



Information and Privacy
Commissioner/Ontario

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

ORDER P-801

Appeal P-9400292

Metro Toronto Convention Centre



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Culture, Tourism and Recreation (the Ministry) received a request for access to information about the proposed expansion of the Metro Toronto Convention Centre (the Convention Centre). The Ministry transferred the request to the Convention Centre, pursuant to section 25(1) of the Act.

The Convention Centre granted partial access to the records. Access was denied to the remaining records pending notification of a named company (the Company) whose interests may be affected by the disclosure of this information.

The Company objected to the disclosure of two letters from the Company addressed to the Convention Centre (the records). Despite the objections, the Convention Centre decided to grant the requester access to the records.

The Company, represented by counsel, appealed the decision of the Convention Centre, on the basis of the mandatory exemption in section 17(1) of the Act (third party information).

A Notice of Inquiry was provided to the Company, the requester and the Convention Centre. Representations were received from the Company only.

DISCUSSION:

THIRD PARTY INFORMATION

The Company claims that disclosure of the records would prejudice its competitive position or interfere significantly with its contractual negotiations with the Convention Centre and that the negotiations are still ongoing (section 17(1)(a)).

For a record to qualify for exemption under this section, the party resisting disclosure, in this case, the Company, 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 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) of section 17(1) will occur.

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

Part One of the Test

The Company submits that the records contain commercial and financial information because they relate to the expansion of the Convention Centre's facility and they "address the financial relationship" with the Convention Centre. I have reviewed the records. In my view, only a very small portion of the records actually relates to the commercial arrangement between the Company and the Convention Centre. I find that it is only these parts that contain commercial information. Part one of the test has, therefore, been met with respect to part of the records.

Part Two of the Test

In order for the second part of the section 17(1) test to be satisfied, the records must have been **supplied to the Convention Centre by the Company**, either explicitly or implicitly **in confidence**.

As I have noted above, the records comprise letters from the Company to the Convention Centre. The Company states that while the records are not marked "confidential", they contain commercial information supplied to the Convention Centre in confidence during the course of negotiations. The Company submits that it had a reasonable expectation that information supplied during the course of negotiations would be kept confidential and that this expectation is a reasonable expectation.

Previous orders have addressed the question of whether information which is the product of a negotiation process can be "supplied" by the third party to the institution. These orders concluded that this type of information will not qualify as originally having been "supplied" for the purposes of section 17(1) of the Act. I adopt this approach for the purposes of this appeal.

Based on my review of the records and the representations of the Company, I find that the information in the records reflects the terms negotiated between the parties, not information supplied by the Company to the Convention Centre. Nor would disclosure of the records reveal information actually supplied to the Convention Centre by the Company. Therefore, I do not accept that the information was "supplied" or would reveal information that was supplied by the Company to the Convention Centre for the purposes of section 17(1). Accordingly, part two of the section 17(1) test has not been met.

In my view, the records do not qualify for exemption under section 17(1) of the Act.

As I have noted before, all three parts of the test must be satisfied in order for the records to qualify for exemption under section 17(1). Therefore, I do not need to consider the third part or the balance of the second part of the test.

However, even if I were to find that the "supplied" element of part two of the test had been met, I have been provided with no evidence to indicate that this was done in confidence, either explicitly or implicitly.

Further, part three of the test requires the Company to establish a clear and direct link between the disclosure of the information in the records and the harm that is alleged. The evidence in this regard must be clear and convincing. Again, I would note that there is no evidence before me to suggest that the disclosure of the information in the records could be expected to result in any of the harms enumerated under section 17(1)(a).

Accordingly, the records do not qualify for exemption under section 17(1) of the Act.

ORDER:

1. I uphold the decision of the Convention Centre.
2. I order the Convention Centre to disclose the records to the requester within thirty-five (35) days of the date of this order but not earlier than the thirtieth (30th) day after the date of this order.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Convention Centre to provide me with a copy of the records which are disclosed to the requester pursuant to Provision 2.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ November 23, 1994