



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-346**

**Appeal M-9400224**

**Regional Municipality of Ottawa-Carleton**



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## **NATURE OF THE APPEAL:**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Regional Municipality of Ottawa-Carleton (the Region) received a request for access to the schedule of prices submitted by the successful bidders in tender number HC-0194-MS-96 which related to the sale of medical supplies to the Region. The records at issue in this appeal consist of (1) a document entitled "Medical Supplies Tender - Schedule of Prices" and (2) two items numbered 112 and 124 in Addendum Number 3 to the main document. The Region decided to grant full access to the records to both requesters.

One of the successful bidders, (now the appellant) was notified of the Region's decision to grant access and has appealed this determination to the Commissioner's office. The appellant takes the position that its tender document be withheld from disclosure based on the third party exemption (section 10) contained in the Act.

A Notice of Inquiry was provided to the appellant, the original requester and the Region. Representations were received from the appellant and the Region only.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

The appellant has claimed that section 10(1) of the Act applies to the records at issue. For the records to qualify for exemption under this provision, the party resisting disclosure, in this case the appellant, 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 sections 10(1)(a), (b) or (c) will occur.

The failure to establish any part of this test means that the exemption will not apply.

### **Part One of the Test**

Previous orders have found that unit pricing information qualifies as financial and/or commercial information. Accordingly, I find that part one of the test has been satisfied.

## **Part Two of the Test**

The second part of the test has two elements. First, it must be shown that the information was **supplied** to the Region and secondly, that it was supplied **in confidence**, either implicitly or explicitly.

In their representations, the Region and the appellant submit that the information was supplied to the Region. I agree.

I must now determine whether this information was supplied to the Region in confidence, either implicitly or explicitly.

It has been established in previous orders of the Commissioner's office that part two of the test requires the demonstration of a reasonable expectation of confidentiality on the part of a third party at the time the information was provided. It is not sufficient that the appellant had an expectation of confidentiality with respect to the information supplied to the Region. Such an expectation must have been reasonable, and must have an objective basis. The expectation of confidentiality may have arisen implicitly or explicitly.

With respect to the unit prices, the appellant admits that in responding to the tender he did not specifically ask that pricing information be treated in a confidential manner. Rather, the supporting documents submitted by the appellant acknowledge that prices submitted in the Schedule of Prices "may become public information". The appellant also made this point in his initial submissions to the Region.

The appellant nonetheless submits that the records at issue were supplied to the Region in confidence because it is the Region's practice when opening the bids that only the total price, and not the unit prices, is disclosed at a public meeting.

In its representations, the Region states that it did not intend to treat the complete package of tender information in a confidential manner. In support of its position, the Region has submitted the notice provided to each bidder which contained the terms and conditions of the tender. This document states, in part, that "Submissions in response to the Tender may become public information ..." and adds that letters of reference, insurance certificates and documents relating to bonding requirements will be treated as confidential. While there is no specific reference to the treatment of unit pricing information, the Region submits that even before the enactment of the Act, it followed a long-standing and consistent practice of granting full access to requests for such information. This assertion is supported by the documents submitted by the appellant and his own experience.

Accordingly, it is my view that it is reasonable to conclude that the Region does not treat unit price information as confidential. Further, I find that the appellant's expectation of confidentiality was

unreasonable, given the nature of the circumstances surrounding the tendering process and the past history of the parties.

On this basis, I conclude that the appellant has not established that the record was supplied to the Region in confidence, either explicitly or implicitly. Consequently, 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. The exemption provided by section 10 of the Act does not apply to the record at issue and it should be disclosed to the requester.

**ORDER:**

1. I uphold the Region's decision to disclose the records at issue (the fifteen page "Medical Supplies Tender - Schedule of Prices" document, and Items 112 and 124 of Addendum Number 3 to the Schedule) to the requester.
2. I order the Region to disclose the records as described in Provision 1 of this order within thirty-five (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 the provisions of this order, I reserve the right to require the Region to provide me with a copy of the records which are disclosed to the requester pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ July 12, 1994