as confidential in practice.

[25] In light of the above, I am satisfied that the appraisal reports were supplied to the city with a reasonable expectation of confidentiality and that the second part of the section 10(1)(a) test is met.

Part 3 of the test: harms

[26] I now turn to the third part of the test under section 10(1)(a), the harms test. 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 the harms in the *Act*.¹²

[27] Parties resisting disclosure must show 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 To satisfy the harms test for section 10(1)(a), the city and the affected party must demonstrate that disclosure could reasonably be expected to result in

¹¹ Orders P-579, PO-2830, and MO-2222.

¹² Orders MO-2363 and PO-2435.

¹³ *Merck Frosst Canada Ltd. v. Canada (Health)*, [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.

significant prejudice to the competitive position or significant interference with the contractual or other negotiations of the affected party.

Parties' representations

[28] The city adopts the affected party's submissions regarding harm.

[29] The affected party submits that disclosure of the appraisal reports could reasonably be expected to prejudice its competitive position, interfere significantly with its contractual and negotiating relationships, and result in undue loss. It submits that the reports contain detailed, non-public commercial and financial information, including tenant-specific rent structures, revenue and expense assumptions, cash-flow analyses, and valuation methodologies reflecting internal benchmarks and negotiating positions. It further submits that disclosure would breach contractual confidentiality obligations under the Retail Lease, the subleases, and its engagement with the appraisers, exposing it to liability and loss of trust and equipping tenants, competitors, and potential purchasers with privileged insights. This would undermine negotiations, create pressure for rent parity or renegotiation, and have a chilling effect on future commercial relationships. It also submits that such information is ordinarily shared only under strict confidentiality agreements in commercial real estate practice.

[30] The appellant submits that the claimed harms do not meet the evidentiary threshold under section 10(1)(a). Relying on Orders PO-2435 and PO-2018, she submits that the affected party has failed to provide "detailed and convincing" evidence to establish a reasonable expectation of harm.

[31] The appellant further submits that the appraisal reports are historical in nature and that changes in market conditions reduce their ongoing sensitivity, relying on Order PO-1889. She also submits that public reporting and tenant commentary regarding lease terms indicate that comparable information is not treated as consistently confidential in practice, undermining the credibility of the claimed harms.

[32] In response to the appellant's submission that the claimed harms are speculative and unsupported, the affected party submits that the appraisal reports contain property-specific, non-public commercial and financial information that goes beyond general market indicators and functions as a critical negotiating tool in a highly competitive leasing environment. It submits that disclosure would undermine its ability to negotiate effectively with existing and prospective tenants by revealing rent disparities, valuation inputs, cash-flow data, and internal financial thresholds that could be leveraged to demand parity, resist renewal, or trigger renegotiation or termination rights. It explains that national and anchor tenants may have strong commercial and, in some cases, contractual incentives to seek concessions, thereby destabilizing revenues and interfering significantly with ongoing and future negotiations.

[33] The affected party further submits that disclosure would interfere with established

contractual and commercial expectations of confidentiality and erode trust among tenants, lenders, and other commercial partners. It submits that this would undermine industry norms, expose it to reputational harm, and impair future commercial relationships, including by making counterparties less willing to share sensitive information or more likely to demand protective terms.

[34] In response to the appellant's submissions regarding the age of the appraisal reports, the affected party submits that the information remains commercially sensitive and continues to inform leasing and financing negotiations, notwithstanding the passage of time. It emphasizes that in commercial real estate, where lease arrangements often span decades and long-term anchor tenants are involved, valuation and rent benchmarks retain ongoing relevance.

[35] Finally, the affected party submits that removing tenant names would not mitigate the anticipated harms because the negotiating, contractual, and reputational risks it identifies do not depend on the disclosure of tenant identities. It submits that even with tenant names removed, the appraisal reports would continue to reveal detailed financial analyses, benchmarks, and valuation assumptions that could be leveraged in negotiations and undermine commercial trust.

Analysis and findings

[36] Section 10(1)(a) seeks to protect information that could be exploited in the marketplace.¹⁵ In assessing the harms requirement under this provision, I must determine whether the evidence establishes a reasonable expectation that disclosure of the appraisal reports could "prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization." This assessment must be grounded in the specific content of the records and the commercial context in which they operate.

[37] I have reviewed the appraisal reports and find that they contain detailed rent roll information, valuation assumptions, cash-flow analyses, and internal financial benchmarks directly connected to ongoing leasing and financing activities. This information reflects non-public negotiating positions and financial thresholds used by the affected party in managing its retail leasing operations.

[38] Having considered the representations of the city and the affected party, I am satisfied that disclosure could reasonably be expected to provide tenants and other market participants with leverage in lease negotiations by revealing rent disparities, valuation assumptions, and internal financial thresholds. I agree that, in a competitive commercial real estate environment, particularly where the affected party operates a single retail leasing site with long-term lease arrangements and national or anchor tenants, this information could be used to demand more favourable terms, resist

¹⁵ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

renewals, or seek renegotiation. Unlike the generalized assertions rejected by the IPC in Orders PO-2435 and PO-2018, the evidence in this appeal is grounded in the specific financial and valuation information contained in the records and the affected party's ongoing leasing and financing context. I therefore accept that disclosure of the appraisal reports could reasonably be expected to significantly prejudice the affected party's competitive position and interfere significantly with its contractual or other negotiations as contemplated by section 10(1)(a).

[39] This conclusion is consistent with Order MO-1450, in which the IPC recognized that disclosure of detailed rent and financial analyses in a competitive real estate market can enable competitors and tenants to renegotiate leases and obtain commercial advantage. The appraisal reports in this appeal similarly contain non-public financial projections, valuation inputs, and leasing information that could be leveraged in ongoing and future negotiations.

[40] I am not persuaded that the age of the appraisal reports, on its own, sufficiently reduces the likelihood of these harms. Order PO-1889 arose in the context of a completed regulatory investigation and involved compliance and audit records, where the passage of time reduced the sensitivity of the information. In this appeal, the appraisal reports continue to inform active leasing, financing, and strategic decisions in a competitive retail environment.

[41] Finally, I do not accept the appellant's argument that removing tenant-identifying information would mitigate the harms described above. Even without tenant names, the appraisal reports would continue to reveal detailed valuation assumptions, rent benchmarks, cash-flow analyses, and other financial data that could be used by tenants or other market participants to gain leverage in negotiations and would effectively signal the affected party's internal pricing and valuation thresholds to the market.

[42] For these reasons, I am satisfied that disclosure of the records could reasonably be expected to result in the harms set out in section 10(1)(a). As all three parts of the test have been met, I find that the appraisal reports are exempt from disclosure under the mandatory exemption at section 10(1)(a) of the *Act*.

ORDER:

I uphold the city's decision and dismiss the appeal.

Original Signed by: _____
Elana May
Adjudicator

February 18, 2026 _____