



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

ORDER P-497

Appeal P-9300095

Ministry of Health



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ORDER

The Ministry of Health (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to copies of the standing offers on file with the Ministry from the various providers of air ambulance services in Ontario for the current six-month period and the previous one.

The Ministry denied access to the information requested pursuant to sections 17(1)(a),(b) and (c) of the Act. The requester appealed the denial of access.

During mediation, the scope of the request was narrowed to include only information relating to the portions of the standing offers made by one of the service providers (the affected party) which contained the rates upon which the offers were based. Following a review of the records with the Ministry, it was determined that two pages of the records were responsive.

The records consist of two pages of the completed Tariff Schedule (Schedule "E") taken from the Standing Offer Agreement No. A.A.S. 006 Charter Air Carrier Transport Service Fixed and Rotary Wing Aircraft binder. One page was contained in the February 28, 1992 offer and the second page was contained in the October 1, 1992 offer.

The sole issue in this appeal is whether the mandatory exemption provided by sections 17(1)(a),(b) and (c) of the Act applies to the records. These sections read as follows:

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, where 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;

In order for a record to qualify for exemption under section 17(1)(a), (b) or (c) the Ministry 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 Ministry 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 subsection 17(1) will occur.

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Part 1

The information contained in the records details operational charges and expenses relating to the affected party's offers for provision of air ambulance services to the Ministry. 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 party to the Ministry in confidence.

The Ministry states:

The information was obtained by a competitive process in the form of tenders which occurs annually as various airlines bid on Ministry tenders.

The affected party adds:

The tariff fees in the Schedules are in fact the actual bid price, taken directly from [the affected party's] financial statements and represents the cost-base which [the affected party] needs to operate the air ambulance service ... information was

provided to the [Ministry] for the purpose of creating the Schedules in the Agreement, and AT NO TIME did any negotiations take place with regard to the information provided.

Both the Ministry and the affected party referred to Ministry guidelines for carriers which explicitly stipulate that any information supplied by an air carrier in an offer is supplied in confidence. In addition, both referred to public meetings held with the Minister in which

assurances were given that all information supplied for the purposes of bidding for air ambulance services was and would be confidential.

Having reviewed the representations and the records, I am satisfied that Part 2 of the test has been met.

Part 3

With respect to section 17(1)(a), the affected party submits:

Bids for air ambulance services are open province-wide and there are several air carriers, with both similar and identical aircraft, competing directly with [the affected party] ... [C]onfidential cost and revenue information is contained in those Schedules ... Any disclosure of that information would interfere significantly with [the affected party's] ability to renew the contract, as it would unfairly alter their bargaining position with respect to other air carriers.

Having carefully reviewed the records, it is my view that their disclosure could reasonably be expected to prejudice significantly the competitive position of the affected party. 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 section 17(1)(a).

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

July 14, 1993