



Information and Privacy
Commissioner/Ontario

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

ORDER M-574

Appeal M_9500216

Township of West Lincoln



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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 Township of West Lincoln (the Township) received a request for information about the following:

1. The Township of West Lincoln's involvement in procurement of land, if any, in regards to Maple Manufacturing and its fair market value.
2. West Lincoln's Township arrangement with any other provincial or federal jurisdiction in regards to funding and/or partnership arrangement in regards to Maple Manufacturing.
3. The total dollar value combined, the Township of West Lincoln contributed to the erection of [buildings] in regards to Maple Manufacturing using tax dollars.
4. The Township of West Lincoln's financial involvement in dollars in regards to Maple Manufacturing.
5. The Township of West Lincoln's sale or lease arrangements with Maple Manufacturing on sale and/or lease of lands and buildings, i.e. terms and conditions.

In accordance with section 21 of the Act, the Township notified a third party whose interests may be affected by the disclosure of records which are responsive to the request. The affected party requested that the records not be disclosed.

The responsive records in this appeal are an 18 page lease agreement dated November, 1993; a three page construction financing agreement dated November, 1993; a 27 page construction agreement dated November, 1993; a three page amendment to lease agreement dated March 10, 1994 and the Township's annual financial report for the year 1994. The Township claimed the application of the following exemptions contained in the Act to deny access to the records:

- third party information - section 10(1) - for the agreements
- information to be published - section 15(b) - for the financial report

The requester appealed this decision. A Notice of Inquiry was sent to the appellant, the Township and the affected party. Representations were received from all three parties. The Township provided the appellant with a copy of its 1994 annual financial report and withdrew its reliance on section 15(b). Accordingly, the only outstanding issue in this appeal is whether section 10(1) of the Act applies to the agreements.

DISCUSSION:

THIRD PARTY INFORMATION

The Township and the affected party claim that section 10(1) of the Act applies to exempt the records at issue from disclosure. Specifically, the affected party cites sections 10(1)(a) and (c).

For the records to qualify for exemption under sections 10(1)(a), (b) or (c) of the Act, the parties resisting disclosure, in this case the Township and the affected party, 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.

Failure to establish the requirements of any part of this test will render the section 10(1) exemption claim invalid.

Part One of the Test

The records contain information about financial arrangements between the affected party and the Township involving the construction of a building for use by the affected party. In my opinion, all of this information may be properly identified as either commercial or financial information and accordingly, part one of the test has been satisfied.

Part Two of the Test

The second part of the test has two elements. First, the party resisting disclosure must establish that the information was **supplied** to the Township and second, that it was supplied **in confidence**, either implicitly or explicitly.

A number of previous orders have addressed the question of whether information contained in an agreement entered into between an institution and an affected party was supplied by the affected party. In general, the conclusion reached in these orders is that, for such information to have been supplied to an institution, the information contained in the record must be substantially the same as that originally provided by the affected party. Since the information contained in an agreement is typically the product of a negotiating process between the institution and a third party, that information will often not qualify as originally having been "supplied" for the purposes of section 10(1) of the Act. [Orders 36, 87 and P-385]

However, other orders issued by the Commissioner's office have held that the disclosure of information contained in a record would **reveal** information "supplied" by an affected party, within the meaning of section 10(1) of the Act, if its disclosure would permit the drawing of

accurate inferences with respect to the information actually supplied to the institution. [Orders 203, P-388 and P-393]

The affected party submits that the records contain the identical information which it had supplied to the Township in the course of the negotiation of the agreements which are the subject records. I have carefully reviewed the records and, in my view, the disclosure of the information contained in them would either reveal the actual information provided to the Township or would allow for the drawing of accurate inferences with respect to the information actually supplied by the affected party to the Township.

I must now determine if this information was supplied to the Township in confidence, either implicitly or explicitly. In its representations, the affected party states that direct discussion was held with a Township representative regarding the issue of confidentiality at the time the agreements were entered into and it was mutually understood that the dealing would be held in confidence. In addition, the records are stamped "confidential".

Having reviewed the records and the submissions from the parties, I find that the records at issue contain information which was supplied to the Township explicitly in confidence, and accordingly, part two of the test has been satisfied.

Part Three of the Test

In order to meet part three of the test, the parties resisting disclosure must demonstrate that the prospect of disclosure gives rise to the reasonable expectation that one of the harms specified in sections 10(1)(a) or (c) will occur.

The affected party submits that disclosure of the information contained in the records would result in the disclosure to its competitors and customers of confidential information about the affected party's business which is not otherwise available to them. This would place the affected party at a competitive disadvantage within its industry and harm its business relationship with its customers.

I find that I have been provided with sufficient evidence to establish a reasonable expectation that the harms contemplated by section 10(1)(a) or (c) would occur should the records be disclosed. I find, therefore, that part three of the test has been satisfied. Accordingly, I find that the records qualify for exemption under section 10 of the Act.

ORDER:

I uphold the Township's decision.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ July 27, 1995