



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

ORDER M-764

Appeal M_9500634

Fort Frances-Rainy River Board of Education



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NATURE OF THE APPEAL:

The Fort Frances-Rainy River Board of Education (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the “formula work sheets” used to determine the value of four specific contracts for the delivery of school bus services to the Board. The Board located the requested record and, following notification of four individuals in accordance with section 21 of the Act, denied access to portions of it. Access to the total value of each of the four contracts was granted. The Board claimed that the undisclosed information contained in the record was exempt from disclosure under the following exemptions contained in the Act:

- third party information - section 10(1)
- valuable government information - section 11(a)
- economic and other interests - section 11(c)

The appellant appealed the Board’s decision. A Notice of Inquiry was provided to the appellant, the Board and to the four successful contractors for the supply of school bus services (the affected persons). Representations were received from the Board, the appellant and one of the affected persons.

As it was determined that the record may contain the personal information of the affected persons, a Supplementary Notice of Inquiry soliciting the views of the parties on the possible application of section 14(1) of the Act was forwarded to the appellant, the Board and the four affected persons. Supplementary representations were received from the appellant and all four of the affected persons.

DISCUSSION:

VALUABLE GOVERNMENT INFORMATION/ECONOMIC AND OTHER INTERESTS

The Board has not made any submissions with respect to the application of sections 11(a) and (c) to the record. In the absence of any evidence to substantiate its claim regarding these exemptions, I find that sections 11(a) and (c) do not apply.

THIRD PARTY INFORMATION

For a record to qualify for exemption under sections 10(1)(a), (b) or (c) of the Act, the Board or the affected persons must satisfy each part of the following three-part test:

1. the record must reveal information which is a trade secret or scientific, technical, commercial or financial information; **and**
2. the information must have been supplied to the Board in confidence, either explicitly or implicitly; **and**

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of section 10(1) will occur.

Part One of the Test

The Board submits that the record contains dollar amounts which are financial information. The affected person who submitted representations on this issue characterizes the information as “personal financial information”.

I have examined the information contained in the record and agree that it qualifies as commercial or financial information within the meaning of section 10(1).

Part Two of the Test

The Board and the affected person submit that the affected persons supplied the information which is contained in the record to the Board implicitly in confidence. The appellant has not addressed this aspect of the section 10(1) test in his arguments. I am prepared to accept that there existed an implicit understanding of confidentiality between the Board and the affected persons at the time this information was supplied.

Part Three of the Test

The Board submits that “Disclosure of these records would significantly interfere with the competitive position of the ‘named individuals’ (affected persons) should the Board choose to tender any of these routes in the future”. The Board has not, however, explained **how** the disclosure of the information contained in the record would lead to the harms in sections 10(1)(a), (b) or (c) occurring. Nor has the affected person who submitted representations on this issue explained **how** his competitive advantage might be lost should the records be disclosed.

As such, I am unable to determine that the disclosure of the record could reasonably be expected to result in significant prejudice to the affected person’s competitive position or cause undue loss or gain to any other individual.

I find, therefore, that part three of the test has not been met and the record does not qualify for exemption under section 10(1) of the Act.

INVASION OF PRIVACY:

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual. I have examined the record and find that only those portions which describe the insurance and licensing costs submitted by each of the affected persons may properly be characterized as their personal information. The figures listed under these headings represent projected costs to be borne by the affected persons in the operation of a school bus on one of the Board’s routes. I find that the remaining information describing the capital cost of a bus, fuel costs, maintenance and labour allowances as well as administrative fees

does not qualify as personal information as it was fixed by the Board and forms part of its contract formula. This information should, therefore, be disclosed to the appellant.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 14(1)(f), which permits disclosure if it “... does not constitute an unjustified invasion of personal privacy”.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies.

The appellant submits that the exception provided by section 14(4)(b) of the Act applies to the information. This section states:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

discloses financial or other details of a contract for personal services between an individual and an institution.

As noted above, the only variables contained in the record which were provided by the contractor were the insurance and licence costs. These dollar amounts were then combined with the costs fixed by the Board to arrive at the total contract price. The successful contractor then entered into an agreement for the supply of transportation services to the Board, based on the total contract price incorporating all of the variables.

I find that the insurance and license costs which were supplied to the Board by the affected persons and reflected in the record may properly be characterized as information which discloses the financial details of a contract for the supply of personal services within the meaning of section 14(4)(b). Accordingly, the disclosure of this information would not constitute an unjustified invasion of the personal privacy of the affected persons and should be disclosed to the appellant.

ORDER:

1. I order the Board to disclose the record to the appellant by providing him with a copy by **June 7, 1996** but not before **June 3, 1996**.
2. In order to verify compliance with the provisions of this order, I reserve the right to require the Board to provide me with a copy of the record which is disclosed to the appellant in accordance with Provision 1.

Original signed by: _____ May 3, 1996
Donald Hale
Inquiry Officer