



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-460

Appeal M-9400407

City of Toronto



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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 appellant requested information from the City of Toronto (the City) relating to specific clauses in the rental agreements which pertain to three identified commercial properties. The clauses at issue relate to rent, parking, utilities, the length of the lease and/or their termination dates. The information is found in a lease history report, two leases and one lease amending agreement.

The City relies on the following exemptions to withhold access to this information:

- economic and other interests - sections 11(c) and (d)

A Notice of Inquiry was provided to the City, the appellant, and the three lessees (the affected parties). Representations were received from the City, the appellant and two of the affected parties.

PRELIMINARY MATTER:

In their representations, one of the affected parties made arguments which suggested that the records qualified for the mandatory exemption found in section 10 of the Act. A supplemental Notice of Inquiry inviting comment on the application of this section was provided to all of the parties to the appeal. No additional representations were received. Having reviewed the records and the information before me, it is my view that the records do not qualify for exemption under section 10 of the Act.

DISCUSSION:

ECONOMIC AND OTHER INTERESTS

Sections 11(c) and (d) of the Act state:

A head may refuse to disclose a record that contains,

- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;

In order to qualify for exemption under sections 11(c) or (d) of the Act, the City must successfully demonstrate a clear and direct linkage between the disclosure of the information contained in the records and the harms alleged.

The City submits that the information contained in the records could be used by competing landlords to their advantage and its disclosure could prejudice significantly the negotiations with other tenants, thereby adversely affecting the City's financial and economic interests. By way of example, the City submits that if

the amount of rent were known, competing landlords may entice the affected parties with a better space at a lower rent, resulting in significant financial losses to the City.

I have reviewed the representations of the City in this context and find that they do not present detailed or convincing evidence linking the suggested potential harm to disclosure of the records. I find that the City has failed to demonstrate that there is a reasonable expectation of harm to its economic or financial interests if the records at issue are disclosed. Therefore, the records do not qualify for exemption under sections 11(c) or (d).

ORDER:

1. I order the City to disclose the records in their entirety to the appellant within thirty-five (35) days after the date of this order but not earlier than the thirtieth (30th) day after the date of this order.
2. In order to verify compliance with this order, I reserve the right to require the City to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ February 9, 1995