



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

Reconsideration Order R-980001

Appeal P-9700276

Order P-1503

Ministry of the Solicitor General and Correctional 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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

This order sets out my decision on the request for reconsideration of Order P-1503.

Subsequent to the issuance of Order P-1503 I received a letter from the successful bidder requesting that I reconsider my order on the grounds that I omitted the consideration of the financial harm that would result in releasing pertinent information to a competitor. Specifically, the successful bidder is of the view that I erred in not considering the harms portion of the three-part test for section 17(1) with respect to reference checks concerning work performed by it for another company (pages 83 - 94 of the records at issue). In its reconsideration request, the successful bidder proceeds to submit further representations on this issue (additional to the initial representations submitted in regard to Order P-1503).

The IPC's policy on reconsideration provides as follows:

A decision maker may reconsider a decision where it is established that:

- (a) there is a fundamental defect in the adjudication process;
- (b) there is some other jurisdictional defect in the decision; or
- (c) there is a clerical error, accidental error or omission or other similar error in the decision.

A decision maker will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was obtainable at the time of the decision.

In assessing the merits of the request for reconsideration I have taken into account the policy and all of the circumstances of this case.

As is apparent from Order P-1503, this office notified the companies that provided reference checks for the successful bidder and the appellant. None of these companies provided representations in response. Although I acknowledged that these records were supplied by other third parties, I found that I had been provided with insufficient evidence (taking into account the evidence provided by the successful bidder and the Ministry) that they had been supplied in confidence.

In this regard, I would point out that the reference forms themselves do not indicate that the information would be treated in confidence. The Ministry did not specifically address the issue of confidentiality of these records even though it was in the best position to advise whether assurances of confidentiality had been given. Finally, the successful bidder made representations on its expectations of confidentiality regarding the "proposal" but did not, in my view, turn its mind to the issue of confidentiality with respect to the references.

Accordingly, I found that the second part of the test had not been met.

Because all three parts of the test must be satisfied in order for a record to qualify for exemption under section 17(1), I found that it was not necessary for me to go on and consider the harms portion of the test with respect to these pages. Even if I were to consider this portion of the test,

and find in the successful bidder's favour, ie. that there was a reasonable expectation of one or more of the listed harms resulting from disclosure, it would not alter the fact that the records did not satisfy part 2 of the test, and are not exempt from disclosure under section 17(1) for that reason.

In my view, therefore, the request for reconsideration does not fit within any of the grounds for reconsideration set out in the policy. Accordingly, I have decided to decline the request.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ January 22, 1998