



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

# ORDER M-783

Appeal M\_9600074

Town of Petrolia



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## NATURE OF THE APPEAL:

The Town of Petrolia (the Town) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to information relating to an Administrative Report on Curbside Refuse Tenders dated December 16, 1993 (the report) and the Administrative Report on the Refuse Tender with the Town's current contractor.

The Town granted access to the information regarding its current contract. Access was denied to the report, in its entirety. The requester, whose company was unsuccessful in obtaining the contract for garbage collection, appealed the decision to deny access.

The record consists of a two-page report entitled "Administrative Report, Subject: Curbside Refuse Tender 1993" prepared by the Town's Commissioner of Works. The Town denied access to the report pursuant to the following exemptions under the Act:

- advice or recommendations - section 7(1)
- relations with other governments - section 9(1)(b)
- third party information - sections 10(1)(a), (b) and (c)
- economic and other interests - sections 11(c) and (d)
- invasion of privacy - section 14(1)

A Notice of Inquiry was provided to the appellant, the Town and two other companies referred to in the report (the affected parties). Representations were received from the appellant, the Town and one of the affected parties (the affected party).

## DISCUSSION:

The Town has claimed that the exemptions provided by sections 7(1), 9(1)(b), 10(a), (b) and (c), 11(c) and (d) and 14(1) apply to exempt the report from disclosure. I have reviewed the representations submitted by the Town. The Town has made no representations on the application of sections 9(1)(b) and 11(c) and (d). Since these are discretionary exemptions, I will not consider them further.

I will now consider the possible application of the remaining exemptions claimed by the Town, beginning with the mandatory exemption in section 10(1) of the Act.

## THIRD PARTY INFORMATION

Sections 10(a), (b) or (c) of the Act provide as follows:

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, if 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 order for the exemption to apply, the Town and/or the affected party must provide evidence that each of these elements are present in the report.

### **TYPE OF INFORMATION**

Neither the Town nor the affected party has made any submissions on the type of information contained in the record. However, it is clear from my review of the record that the price per tonne of refuse collected, as submitted by each of the four companies that were involved in the tendering process, qualifies as financial and/or commercial information for the purposes of the section 10 definition. I accept that the record contains financial and commercial information.

### **SUPPLIED IN CONFIDENCE**

In order to satisfy this element of the exemption, the Ministry and/or the affected party must show that the information was **supplied** to the Ministry, either implicitly or explicitly **in confidence**. The affected party states that the information regarding its company was provided to the Town in “the strictest of confidence”. The Town submits that the record contains information that was supplied to its staff. The Town has provided no evidence on the confidentiality or lack thereof of its tendering process. On the basis of the affected party’s submissions, I am prepared to accept that there was a reasonable expectation, on the part of the affected party, that this information would be held in confidence. I find therefore that the information at issue was supplied to the Town by each of the affected parties, either implicitly or explicitly in confidence.

### **HARMS**

In order to meet part three of the section 10(1) requirement, the Town and/or the affected party must demonstrate that one of the harms enumerated in sections 10(1)(a), (b) or (c) could reasonably be expected to result from disclosure of the information. The onus or burden of proof lies on the parties resisting disclosure of the record, in this case, the Town and the affected party. Neither the Town nor the affected party has made any submissions on this part. Accordingly, I find that none of the harms specified in sections 10(1)(a), (b) and (c) have been established.

Since it is necessary to satisfy **all three elements** of section 10(1) in order for the exemption to apply, I find that the information in the record is not exempt.

The Town has also claimed that other exemptions apply to the record. I will now consider the possible application of sections 7(1) and 14(1) of the Act.

### **ADVICE OR RECOMMENDATIONS**

The Town has claimed that the information in the record is exempt from disclosure pursuant to section 7(1) of the Act. This section reads as follows:

A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

Previous orders of the Commissioner have determined that advice and recommendations for the purpose of section 7(1) must contain more than just information. To qualify as “advice” or “recommendations”, the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process. Information that would permit the drawing of accurate inferences as to the nature of the actual advice or recommendation given also qualifies for exemption under section 7(1) of the Act (Orders 118 and P-1124).

The Town submits:

[t]he Administrative Report is a report from Staff to Council for their information, as requested by Council. The information is the findings, etc. from Staff reported to Council for their information and use, and is to protect people, business, Ministries etc. who gave information to the staff in confidence, to report to Council.

In my view, the purpose of the exemption is to protect the free-flow of advice and recommendations within the deliberative process of government decision-making and policy-making.

I have carefully reviewed the information in the report. I find that there are only three sentences on the second page of the report, under the heading RECOMMENDATIONS, that qualify as recommendations or advice for the purpose of section 7(1). I find therefore that this information is exempt from disclosure under section 7(1) of the Act. I have highlighted the three sentences on the copy of the record provided to the Town’s Freedom of Information and Privacy Co\_ordinator. The highlighted portions of the record should not be disclosed.

### **PERSONAL INFORMATION AND INVASION OF PRIVACY**

The Town claims that disclosure of the information in the record would constitute an unjustified invasion of personal privacy of individuals other than the appellant under sections 14(2)(f) and (h) and section 14(3)(g) of the Act. I will therefore first review the record to determine whether the information qualifies as personal information.

As I have indicated previously, the record is a two-page report from the Town's Commissioner of Works regarding the bids received from the four companies. It also contains additional information about the appellant's company. Based on the evidence before me, I note that the appellant is the principal operator of the company, one of four companies involved in a tender process for a garbage collection contract with the Town.

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

I find that the record contains references to individuals including the appellant and that this information pertains to businesses, business relationships and the quality of services provided by the appellant's company. The record also contains information that relates to employees and senior administrators of other towns, contacted by the author of the report. I find that this information appears in the context of the individuals' employment or professional responsibilities and positions and falls outside the scope of personal information.

Therefore, in the circumstances of this appeal, I find that the information in the record does not qualify as "personal information" as defined in section 2(1) of the Act. Therefore, sections 14(2)(f) and (h) and section 14(3)(g) are not applicable to the information in the record.

In summary, I have found that sections 10(1) and 14(1) do not apply to the information in the record and that section 7(1) applies only to three sentences on the second page of the record. The highlighted portions should not be disclosed to the appellant. The remaining non-highlighted parts of the record should be disclosed to the appellant.

## **ORDER:**

1. I uphold the Town's decision to deny access to the three sentences on the second page of the record, as highlighted on the copy of the record provided to the Town's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I order the Town to disclose the remaining non-highlighted portions of the record to the appellant by sending him a copy of the record not later than **July 11, 1996** and not earlier than **July 8, 1996**.
3. In order to verify compliance with the terms of this order, I reserve the right to require the Town to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ June 6, 1996