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

ORDER M-169

Appeal M-9300035

City of Toronto

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ORDER

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 an application for a special event permit for the use of a public park. The City notified the applicant for the permit of the request and invited him to submit his views regarding disclosure of the records. The applicant objected to disclosure of the record claiming the exemption in section 10(1)(a) of the Act. The City decided to grant access to the record in its entirety and the applicant appealed that decision.

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 appellant, the City and the requester. Written representations were received from the appellant, the City and the requester.

The record at issue consists of a four-page form entitled "Application - Special Event in a City Park" and contains hand-written entries.

The sole issue arising in this appeal is whether the mandatory exemption provided by section 10(1)(a) of the Act applies to the record. Section 10(1)(a) 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,
>
> > prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

For a record to qualify for exemption under section 10(1)(a) of the Act, the party claiming that exemption must satisfy each part of the following 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 harm specified in (a) of section 10(1) will occur.

[Orders 36, M-29 and M-37]

The record is an application form which requires the insertion of particular information, including an outline of the activities intended to be presented; whether food or beverages will be sold; whether tents or marquees are to be erected; the dates and times of intended use; whether access for vehicles will be required; and what park equipment will need to be borrowed. The information provided by the appellant in this case is, on the face of the record, strictly limited to responding to the questions on the form. The appellant has made no specific reference to the information category or categories of section 10(1) in which he believes the information in the record falls. Based on my review of the record and the limited information provided to me, it is unclear whether part one of the test for exemption under section 10(1) has been satisfied.

Turning to the second part of the test, having examined the record and the representations provided to me, I am satisfied that the information contained in the record was supplied to the City by the appellant and, therefore, I find that the "supplied" aspect of part two of the test has been satisfied.

In regards to whether the information was supplied **in confidence**, part two of the test for exemption under section 10(1) requires the demonstration of a reasonable expectation of confidentiality on the part of the supplier at the time the information was provided. It is not sufficient that the business organization had an expectation of confidentiality with respect to the information supplied to the institution. Such an expectation must have been reasonable, and must have an objective basis. The expectation of confidentiality may have arisen implicitly or explicitly.

The appellant submits, in respect of the application, that he was:

> ... not aware that the information therein contained was liable to be disclosed to the public. As such, I am and I remain under the impression that the information contained in the subject application was given in confidence and that it was received by the City in confidence.

The appellant does not state that there was any explicit statement or agreement with the City concerning the confidentiality of the information in the application. There is nothing on the face of the application itself that would lead one to conclude that the appellant was supplying it subject to the limitation that it remain undisclosed. As such, no evidence has been provided that the information in the record was supplied explicitly in confidence.

The issue then turns to the question of whether the information can be said to have been supplied implicitly in confidence. The word "implicit" denotes a particular state of understanding: a belief in a certain set of implied facts. In his submissions the appellant has not pointed to any
particular circumstances or facts that would give rise to a reasonable expectation that the information was communicated to the City on the basis that it was confidential and was to be kept confidential.

The City in its representations points out that all applications for such special event permits where alcohol will be served (as in this case) are considered by the Neighbourhoods Committee in a public meeting pursuant to the City's By-law 736-92. The fact that the application and, therefore, the information contained in it, is to be reviewed by a committee militates against any implicit understanding or reasonable expectation that the subject information was supplied in confidence.

On the basis of the above, I find that the appellant has not established that the information in the record was supplied to the City in confidence, either explicitly or implicitly, and part two of the test has not been met.

Having found that the second part of the test has not been met, it is not necessary for me to deal with the third part of the test. However, as both the appellant and the requester have made representations on the point, I will address it.

The appellant submits that his "experience and know-how" constitutes a "blueprint" for a competitor to launch a competitive or conflicting event. The appellant then goes on to submit:

> There are a limited number of events that can be sponsored in the [area], and any new event may well detract from the sponsorship dollars on which [the appellant] very much depends.

The above submission relates specifically to the harm set out in section 10(1)(a) of the Act of, among other things, significantly prejudicing the competitive position of the appellant's organization.

Even if it had been found that the information contained in the record passed the first two tests under section 10, the appellant's submission concerning the third test would not succeed. Although the appellant's competitive position could well be significantly prejudiced by the staging of a competitive or conflicting event, the appellant still must link that expected harm to the disclosure of the information contained in the record.

As was submitted by the requester and as mentioned earlier in this order, all of the information set out in the application would become publicly evident upon the staging of the appellant's event. Any competitor who attended the appellant's event with a blank application form could, in all likelihood, duplicate the information contained in the appellant's application by merely observing the event and the site.

As such, disclosure of the information in the record **after** that information was made evident by the staging of the event itself could not affect the appellant's competitive position in the manner suggested by the appellant. In this appeal, the request was made some four months after the event was staged in public and, therefore, the appellant could not satisfy the third part of the section 10 test even if he had been able to satisfy the first two.

In summary, I find that the appellant has not met the requirements of parts two and three of the test, and the mandatory exemption set out in section 10(1) does not apply to the information contained in the record.

Although not raised by any parties to the appeal, the record does contain the home telephone number of the appellant, which may be considered to be personal information within the meaning of section 2(1) of the Act and, although not at issue in this appeal, ought not to be disclosed pursuant to section 14(1) of the Act.

ORDER:

1. I uphold the decision of the City to disclose the record, with the exception of the appellant's home telephone number, found on the first page of the record.

2. I order the City to disclose the record as described in Provision 1 of this order within 35 days of the date of this order and not earlier than the thirtieth (30th) day following the date of this order.

3. In order to verify compliance with this order, I order the City to provide me with a copy of the record which is disclosed to the requester pursuant to the above provisions, **only** upon request.

Original signed by: August 5, 1993
Holly Big Canoe
Inquiry Officer