



Information and Privacy  
Commissioner/Ontario

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

# **ORDER M-145**

**Appeal M-9200405**

**The Halton Board of Education**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

# ORDER

The Halton Board of Education (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records which describe the agreements and relationships between the Board and the suppliers of computer hardware and software for use in a new secondary school. Pursuant to section 21 of the Act, the Board notified the three suppliers of the request. The suppliers objected to disclosure of the records prepared by them and provided to the Board. The Board denied the requester access to the records on the basis of the exemption in section 10(1) of the Act, and the requester appealed the denial of access.

During mediation, partial access to one of the records was granted, and this entire record was removed from the scope of the appeal. Mediation was not successful in regard to the remaining records, and notice that an inquiry was being conducted to review this aspect of the Board's decision was sent to the appellant, the Board, and the two computer suppliers who continued to object to disclosure of the records (the affected parties). Representations were received from the Board and the affected parties. The appellant indicated that she was relying on the positions that she had expressed previously.

One of the affected parties states in its representations that it now consents to the disclosure of parts of pages 15 to 18 of the records. In its representations, the Board withdrew its denial of access to these pages. In my view, these pages should be disclosed to the appellant.

The records remaining in issue are identified as follows:

- |                 |  |
|-----------------|--|
| Pages 13-14, 19 | Records provided by the affected parties relating to their agreements with the Board.  |
| Pages 15-18     | Those parts of records provided by one of the affected parties relating to its agreement with the Board that it objects to disclosing. |

The only issue arising in this appeal is whether the mandatory exemption provided by section 10 of the Act applies to the records.

The City and the affected parties have indicated in their representations that they are relying on the exemptions contained in sections 10(1)(a) and (c) of the Act.

Sections 10(1)(a) and (c) of the Act read:

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;

In order for a record to qualify for exemption under sections 10(1)(a), (b), and /or (c), the Board and/or 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; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure must give rise to a reasonable expectation that one of the types of injuries specified in (a), (b) or (c) of section 10(1) will occur.

[Order 36]

### **Part 1**

The information contained in the record relates to the sale and purchase of computer equipment for the Board, and outlines the affected parties' offers to supply the Board with the required equipment for the prices indicated in the record. In my view, this information is "commercial" information and Part 1 of the test has been met.

### **Part 2**

In order to satisfy the second part of the test, the information must have been **supplied** by the affected person to the Board in confidence.

None of the records at issue in this appeal contain a reference to expectations of confidentiality on the part of the affected parties. However, as part of their representations, both the Board and the affected parties have provided sworn affidavits which indicate that the affected parties supplied the records to the Board

explicitly in confidence. Having reviewed the records, the representations and the affidavits provided, I am satisfied that Part 2 of the test has been met.

### **Part 3**

The Board and the affected parties rely primarily on sections 10(1)(a) and (c) in their representations. In support of the application of section 10(1)(a) of the Act, one of the affected parties submits:

[The affected person's] competitive position would be significantly prejudiced, particularly in the municipal and education market, if the information were disclosed to a competitor of [the affected person]. ... [The affected person] has a large number of competitors in the government and public institution market. Pricing for computer equipment, and in particular for minicomputer and personal computer equipment of the type supplied to the Board ... is extremely competitive.

With respect to section 10(1)(c), one of the affected parties stated in its representations that:

It is extremely likely that disclosure would result in financial loss to [the affected person] -- both through lost sales and through lower profits on sales that would be made -- and corresponding gains to [the affected person's] competitors. ... [The affected person's] competitors would benefit enormously from obtaining access to information regarding [the affected person's] pricing and marketing strategies.

Having carefully reviewed the records and parts of the records remaining in issue in this appeal, it is my view that their disclosure could reasonably be expected to prejudice significantly the competitive position of the affected parties, and to result in undue loss to the affected parties and undue gain to their competitors. In my view, Part 3 of the test has been met.

As all three parts of the test have been met, I find that the records are properly exempt under sections 10(1).

### **ORDER:**

1. I order the Board to disclose those parts of pages 15 to 18 of the records that the affected party has consented to disclose within 15 days of the date of this order.

2. I uphold the Board's decision to deny access to the remaining records.
3. In order to verify compliance with this order, I order the Board to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1, **only** upon request.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ June 11, 1993