



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

ORDER P-1215

Appeal P-9600069

Liquor Control Board of Ontario



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NATURE OF THE APPEAL:

The Liquor Control Board of Ontario (the LCBO) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to records showing unit prices and category options provided by the company which was awarded the contract (the Company) to supply certain categories of bottle bags to the LCBO. Prior to the request, the requester had received the purchase order total amount figures from the LCBO.

The LCBO identified a document titled "Requisition for Supplies" as the record responsive to the request. After hearing from the Company, the LCBO provided the requester with partial access to the record.

The requester (now the appellant) appealed the LCBO's refusal to disclose the remaining portions of the record. A Notice of Inquiry was sent to the LCBO, the appellant and the Company. Because the appellant indicated that he felt there was a public interest in disclosure of the record, section 23 of the Act was included as an issue in the Notice. Representations were received from the LCBO and the Company.

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;

...

Type of Information

The information at issue on the Requisition for Supplies form consists of the unit price, the sub-total amounts and the payment terms with respect to the bid presented by the Company on different categories of bottle bags.

Commercial information is information which relates to the buying, selling or exchange of merchandise or services (Order P-493). I find that the undisclosed information is commercial information and, therefore, the first part of the test has been met.

Supplied in Confidence

The second part of the test has two elements. First, the information must have been **supplied** to the LCBO and secondly, it must have been supplied **in confidence**, either implicitly or explicitly.

The Company states that it was their understanding that their prices would be held in the strictest confidence and certainly not disclosed to their competitors. In support of their contention, they point to the language found in paragraph 12.7 of the documentation governing the bidding process, which reads: "The LCBO will consider all bids as confidential subject to the provisions of the Freedom of Information and Protection of Privacy Act, R.S.O. 1990 C.F. 31, as it may be amended from time to time."

The LCBO states that the information at issue was supplied in confidence by the Company in a sealed tender. Based on the representations of the Company and the LCBO, I find that the Company supplied the information to the LCBO implicitly in confidence and, therefore, the second part of the test has been met.

Harms

To satisfy part three of the test, the Company and/or the LCBO must present evidence describing a set of facts that would lead to a reasonable expectation that the harms described in section 17(1)(a), (b) or (c) would occur if the information contained in the record was disclosed.

The Company submits that if the information at issue is disclosed to the appellant, who is a competitor, the appellant will gain an advantage in attracting potential clients and the competitive position of the company will be prejudiced. The LCBO states in its submissions that knowledge of the Company's bid pricing would allow competitors to gain a competitive advantage against the company when bidding on other projects. Based on the representations of the Company and the LCBO, I find that there exists a reasonable expectation that harm to the competitive position of the Company would occur if the record were to be disclosed. Therefore, I find that the third requirement for exemption has been met. Because all three requirements for exemption are satisfied, I find that the undisclosed portions of the record are exempt under section 17(1)(a).

Since I have found that the information is exempt under section 17(1)(a), it is not necessary for me to consider 17(1)(b) and (c).

PUBLIC INTEREST IN DISCLOSURE

The appellant submits that section 23, the public interest override, applies to the information contained in the records.

Section 23 of the Act states as follows:

An exemption from disclosure of a record under sections 13, 15, **17**, 18, 20 and 21 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. (Emphasis added)

There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a compelling **public** interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

In his letter of appeal, the appellant submits that the public interest would be better served in an open environment that allows business and private citizens assurance that "tender" decision making is fair and equitable. The appellant also states that "[our] request is of a private nature with a public corporation that is shrouding our request in a cloak of secrecy."

The LCBO submits that there is no compelling interest in the full disclosure of the record and that the appellant is only interested in obtaining this information for their own competitive purposes. The Company submits that all bidders were notified that the LCBO had full discretion to proceed with or reject any or all bids and that the bidder with the lowest quoted price would not necessary be selected.

I have carefully reviewed the representations and the records at issue in this appeal. I find that there is no compelling public interest in the disclosure of the portions of the record at issue. In my view, the interest which exists is a private interest and section 23 has no application in the circumstances of this appeal.

ORDER:

I uphold the LCBO's decision.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

June 24, 1996