



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1162

Appeal P-9500646

Ministry of Health



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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Health (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The requester sought access to copies of the following two Hepatitis-B tenders that were awarded in 1994:

- (1) the universal vaccination tender #038010 with a closing date of April 28, 1994; and
- (2) the expanded guidelines tender #039943 with a closing date of December 29, 1994.

Pursuant to section 28 of the Act, the Ministry notified the company that was awarded the tenders (the Company). The Company objected to the release of any of the information contained in the tender documents on the basis that to do so would be a disclosure of its confidential commercial information which could reasonably be expected to result in harm to the Company (section 17(1) of the Act).

The Ministry then decided to disclose the first page of the tender documents, which includes the successful bid prices, to the requester. The Company appealed this decision.

This office sent a Notice of Inquiry to the Ministry, the requester and the Company. Representations were received from the Ministry and the Company.

The sole issue to be determined in this appeal is whether the information contained on the first page of the tender documents is subject to the mandatory exemption in section 17(1) of the Act.

DISCUSSION:

THIRD PARTY INFORMATION

Section 17(1) of the Act states, in part:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency;

In this case, because the Company objects to the disclosure of the information the Ministry has decided to release, the Company bears the burden of proving that each element of this section has been met.

Type of Information

The information is found on a standard form page entitled "Request for Tender" prepared by the Ministry's Supply and Financial Services Branch. Some of the information has been completed by the Ministry such as the tender numbers, mailing address for tender documents and instructions for mailing. The bottom of the page includes a section which has been completed by the Company. This section contains the bidder number, Company name, position and telephone number of the Company's contact person and the name and signature of the authorized Company official. It also includes the "Grand Total" of the bid.

In my view, it is only the "Grand Total" or total bid prices for each tender which constitute the type of information set out in section 17(1). I find that these numbers constitute the commercial information of the Company as they relate to the purchase, by the Ministry, and sale, by the Company, of certain products.

Supplied in Confidence

The Company must demonstrate that the total bid prices were supplied to the Ministry and that they were supplied in confidence, either explicitly or implicitly.

It is clear that the total bid prices are figures provided to the Ministry by the Company. The Ministry states that when tenders are sent to it, the total bid prices are submitted implicitly in confidence. The Company submits that it provided such information to the Ministry in confidence. I accept these submissions of the Ministry and the Company and find that the total bid prices were supplied by the Company to the Ministry implicitly in confidence.

Harms

The Company submits that, in this case, disclosure of the total bid prices would reveal its market sensitive pricing and bidding strategies. The Requests for Tender cover a specified quantity of a single product item. The Company states that by dividing the total bid price by the tender quantity in each case, one can easily calculate the unit prices of its successful bids. It is the position of the Company that such information has been previously recognized by this office as being subject to the mandatory exemption in section 17(1) of the Act.

I accept that the information at issue in this appeal may be more aptly characterized as "unit" prices as opposed to "total" prices. It is also true that, in general, in other appeals decided under the Act, unit prices have been found to be exempt from disclosure while total or global figures have been disclosed. However, each case must be decided on its own facts. Moreover, the party objecting to the disclosure of the information at issue must provide sufficient evidence to demonstrate that one of the harms set out in sections 17(1)(a), (b) or (c) could reasonably be

expected to occur should the information be released. As I have previously indicated, it is the Company which bears this burden in this case.

The Ministry states that it has always been its practice to make available the name of the successful bidder and the successful bid total once the tender has been awarded.

In this case, the Ministry states that the total bid prices and the name of the successful bidder, the Company, have been publicized on a service called the Open Bidding Service. This is a computerized on-line tendering service utilized by all Ontario government ministries to tender for goods over \$25,000 and services over \$100,000.

In my view, there can be no reasonable expectation of any of the harms described in section 17(1) arising from disclosure of information which has already been disclosed or where it is available to the public. In this case, given that the total bid prices have been previously disclosed, this information fails to qualify for exemption under section 17(1) of the Act.

ORDER:

1. I uphold the decision of the Ministry to disclose the first page of the tender documents including the total bid prices to the requester.
2. I order the Ministry to send a copy of these pages to the requester by **May 14, 1996** and not before **May 9, 1996**.
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 pages which are disclosed to the requester pursuant to Provision 2.

Original signed by: _____

Anita Fineberg
Inquiry Officer

April 9, 1996