



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

ORDER M-1007

Appeal M-9700168

City of Toronto



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 appellant submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the City of Toronto (the City). The request was for access to all reports of the Land Use Committee from the Planning and Development Department relating to a specified property, including all reports from the Commissioner of Public Works and Environment and the Medical Officer of Health. The appellant also requested all reports from consultants regarding environmental conditions on the specified property.

The appellant later narrowed the request to “the soil and ground water management reports including any quality management program requests, regarding (the identified property), in the years 1995 and 1996.”

The City denied access to the requested records pursuant to sections 10(1) (third party information), 11(c), 11(d) and 11(e) (economic and other interests) of the Act.

The appellant appealed the City’s decision to deny access.

This office sent a Notice of Inquiry to the appellant and the City. As the rights of two organizations/institutions (the affected parties) may be affected by disclosure of the records, they were also sent a copy of the Notice of Inquiry and were invited to make representations. Representations were received from the City and the appellant only. In its representations, the City withdrew its reliance on the exemptions in sections 11(c), (d) and (e). These three exemptions are therefore no longer at issue in this appeal.

RECORDS:

The records at issue consist of three draft reports dated July 1995 and the final report dated January 1996 prepared for a named corporation (the Corporation) by a consulting firm.

DISCUSSION:

THIRD PARTY INFORMATION

For a record to qualify for exemption under section 10(1) of the Act, the City and/or the parties who are 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 the City 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.

Type of Information

The City submits that the records contain scientific and technical information relating to the environmental status of the lands currently under development, the “infrastructure lands” relating to the development lands, and other abutting lands, and also contain details of the plans for the quality management of the development lands and infrastructure lands during construction. The City submits further that the records contain commercial information, in that the environmental assessment and management plan is one of the factors which determine the value of the site to the owner, and its commercial viability for development.

I have reviewed the records and the City’s submissions and am satisfied that the records contain information which qualifies as “technical and scientific information” within the meaning of section 10(1) of the Act.

Supplied in confidence

In order to meet this element of the exemption, the affected parties and/or the City must demonstrate that the information contained in the records was **supplied** to the City, either explicitly or implicitly, **in confidence**.

It is clear from a review of the records that they were supplied to the City by the Corporation.

The City states that the records were supplied to it implicitly in confidence and have been treated by the City in confidence since their receipt, notwithstanding limited references to the record as contained in the public planning report on the subject application.

As I indicated above, the affected parties did not submit representations. Therefore, I have no evidence from them as to their expectations in this regard. In reviewing the records, I note that there is nothing on their face which indicates that they were supplied in confidence or that the Corporation had any expectation that they would be treated confidentially.

I am not persuaded, based on the City’s assertion, that the records were supplied to the City in confidence, either explicitly or implicitly. Accordingly, I find that the City and/or affected parties have not satisfied the second requirement.

Although the City has not met the second part of the three-part test for section 10(1), I will consider its arguments with respect to the harms it expects will occur should the records be disclosed.

Harms

In order to meet part three of the section 10(1) test, the City and/or the affected parties 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 parties resisting disclosure of the record, in this case, the City and the affected parties.

The City did not make representations on the application of sections 10(1)(a) or (c). In the absence of representations from the affected parties on this issue, I have not been provided with sufficient evidence to demonstrate that significant prejudice to the competitive position of the affected parties could reasonably be expected to result from the disclosure of the records as contemplated by section 10(1)(a) of the Act. Similarly, I find that the disclosure of the records to the appellant will not result in an undue loss or gain with respect to the affected parties, within the meaning of section 10(1)(c).

The City submits that disclosure of these records can reasonably be expected to result in similar environmental studies no longer being supplied to the City where it is clearly in the public interest for such studies to be so supplied (section 10(1)(b)). The City states that these studies identify and discuss the full range of environmental conditions and how they are to be managed. The City argues that, in the absence of explicit statutory authority to require same, it relies, in part, on the willingness of property owners to provide the most comprehensive studies possible.

In Order M-907, Inquiry Officer Donald Hale dealt with a similar type of request. He stated, with respect to arguments under section 10(1)(b) that:

In my view, it is not realistic to expect that the disclosure of the information contained in the record will result in such information no longer being made available to the City, as contemplated by section 10(1)(b). I find that it is not reasonable to expect that property developers will no longer provide the City with all of the information it requires on environmental issues regarding contamination and remediation of potential development sites. In order to receive planning approval, such information is required to be supplied to the City by developers and property owners.

I agree with Inquiry Officer Hale in this regard, and find that this reasoning applies equally to the types of reports at issue in this appeal. While I appreciate that it is in the City's interest to continue to obtain detailed reports of this nature, its concern that such reports will no longer be supplied must have a reasonable basis. There is no evidence presented that disclosure of the records at issue in this appeal will result in property owners not providing the most comprehensive studies possible where it is in their interest to do so. Accordingly, I find that disclosure of the records could not reasonably be expected to result in the harm described in section 10(1)(b) of the Act.

For this reason, I find that the City and the affected parties have not satisfied the third part of the section 10(1) test. As all three parts of the test must be met, the exemption does not apply to the records in question.

ORDER:

1. I order the City to disclose the records at issue to the appellant by sending him a copy of the records not earlier than **October 27, 1997** and not later than **October 31, 1997**.
2. In order to verify compliance with the provisions of this order, I reserve the right to require the City to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____ September 26, 1997
Laurel Cropley
Inquiry Officer