



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

ORDER M-848

Appeal M_9600226

The Regional Municipality of Sudbury



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NATURE OF THE APPEAL:

The Regional Municipality of Sudbury (the Municipality) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to copies of invoices submitted by a named company for work performed on sewers on behalf of the Municipality in 1994, 1995 and 1996.

The Municipality located 44 responsive records and, after consulting with the company, decided to grant the requester access to severed versions of the invoices. The requester did not appeal the Municipality's decision to deny access to the severed information. The company, however, objected to the Municipality's decision to grant access to certain other information contained in the invoices which the Municipality proposed to disclose to the requester. The company appealed the Municipality's decision and it is the severed version of the invoices which comprise the records at issue in this appeal.

This office provided the Municipality, the original requester and the company (now the appellant) with a Notice of Inquiry setting out the issues to be determined in this Inquiry. Representations were received from the Municipality and the original requester only.

DISCUSSION:

THIRD PARTY INFORMATION

For a record to qualify for exemption under section 10(1), the party resisting disclosure, in this case the appellant company, 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 Municipality 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 subsection 10(1) will occur.

Type of Information

I have reviewed the unsevered information contained in the records and find that it may be characterized as "technical" for the purposes of section 10(1). The information relates to the type of services performed by the appellant company and describes the methods and techniques employed in completing the work on behalf of the Municipality. In addition, I find that three of the records contain financial information in the form of hourly rates charged by the company for certain work which it performed. Accordingly, the first part of the section 10(1) test has been satisfied.

In its submissions to the Municipality, in response to the initial notice that a request for the invoices had been received, the appellant argued that the records contain trade secrets about the way in which it performs the work it has contracted. I note, however, that the Municipality is not proposing to disclose any of the detailed information about the actual work performed which is contained in the invoices. Accordingly, since this information is not at issue in the appeal, the "trade secrets" about which the appellant is concerned would not be revealed.

Supplied in Confidence

The Municipality submits that "(D)uring the tendering or negotiating process contractors and suppliers provide this information to the Region in confidence. Consistent with industry practice and custom, the Region does not disclose unit price information".

In his appeal letter, the appellant argues that the information remaining in the records is "part of detailed pricing units and should be regarded as confidential". In its submissions to the Municipality, the appellant states that the information was given to the Municipality in strict confidence.

The requester argues that the work performed by the appellant company was performed in public and could be observed by anyone passing by. For this reason, he submits that the information was not supplied in confidence.

I have reviewed the remaining information from the invoices and find that they contain information which was supplied to the Municipality with a reasonably held expectation of confidentiality by the appellant company. The second part of the test has, therefore, been satisfied.

Harms

The requester submits that none of the harms set forth in sections 10(1)(a), (b) or (c) could reasonably be likely to result from the disclosure of the information contained in the records.

The Municipality argues that it does not intend to disclose any information relating to unit prices, as well as the location and description of the work performed. It proposes to disclose only the total amounts billed by the appellant, which have been made public as part of a report made to the Municipality's Public Works Committee on March 7, 1996.

The appellant submits that the disclosure of any of the information contained in the invoices will assist its competitors in learning how the company performs its work and conducts its business (section 10(1)(a)). In addition, it argues that it supplies detailed invoices to enable various departments within the Municipality to update their files and maps without having to spend considerable time extracting this information from other sources. The appellant infers that should these invoices be disclosed, it may no longer supply this detailed information to the Municipality on its invoices (section 10(1)(b)). Finally, the appellant argues that its competitors would gain an unfair advantage should the records be disclosed (section 10(1)(c)).

It should be noted that the appellant's submissions were made based on his understanding that all of the information contained in the invoices was to be disclosed. Following the receipt of his submissions, the Municipality revised its decision and proposed that much of the information contained in the records would not be disclosed to the requester.

I have reviewed the information which the Municipality proposes to disclose to the requester and find that, with the following exceptions, it does not fall within the section 10(1) exemption. Pages 12, 15 and 47 contain information relating to hourly rates which has been severed from many of the other invoices. I find that the disclosure of this information could reasonably be expected to result in harm to the competitive position of the appellant. I find that the disclosure of the remaining information could not, however, be reasonably expected to result in any of the harms listed in section 10(1)(a), (b) or (c).

I have highlighted on the copy of Pages 12, 15 and 47 provided to the Municipality's Freedom of Information and Protection of Privacy Co-ordinator those portions of these records which are not to be disclosed to the requester. As I have found that the remaining severed information is not exempt under section 10(1), it ought to be disclosed to the requester.

ORDER:

1. I uphold the Municipality's decision to disclose the severed information contained in the records with the exception of those portions of Pages 12, 15 and 47 which I have highlighted on the copies provided to the Municipality's Freedom of Information and Protection of Privacy Co-ordinator.
2. I order the Municipality to disclose this information to the requester by sending him a copy by **November 4, 1996**.
3. In order to verify compliance with the terms of this order, I reserve the right to require the Municipality to provide me with a copy of the records which are disclosed to the requester pursuant to Provision 2.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ October 15, 1996