



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

# **ORDER P-1248**

**Appeal P-9600241**

**Ministry of Community and Social Services**



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

## **NATURE OF THE APPEAL:**

The Ministry of Community and Social Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the contract awarded to the successful bidder in response to a specified Request for Proposal. In addition, the requester, an unsuccessful tenderer, also sought access to the successful bidder's proposal submissions. The Ministry located the responsive records and denied access to them, claiming the application of the following exemptions contained in the Act:

- third party information - section 17(1)
- valuable government information - section 18(1)(a)

The requester, now the appellant, appealed the Ministry's decision. During the mediation of the appeal, the Ministry disclosed to the appellant a copy of the contract entered into between it and the successful bidder, with several severances which were agreed to by the appellant. The sole record remaining at issue is the proposal submission which the successful bidder provided to the Ministry in response to the Request for Proposal.

A Notice of Inquiry was provided to the Ministry, the appellant and the successful bidder. Representations were received from the Ministry and the successful bidder only. The Ministry indicates in its representations that it is no longer relying on the section 18(1)(a) exemption. I will not, therefore, address it further in this order.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

For a record to qualify for exemption under section 17(1), the Ministry and/or the successful bidder 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 Ministry 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 17(1) will occur.

### **Part One of the Test**

The Ministry and the successful bidder submit that the record contains information which qualifies as technical information within the meaning of section 17(1) as it explains in great detail the methodologies and techniques employed by the successful bidder in addressing the problems posed by the Request for Proposal. In addition, the successful bidder submits that the record contains commercial information relating to its per diem and hourly rates.

I have reviewed the record and the submissions of the parties and find that the record contains information which may properly be characterized as both technical and commercial information within the meaning of section 17(1). Accordingly, the first part of the test has been met.

### **Part Two of the Test**

The Ministry and the successful bidder submit that the record was supplied to the Ministry in confidence and that its expectation of confidentiality was reasonably held. The cover page of the record specifically states that:

The information contained herein is of a confidential technical nature and is being supplied on that basis. The non-confidential disclosure of this information could potentially harm [the successful bidder's] competitive position and/or materially interfere with ongoing or future contract/tender negotiations.

In my view, the information contained in the record was supplied by the successful bidder to the Ministry with a reasonably held expectation of confidentiality. Accordingly, the second part of the section 17(1) test has been satisfied.

### **Part Three of the Test**

The successful bidder submits that the disclosure of the record will give rise to a reasonable expectation that one or all of the harms specified in sections 17(1)(a), (b) or (c) will occur. It describes the harm to its competitive position and the undue gain which would accrue to its competitor, the appellant, should the record be disclosed to him. In addition, it argues that since the information contained in the record is relatively current, the likelihood of such harm occurring is quite high.

The Ministry relies on the findings in Orders P-610, M-250 and P-431 to argue that if the disclosure of information provided in a tender document would allow a competitor to determine profit margins and markups, the successful bidder's competitive position would be prejudiced in further bids.

I have reviewed the submissions of the successful bidder and the Ministry, along with the record at issue and find that the disclosure of the tender documents could reasonably be expected to prejudice significantly the competitive position of the successful bidder. As a result, the third part of the section 17(1) test has been met and the record is properly exempt from disclosure.

### **ORDER:**

I uphold the Ministry's decision to deny access to the record.

Original signed by: \_\_\_\_\_  
Donald Hale

August 27, 1996

Inquiry Officer