



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-94**

**Appeals M-9200429 and M-9200430**

**City of Toronto**



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# ORDER

## BACKGROUND:

The City of Toronto (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the "Life Safety Study on the Riverdale Hospital Building". Pursuant to section 21 of the Act, the City notified six persons whose interests could be affected by the disclosure of the requested information, inviting them to make representations concerning the release of the study. The City received representations from two of these persons (the affected parties) and, despite their objections to disclosure, notified the affected parties that it had decided to release the study to the requester in its entirety. The two affected parties who made representations appealed the City's decision to grant access to the requester.

Mediation of the appeal was not successful, and notice that an inquiry was being conducted to review the City's decision was sent to the affected parties, the City and the original requester. Representations were received from the original requester and one of the affected parties.

The record at issue consists of a 43 page document entitled "Life Safety Study" to which is attached 16 pages of drawings submitted to the City's Fire Department by the Riverdale Hospital.

## ISSUES:

The issues arising in this appeal are:

- A. Whether the mandatory exemption provided by section 10(1)(a), (b), (c) or (d) applies.
- B. Whether disclosure of the record pursuant to the Act constitutes an infringement of copyright protection which may exist in the record.

## SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the mandatory exemption provided by section 10(1)(a), (b), (c) or (d) applies.

Section 10(1) of the Act reads:

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.

One of the affected parties submits that "the Hospital is already experiencing labour related repercussions to the proposed project and we feel that disclosure at this time could jeopardize the process that is underway to resolve those issues (see section 10(1)(d))".

In my view, the information contained in the record cannot be accurately characterized as information "supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute". Accordingly, I find that section 10(1)(d) has no application to the record and the rest of my discussion will be restricted to the application of sections 10(1)(a), (b) and (c).

Each part of the following three-part test must be met in order for a record to qualify for exemption under section 10(1)(a), (b), or (c):

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 of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of section 10(1) will occur.

[Orders 36 and M-10]

## **Part One**

The record was prepared by a firm of consulting architects. It consists of the proposal and recommendations for upgrading the Hospital to Life Safety Standards as required by the Ministry of Health and Office of the Fire Marshal. In my view, the record contains information which is technical and financial in nature. Accordingly, part 1 of the section 10 test has been met.

## **Part Two**

The representations and submissions of the affected parties do not address whether the record was supplied in confidence, either implicitly or explicitly, and there is no mark or evidence on the face of the record which would indicate confidentiality. Accordingly, in my view, Part 2 of the section 10 test has not been met.

## **Part Three**

One of the affected parties submits that "the Hospital is currently in the midst of the tendering process and until the tender is let, any publication of information concerning the study could be prejudicial to the timely completion of the project." No evidence as to why the expectation of harm occurring may be reasonably expected to result from the disclosure of the record has been provided.

As stated above, each Part of the Section 10 test must be met in order to satisfy the requirements of the exemption. Since neither Parts 2 or 3 of the test has been met, the affected parties have not established that the exemption provided by section 10(1) of the Act applies.

### **ISSUE B: Whether disclosure of the record pursuant to the Act constitutes an infringement of copyright protection which may exist in the record.**

In the submissions made by one of the affected parties in response to the City's decision to disclose, the affected party states "the document in question is a 'copyright' document and as such may not be copied in part or whole without consent of the authors". In Order M-29, the question of the applicability of the protection of the Copyright Act to records requested under the Municipal Freedom of Information and Protection of Privacy Act was canvassed by Commissioner Wright. In that Order, he found that:

I think that it is important to note that providing **access** to information under the Municipal Freedom of Information and Protection of Privacy Act does not constitute an infringement of copyright. Specifically, sections 27(2)(i) and (j) of the Copyright Act provide that disclosure of information pursuant to the federal Access to Information Act or any like Act of the legislature of a province does not constitute an infringement of copyright.

I agree with Commissioner Wright, and I find that **disclosure** of the record would not constitute an infringement of copyright.

**ORDER:**

I uphold the City's decision to disclose the record.

Original signed by:  
Holly Big Canoe  
Inquiry Officer

March 4, 1993