



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-377

Appeals M-9400213 and M-9400214

Municipality of Metropolitan Toronto



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NATURE OF THE APPEALS:

These are appeals under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Municipality of Metropolitan Toronto (the Municipality) received a request for the questions, answers and all other documentation used for the purpose of conducting interviews for three separate job competitions. All three job competitions were posted and filled internally. The appellant was an unsuccessful candidate in all three job competitions.

The Municipality granted access to the appellant's own answers, test scores and those questions which were of a non-technical nature. Access was denied to the technical questions, anticipated answers and technical diagrams on which some of the questions were based.

The records that remain at issue in these appeals are the following:

- (1) Job Call 047-23 - interview questions and key (pp. 88-100), handwritten exam questions and answers (pp. 101-104 and 106-125), exam questions (pp. 181-183)
- (2) Job Call #93-005 - questions and answers (severed portions of pp. 15-25, 68-71, and all of pp. 75 and 76)
- (3) Job Call #88-868 - questions and answers (severed portions of pp. 23 and all of pp. 13-16 and 22)

The information in the records consists of questions and proposed answers for the positions of Chief Works Supervisor, Works Supervisor, Grade 2 and Works Supervisor, Grade 1-D.

The Municipality relies on the following exemption to deny access to the records:

- economic and other interests - section 11(c)

Appeal Numbers M-9400213 and M-9400214 were assigned to the appeals. Because the institution, the appellant and the issues are the same, this order will dispose of both appeals.

A Notice of Inquiry was provided to the Municipality and the appellant. Representations were received from the Municipality only.

DISCUSSION:

ECONOMIC AND OTHER INTERESTS

A head may refuse to disclose a record that contains,

information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an

institution;

In order to qualify for exemption under section 11(c) of the Act, the Municipality must successfully demonstrate a clear and direct linkage between the disclosure of the information contained in the records and the harms alleged which could result in prejudice to the Municipality's economic interests or competitive position.

Furthermore, the evidence to support such an expectation must be "detailed and convincing".

The Municipality submits that it has the largest public works department in Canada and that it is imperative to the safe functioning of the utility that it be able to attract technically competent supervisory staff. The Municipality claims that employees functioning in supervisory positions are expected not only to have the technical expertise and experience in order to supervise other employees often working with high voltage equipment but are also responsible for the safety of other employees. Further that if the equipment is not properly maintained, it would result in increased repair and replacement costs. Service to its customers would be disrupted and the economic cost to the Municipality would be significant.

The Ministry states that disclosure of the information in the records would affect its ability to comply with its obligations under section 14(2)(b) of the Occupational Health and Safety Act, "when appointing a supervisor, [to] appoint a competent person."

The Municipality submits that it is competing for highly qualified candidates in a specialized field and, therefore, disclosure of the information in the records would prejudice its competitive position, namely its ability to attract highly skilled technical staff. The Municipality claims that if the information in the records was disclosed, potential [unqualified] candidates would be able to learn the correct answers and the Municipality would be in an untenable situation of having hired incompetent staff for these senior supervisory positions.

The Municipality claims that the questions and answers at issue are carefully developed to cover all areas of the requisite technical knowledge, to ensure the integrity of the system and to maintain its position in a competitive marketplace. I note, however, that the records at issue relate to job competitions held internally within the Municipality. The Municipality also indicated that it had considered developing other questions but only two to four other sets could possibly be developed to test candidates for these particular positions.

I have carefully considered the information in the records together with the representations of the Municipality and I find as follows:

1. While the Municipality has demonstrated its obligations under the Occupational Health and Safety Act to hire competent supervisory staff to protect the health and safety of its employees and to maintain dependable service to its customers, it has not provided me with detailed and convincing evidence of the specific economic harm alleged to result from disclosure of the information in the records.

2. The Municipality has failed to provide me with detailed and convincing evidence on how disclosure of the questions and answers used for a job competition could specifically prejudice its competitive standing in the marketplace.
3. The Municipality has not provided me with any evidence to make the necessary connection between the disclosure of the information in the records and any specific prejudice which could reasonably be expected to result to its economic interests or competitive position.
4. I find that the records do not qualify for exemption under section 11(c) of the Act.

ORDER:

1. I order the Municipality to disclose the records to the appellant in their entirety within fifteen (15) days following the date of this order.
2. In order to verify compliance with Provision 1 of this order, I reserve the right to require the Municipality to provide me with a copy of the records which are disclosed to the appellant.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

August 23, 1994