



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

# **ORDER P-574**

## **Appeal P-9200599**

### **Ministry of the Solicitor General and Correctional Services**



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# ORDER

The Ministry of the Solicitor General (now the Ministry of the Solicitor General and Correctional Services) (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for specific pricing information submitted by a named company to the Ministry and the Ministry's evaluation of equipment rental costs, service charges per copy and prepayment discounts, leading to the named company being a successful bidder to supply photocopiers to the Ministry.

The Ministry identified a number of responsive records and notified the named company as an affected person pursuant to section 28 of the Act. After considering the objections of the affected person, the Ministry granted the requester partial access to some records, denying the rest in whole or in part pursuant to sections 17(1)(a) and 18(1)(a) of the Act. The requester appealed the Ministry's denial of access.

In the course of mediation, a number of records were eliminated from the appeal, including those for which the section 18(1)(a) exemption was claimed. Further mediation was not successful and notice that an inquiry was being conducted to review the decision of the Ministry was sent to the Ministry, the appellant and the affected person. Representations were received from the affected person which raised the application of section 17(1)(c) in addition to 17(1)(a) of the Act. No other representations were received.

The records at issue consist of 97 purchase orders with particular pricing information severed (pages 1-97), eight entire pages of charts of pricing information, cost comparisons, technical details and photocopier features prepared by the affected person (pages 103-110) and 4 pages of Ministry-generated comparison charts of various photocopiers with the affected person's information severed (pages 99-100 and 146-147).

The sole issue in this appeal is whether the mandatory exemptions in sections 17(1)(a) and/or (c) of the Act apply to the records at issue.

Sections 17(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, 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;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency;

For a record to qualify for exemption under section 17(1)(a) or (c), the Ministry and/or the affected persons 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 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.

Failure to satisfy the requirements of any part of the test will render the section 17(1) claim invalid.

[Order 36]

The burden of proving the applicability of the section 17 exemption lies on the party resisting disclosure of the record (Orders 42, 101, P-228, M-10 and M-29). In the circumstances of this appeal, the Ministry and the affected person are the parties resisting disclosure; therefore, the responsibility to establish that the information is exempt under section 17 of the Act rests with them.

### **Part One**

In its representations the affected person states that the information contained in the records referring to product, unit pricing, market considerations and the costing structure of the proposal are technical and commercial information.

Commercial information is information which relates to the buying, selling or exchange of merchandise or services (Orders P-318, 179, 47).

In Order P-454, Assistant Commissioner Irwin Glasberg defined "technical information" as follows:

In my view, technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. While, admittedly, it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be

given a meaning separate from scientific information which also appears in section 17(1) of the Act.

I adopt this definition for the purposes of this appeal.

I have reviewed the records at issue in this appeal and I am satisfied that they contain both technical and commercial information. This satisfies part one of the test.

## **Part Two**

With respect to part two of the test, it must be established that the information was **supplied** to the Ministry and that it was supplied **in confidence**, either implicitly or explicitly. I am satisfied that all of the information in the record that has been withheld from the appellant was supplied to the Ministry by the affected person.

With respect to the issue of whether the information was supplied in confidence, the affected person refers to its Policy Manual which provides that information relating to product and pricing information and "the affairs of the Company pertaining to finance, business expansion, marketing planning, commercial or **government contracts** and all manufacturing/distribution agreements are confidential." [emphasis added]

Having reviewed the affected person's representations, the nature of the information at issue and the circumstances under which it was provided to the Ministry, in my view, the information at issue was supplied to the Ministry implicitly in confidence. Therefore, I find both requirements for part two of the test have been met.

## **Part Three**

In order to satisfy part three of the test, the affected person must present evidence that is detailed and convincing and must describe a set of facts and circumstances that would lead to a reasonable expectation that one or more of the harms in section 17(1) could occur if the information were disclosed (Order 36).

The affected person states that release of confidential pricing information would prejudice its financial position, as it would interfere with the competitive process at a time when the government is commencing its tendering process for the renewal of its Standing Agreement for collective purchasing of photocopiers. The affected person indicates that disclosure of the information at issue would give its competitors an undue advantage in the bidding process.

The affected person further states that, based on previous financial records, a substantial portion of the company's gross copier revenue has been generated from sales to provincial government ministries. Loss of this revenue would seriously prejudice the company's financial position.

Having reviewed the representations of the affected person and the contents of the records at issue, I am satisfied that, in the circumstances of this appeal, there is sufficient evidence to indicate that disclosure of the records could reasonably be expected to prejudice significantly the competitive position of the affected person. Accordingly, I find that part three of the test for exemption under section 17(1) of the Act has been met.

All three parts of the test having been satisfied, I find that the mandatory exemption in section 17(1)(a) applies to the records at issue in this appeal. As a result, it is not necessary for me to consider the applicability of section 17(1)(c).

**ORDER:**

I uphold the decision of the Ministry.

Original signed by:  
Asfaw Seife  
Inquiry Officer

November 8, 1993