



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

ORDER M-828

Appeal M_9600122

Metropolitan Toronto Police Services Board



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NATURE OF THE APPEAL:

The Metropolitan Toronto Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the final contract entered into between the Police and a named company (the company), as well as the tender documents submitted by the company in response to a tender call for the operation of two Collision Reporting Centres. The Police located the responsive records and decided to grant access to the contract in its entirety and to portions of the tender documents.

Pursuant to section 21 of the Act, the Police contacted the company and advised it of its decision to disclose portions of the tender documents. The Police provided the requester with a copy of the contract between the Police and the company. The company, now the appellant, appealed the Police's decision to grant the requester access to any of the information contained in the tender documents, claiming the application of the following exemptions contained in the Act:

- law enforcement - sections 8(1)(a), (c) and (g)
- endanger life or safety - section 8(1)(e)
- security - section 8(1)(i)
- facilitate commission of an unlawful act - section 8(1)(l)
- third party information - section 10(1)
- danger to safety or health - section 13
- invasion of privacy - section 14

A Notice of Inquiry was provided to the Police, the appellant and the original requester. Representations were received from the appellant only. The Police have taken the position that the records which it decided to disclose are not subject to any of the exemptions in the Act.

The records at issue in this appeal consist of only those portions of the tender documents which the Police decided to disclose to the original requester. Accordingly, only Pages 1-5, 8-11, 27-31, 34-40, 46-55, 57-64, 67-70, 86-91, 94-99, 105-114 and 116-118, in full, and portions of Pages 6, 56, 65 and 115 are at issue. The Police decided not to disclose the remaining portions of the tender documents and this decision was not appealed by the original requester.

PRELIMINARY ISSUE:

RAISING OF DISCRETIONARY EXEMPTIONS BY THE APPELLANT

In a letter sent in response to the section 21 notice by the Police, the appellant raised the application of sections 8(1)(a), (c), (e), (g), (i), (l) and 13 to that portion of the record which the Police had proposed be disclosed to the original requester. In Order P-1137, Inquiry Officer Anita Fineberg addressed a similar situation where an affected party to an appeal raised the possible application of discretionary exemptions contained in the Freedom of Information and Protection of Privacy Act. In that order, Inquiry Officer Fineberg held that:

The Act includes a number of discretionary exemptions within sections 13 to 22 which provide the head of an institution with the discretion to refuse to disclose a record to which one of these exemptions would apply. These exemptions are designed to protect various interests of the institution in question. If the head feels that, despite the application of an exemption, a record should be disclosed, he or she may do so. In these circumstances, it would only be in the most unusual of situations that the matter would come to the attention of the Commissioner's office since the record would have been released.

The Act also recognizes that government institutions may have custody of information, the disclosure of which would affect other interests. Such information may be personal information or third party information. The mandatory exemptions in sections 21(1) and 17 of the Act [which are the equivalent of sections 14(1) and 10 in the municipal Act] respectively are designed to protect these other interests. Because the Office of the Information and Privacy Commissioner has an inherent obligation to ensure the integrity of Ontario's access and privacy scheme, the Commissioner's office, either of its own accord, or at the request of a party to an appeal, will raise and consider the issue of the application of these mandatory exemptions. This is to ensure that the interests of individuals and third parties are considered in the context of a request for government information.

Because the purpose of the discretionary exemptions is to protect institutional interests, it would only be in the most unusual of cases that an affected person could raise the application of an exemption which has not been claimed by the head of an institution. Depending on the type of information at issue, the interests of such an affected person would usually only be considered in the context of the mandatory exemptions in section 17 or 21(1) of the Act.

In light of the fact that the information at issue in this appeal is limited to only a portion of the tender documents, I find that the interests which the appellant seeks to protect are adequately addressed by sections 10 and 14 of the Act. This is not the type of unusual case in which the appellant's interests go beyond the protection afforded by the sections 10 and 14 exemptions. For this reason, I am not prepared to address the possible application of the discretionary exemptions claimed by the appellant to the information at issue.

DISCUSSION:

THIRD PARTY INFORMATION

The appellant submits that those portions of the records which remain at issue are exempt from disclosure under sections 10(1)(a), (b) and (c) of the Act. For a record to qualify for exemption under section 10(1), the appellant 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 Police 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 (a), (b) or (c) of section 10(1) will occur.

All three parts of the above test must be met in order for the exemption to apply.

Part One of the Test

I have reviewed the records at issue and find that only the following pages contain information which qualifies as technical, commercial or financial information within the meaning of section 10(1):

Pages 5, 35 (which is the same as Page 95), Page 51 (which is the same as Page 110), Page 52 (which is the same as Page 111), Page 53 (which is the same as Page 112), Page 55 (which is the same as Page 113), Page 56 and Pages 115-118.

The remaining pages do not contain information which falls within the ambit of the types of information listed in section 10(1).

Part Two of the Test

The appellant submits that the information contained in its proposal was submitted to the Police explicitly in confidence and that its expectation of confidentiality was reasonably held. The appellant refers to a portion of the proposal which states:

This information and documentation for Phase 2 of the bid process forms part of Stage 1 tender documents. Any and all information or materials contained herein of both phases of the bid process shall not be released, or viewed by any other bidder or any other persons due to the extreme confidentiality and private nature of the information that is contained herein.

In my view, the information contained in the records was supplied by the appellant to the Police with a reasonably held expectation of confidentiality. Accordingly, the second part of the section 10(1) test has been satisfied.

Part Three of the Test

The appellant submits that the disclosure of the records will give rise to a reasonable expectation that one or all of the harms specified in sections 10(1)(a), (b) or (c) will occur.

Section 10(1)(a)

The appellant submits that it has successfully used the information in the proposal in submitting tenders for four Collision Reporting Centres and is presently being used to negotiate for two additional centres. It states that this information was developed by the appellant at its own expense in both time and money. The appellant argues that the disclosure of the information contained in the proposal would interfere significantly with its competitive position in the negotiations which are presently under way for the operation of the two additional Collision Reporting Centres.

I have reviewed the representations of the appellant and the information contained in Pages 5, 35, 51, 52, 53, 55, 56, 95, 110, 111, 112, 113, and 115-118 and find that there exists a reasonable expectation that the disclosure of the information contained in these pages would result in significant prejudice to the competitive position of the appellant. As a result, part three of the section 10(1) test has been met and Pages 5, 51, 52, 53, 55, 56, 110, 111, 112, 113 and 115-118 are properly exempt from disclosure under this exemption.

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the pages of the proposal which remain at issue and find that the only personal information contained therein is the date of birth of the President of the appellant which appears on Page 8 (which is the same as Page 67). There are other references to the President contained in the records, including his name, but I find that they refer to this individual in his corporate, rather than his personal capacity, and thus do not constitute his personal information.

Section 14(1) of the Act prohibits the Police from disclosing personal information except in the circumstances listed in sections 14(1)(a) through (f). Of these, only section 14(1)(f) could apply in the circumstances of this appeal. It permits disclosure if it "does not constitute an unjustified invasion of personal privacy."

As noted above, the requester has not made any representations on the application of the exemptions to the records. As I have not been provided with any submissions which favour the disclosure of this information, I am not convinced that it would not constitute an unjustified invasion of personal privacy. Accordingly, this information should not be disclosed to the requester.

ORDER:

1. I uphold the decision of the Police to grant the requester access to Pages 1, 2, 3, 4, 8 (with the exception of the date of birth), 9, 10, 11, 27, 28, 29, 30, 31, 34, 36, 37, 38, 39, 40, 46, 47, 48, 49, 50, 67 (with the exception of the date of birth), 68, 69, 70, 86, 87, 88, 89, 90, 91, 94, 96, 97, 98, 99, 105, 106, 107, 108 and 109 and order the Police to disclose these pages to the requester by providing him with a copy by **October 2, 1996** but not before **September 27, 1996**.

2. I order the Police **not** to disclose to the requester the date of birth contained in Pages 8 and 67 and Pages 5, 35, 51, 52, 53, 55, 56, 95, 110, 111, 112, 113 and 115-118 in their entirety.
3. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the records which are disclosed to the requester pursuant to Provision 1.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ August 28, 1996