



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

# **ORDER P-750**

**Appeal P\_9400220**

**Ministry of Environment and Energy**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Téloc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested access from the Ministry of Environment and Energy (the Ministry) to the successful bid relating to a specific request for proposals (RFP). The record at issue consists of portions of the Press Clipping and Media Monitoring Services Proposal prepared for the Ministry by Mediascan Canada Inc. (Mediascan). The portions of the record which have been withheld are described in Appendix "A" to this order.

The Ministry notified Mediascan that a request had been received relating to its bid. Mediascan objected to disclosure of specific portions of the record. The Ministry relies on the following exemption in denying access to these portions of the record:

- third party information - section 17.

A Notice of Inquiry was provided to the parties to the appeal, namely the appellant, the Ministry and Mediascan. Representations were received from all three parties. In their representations, Mediascan consented to the release of information contained in Appendix "C" of the Proposal. Accordingly, I will order the Ministry to disclose this portion of the record to the appellant.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

The Ministry submits that disclosure of the information contained in the record could reasonably be expected to result in one of the harms set out in sections 17(1)(a) and (c) of the Act.

For a record to qualify for exemption under these provisions, the Ministry and/or Mediascan 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) or (c) of subsection 17(1) will occur.

### **Part One**

The Ministry and Mediascan both submit that the portions of the record which have been withheld contain commercial and technical information. Mediascan also indicates that the portions of the record relating to price structure and budget consist of financial information.

The appellant indicates that his company offers the same services as Mediascan. He submits, therefore, that his request cannot be characterized as requiring commercial, financial or technical information relating to the company.

The information withheld from the record details the specific and unique procedures which have been developed by Mediascan and specifically tailored services which are offered to potential clients. The record also contains cost estimates for its services and the names of some of Mediascan's clients. Mediascan indicates that these references have agreed to the use of their names only with respect to this specific tender and for no other purpose.

In my view, the portions of the records at issue contain financial and/or commercial information. Therefore, the requirements of part one of the test have been met.

### **Part Two**

With respect to part two of the test, two requirements must be met by the parties resisting disclosure. They must prove that the information was **supplied** to the Ministry and that it was supplied **in confidence** either explicitly or implicitly.

The Ministry and Mediascan submit that the record at issue was submitted to the Ministry in response to a RFP. I am satisfied that all of the information in the record that has been withheld from the appellant was supplied to the Ministry by Mediascan.

With respect to the issue of whether the information was supplied in confidence, Mediascan indicates that the portions of the record at issue contain strategic information. This material is provided to the Ministry in strict confidence on the understanding that providing detailed information about its services generates a trust relationship.

The Ministry states that although there is nothing in the RFP to indicate that information is received in confidence, the Ministry's standard policy is to always treat proposals as confidential unless the RFP specifies that there will be a public tender opening.

Having reviewed the representations and the nature of the information, 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 Ministry and/or Mediascan must present evidence that is detailed and convincing, and which describes a set of facts and circumstances which would lead to a reasonable expectation that one or more of the harms described in section 17(1)(a) or (c) would occur if the information was disclosed (Order 36).

Both Mediascan and the Ministry provide detailed representations relating to each portion of the record which has been withheld. In essence, they submit that the information which has been withheld is unique to Mediascan and has been developed over a number of years. Mediascan submits further that disclosure of this information would allow its competitors to use all or part of it for their benefit, to upgrade their working procedures, to increase or replicate press coverage and to copy or subvert the various agreements listed in the proposal.

The original requester indicates that he has requested similar records from another Ministry and has received complete access to them. He argues that this fact supports the view that Mediascan would not suffer harm should the portions of the record which have been withheld be disclosed.

He further submits that the contract to which the tender relates is about to expire and future tenders would not be dealt with according to the same requirements.

I am satisfied that I have been presented with sufficient evidence to conclude that disclosure of the portions of the record which have been withheld could reasonably be expected to prejudice significantly the competitive position of or interfere significantly with the contractual negotiations of Mediascan. Accordingly, I find that, with the exception of Appendix "C", all three parts of the mandatory exemption provided by section 17(1)(a) apply to the information at issue.

**ORDER:**

1. I order the Ministry to disclose to the appellant Appendix "C" to the record in its entirety.
2. I uphold the Ministry's decision to deny access to the remaining portions of the record.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the portion of the record disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_  
September 8, 1994

## APPENDIX "A"

### INDEX OF RECORDS AT ISSUE

PAGE NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED	DECISION ON RECORD
4 - 12	Print Coverage - details of service	17(1)	upheld
13 - 14	List of Stations	17(1)	upheld
18	Suggested course of action	17(1)	upheld
19 - 20	On-line Services	17(1)	upheld
21	References	17(1)	upheld
22 - 25	Cost estimates per item	17(1)	upheld
Appendix "A"	Modem Set-up Questionnaire	17(1)	upheld
Appendix "B"	Product Samples	17(1)	upheld
Appendix "C"	Mediascan Documentation	17(1)	disclose