



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

# **ORDER M-961**

**Appeal M\_9700106**

**Regional Municipality of Halton**



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## NATURE OF THE APPEAL:

The Regional Municipality of Halton (Halton) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester sought access to records relating to the provision of appraisal and negotiation services to Halton for a number of properties at a named intersection. Halton located four records containing information which was responsive to the request, granting access in full to two of them, and partial access to the others. Halton denied access to the undisclosed portions of the records claiming the application of the following exemptions contained in the Act:

- third party information - section 10(1)
- economic and other interests - sections 11(c), (d) and (e)
- proposed plans, projects or policies of an institution - section 11(g)
- invasion of privacy - section 14(1)

The requester, now the appellant, appealed Halton's decision to deny access to one of the records for which sections 10(1) and 14(1) had been claimed. The sole information remaining at issue consists of the hourly and the mileage rate contained in a bid received from an appraisal firm (the affected party).

This office forwarded a Notice of Inquiry to the appellant, the affected party and Halton. Representations were received from the affected party only. The appellant indicated that he wished to rely on the submissions contained in his earlier correspondence with the Commissioner's office.

## DISCUSSION:

### THIRD PARTY INFORMATION

The affected party submits that the information remaining at issue is exempt from disclosure under section 10(1)(a) of the Act. For a record to qualify for exemption under section 10(1), the affected party, who is resisting disclosure, 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 Halton 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.

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

I have reviewed the information at issue and conclude that it may properly be characterized as “commercial information” for the purposes of section 10(1). Information relating to the hourly and mileage rates charged by a commercial enterprise such as that operated by the affected party clearly meet this test.

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

Based on my review of the record itself and the submissions of the affected party, I am satisfied that the information contained in the record was not the subject of negotiation between Halton and the affected party. Instead, I find that it was supplied to Halton within the meaning of section 10(1).

I must now satisfy myself that the information was supplied to Halton by the affected party with a reasonably-held expectation that it was to be treated as confidential. The affected party has expressed his concerns about the possible disclosure of the information at issue in no uncertain terms. Though not explicitly stated, I find that the expectation of confidentiality was implicit in the proposal submitted by the firm. Based on the submissions made by the affected party, I am also satisfied that the information was supplied to Halton with a reasonably-held expectation of confidentiality.

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

In order to meet part three of the section 10(1) test, the affected party must demonstrate that one of the harms enumerated in sections 10(1)(a), (b) or (c) could reasonably be expected to result from disclosure of the information. The onus or burden of proof lies on the party resisting disclosure of the record, in this case, the affected party.

The affected party has provided submissions setting out his concerns about the possible consequences to his competitive position should the information pertaining to his hourly and mileage rates be disclosed. In his view, it is reasonable to expect that harm to the firm’s competitive position could result if the information was to be disclosed.

Based on my review of the information at issue and the submissions of the affected party, I am satisfied that it is reasonable to expect that harm to his competitive position, as contemplated by section 10(1)(a) of the Act, would result from the disclosure of this information. I find, accordingly, that the information is properly exempt from disclosure under section 10(1)(a).

Because of the manner in which I have addressed section 10(1)(a), it is not necessary for me to address the possible application of section 14(1) to the information.

### **ORDER:**

I uphold Halton’s decision not to disclose the information.

Original signed by: \_\_\_\_\_ July 9, 1997  
Donald Hale  
Inquiry Officer