



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

ORDER M-1024

Appeal M-9700185

Ottawa-Carleton Regional Transit Commission



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NATURE OF THE APPEAL:

The Ottawa-Carleton Regional Transit Commission (OC Transpo) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for a copy of the Agreement, along with any amendments, between a named advertising agency and OC Transpo for Transit Shelter Advertising. OC Transpo located the requested records and, pursuant to section 21 of the Act, notified the advertising agency, seeking its views on their disclosure. The advertising agency objected to the release of the requested information. OC Transpo, after considering the submissions of the advertising agency, decided to disclose the records to the requester. The advertising agency, now the appellant, appealed this decision. It claims that harm to its competitive position would result from the disclosure of the information contained in the records. This corresponds to the exemption in section 10(1)(a) of the Act.

A Notice of Inquiry was provided by this office to the appellant, the requester and OC Transpo. Following receipt of the Notice of Inquiry, the appellant agreed to the disclosure of the Agreement, along with Appendices A, B and C to it. These records have now been disclosed to the requester by OC Transpo. The appellant did not, however, agree to the disclosure of the Addenda in the Agreement to the requester. Accordingly, these records remain at issue. Representations were received from the requester only.

DISCUSSION:

THIRD PARTY INFORMATION

For a record to qualify for exemption under section 10(1) of the Act, the party who is resisting disclosure, in this case, 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 OC Transpo 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.

I have not received any submissions from the appellant as to the application of the section 10(1) exemption to the records. I am, however, required to review the records, along with any other evidence tendered by the parties, in order to determine whether they are properly exempt under this section, despite the lack of representations from the appellant.

Type of Information

I have reviewed the contents of the Addenda and find that they contain detailed information relating to the rights and obligations of the parties to the main Agreement. I find that this information qualifies as commercial and financial information within the meaning of section 10(1). The first part of the test has, accordingly, been satisfied.

Supplied in Confidence

In order to meet this element of the exemption, the appellant must demonstrate that the information contained in the records was **supplied** to OC Transpo, either explicitly or implicitly, **in confidence**.

A number of previous orders of the Commissioner's office have addressed whether information contained in a negotiated Agreement between an institution and a third party may properly be described as having been "supplied" to the institution, as required by the second part of the section 10(1) test. In Order P-1105, in the context of the application of section 17(1) of the provincial Act, former Inquiry Officer Anita Fineberg made the following comments with respect to this issue:

Previous orders have addressed the question of whether the information contained in an agreement entered into between an institution and a third party was supplied by the third party. In general, the conclusion reached in these orders is that, for such information to have been supplied to an institution, the information must be the same as that originally provided by the third party. Since the information in an agreement is typically the product of a negotiation process between the institution and the third party, that information will not qualify as originally having been "supplied" for the purposes of section 17(1) of the Act.

She went on to find that:

In my view, for the purposes of determining whether information was "supplied" under section 17(1), it does not necessarily matter which party "prepared" the records - the determinative issue is whether the information contained in the agreement was supplied to an institution by a third party.

I adopt the interpretation expressed by Inquiry Officer Fineberg for the purposes of this appeal. In the present circumstances, I have not been provided with any evidence that the information contained in the Addenda was originally "supplied" to OC Transpo by the appellant within the meaning of section 10(1). As such, I find that the second part of the section 10(1) test has not been satisfied. As all three parts of the test must be met, I find that the Addenda are not exempt under this exemption and they should be disclosed to the requester.

ORDER:

[IPC Order M-1024/October 15, 1997]

1. I uphold OC Transpo's decision to disclose the records to the requester.
2. I order OC Transpo to disclose the Addenda to the Agreement to the requester by providing him with a copy by **November 19, 1997** but not before **November 14, 1997**.
3. In order to verify compliance with the terms of this order, I reserve the right to require OC Transpo 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, 1997