



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

ORDER P-1613

Appeal PA_980131_1

GO Transit



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/Téléc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

GO Transit received a request under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to complete copies of all of the proposals received by GO Transit in response to a specified Request for Quotation for the provision of translation services to GO Transit customers making telephone inquiries. In addition to the proposal submitted by the requester, GO Transit located one 11-page response to the Request for Quotation and denied access to it, in its entirety, claiming the application of section 17(1) of the Act.

The requester, now the appellant, appealed GO Transit's decision to deny access to the records.

During the mediation of the appeal, the company which submitted the response to the Request for Quotation (the affected party) agreed to the disclosure of portions of the responsive records. GO Transit disclosed them to the appellant. The parts of the records which remain at issue consist of the following:

1. A covering letter which accompanied the Request for Tender Proposal.
2. Page Two of the two-page Request for Tender/Proposal.
3. One page containing billing information.
4. One page containing specifications of the proposal.
5. The [affected party] Interpreter Services Agreement.

A Notice of Inquiry was provided to the appellant, the affected party and GO Transit. Representations were received from the affected party only.

DISCUSSION:

THIRD PARTY INFORMATION

The affected party and GO Transit submit that the undisclosed portions of the records are exempt under section 17(1). This section states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer, or other person appointed to resolve a labour relations dispute.

For a record to qualify for exemption under sections 17(1)(a) or (b) GO Transit and/or the affected party 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 GO Transit 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) or (b) of section 17(1) will occur.

[Order 36]

Part One of the Test

Types of Information

The affected party submits that because some of the undisclosed portions of the records contain price quotations, this information qualifies as commercial information within the meaning of section 17(1). In addition, the affected party indicates that the records contain information about the manner in which it delivers telephonic translation services and that this information qualifies as a trade secret. Further, it submits that the information is of a scientific and technical nature and thereby falls within the definition of those terms, as contemplated by section 17(1).

Previous orders of the Commissioner's office have defined the term "commercial information" to mean information which relates to the buying, selling or exchange of merchandise or services (Orders 47, 179 and P-318).

In Order M-29, former Commissioner Tom Wright considered the definition of "trade secret". He found that:

"trade secret" means information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which

- (i) is, or may be used in a trade or business,
- (ii) is not generally known in that trade or business,
- (iii) has economic value from not being generally known, and
- (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

I adopt this definition of "trade secret" for the purposes of this appeal.

In Order P-454, former Assistant Commissioner Irwin Glasberg established the following definition of the term "scientific information" for the purposes of meeting the first part of the section 17(1) exemption. He stated that:

In my view, scientific information is information belonging to an organized field of knowledge in either the natural, biological or social sciences or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of specific hypothesis or conclusions and be undertaken by an expert in the field. Finally, scientific information must be given a meaning separate from technical information which also appears in section 17(1)(a) of the Act.

Former Assistant Commissioner Glasberg went on to discuss the meaning of the term "technical information" for the purposes of section 17(1). He found that:

In my view, technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. While, admittedly, it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information which also appears in section 17(1)(a) of the Act.

I have reviewed the records and find that:

1. The undisclosed information contained in Pages 1 and 3 satisfies the definition of the term "commercial information" for the purposes of section 17(1). This information, which includes price quotations, relates directly to the selling of services by the affected party to GO Transit and describes in detail the commercial terms submitted in response to the Request for Quotation.

2. The undisclosed information in Page 11 also meets the definition of “commercial information” for the purposes of the section 17(1) exemption. It describes the terms of the agreements between the affected party and those who supply translation services to it. As a result, this information also falls within the definition described above.
3. Pages 8 and 9 of the records describe in detail the operation of the process whereby the affected party intends to supply the required translation services to GO Transit. In my view, this information meets the definition of “technical information” contained in section 17(1).

As I have found that all of the information contained in the records falls within the definition of either commercial or technical information, it is not necessary for me to determine whether it also satisfies the definition of trade secret or scientific information. Accordingly, the first part of the section 17(1) test has been met with respect to all of the remaining information at issue.

Part Two of the Test

Supplied

There is no dispute that the information contained in the records was supplied by the affected party to GO Transit in response to its Request for Quotation.

In Confidence

In order to meet this aspect of the second part of the test, GO Transit and/or the affected party must establish that the information in the records was supplied to GO Transit in confidence explicitly or implicitly. The information will also be considered to have been supplied if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to GO Transit (Orders P_203, P-388 and P-393).

Previous orders of the Commissioner have found that in order to determine that a record was supplied in confidence, either explicitly or implicitly, it must be demonstrated that an expectation of confidentiality existed and that it had a reasonable basis (Order M-169).

The affected party indicates that the information provided in the materials which it forwarded to GO Transit in response to the Request for Quotation was intended to be kept confidential. It states that the information in the records regarding its pricing, marketing methods and delivery of service would not be disclosed to its competitors under any circumstances. The affected party also refers to the fact that the appellant is its competitor in the provision of telephonic translation services.

In my view, the affected party has adequately demonstrated that it was clearly understood by all of those who responded to the Request for Quotation that the responses would be treated in a confidential manner by GO Transit. I find that this expectation on the part of the affected party

had a reasonable basis. Accordingly, I find that the second part of the section 17(1) test has been satisfied with respect to the information remaining at issue in the records.

Part Three of the Test

Harms

In order to meet the third part of the test, GO Transit and/or the affected party must demonstrate that one or more of the harms enumerated in sections 17(1)(a), (b) or (c) could reasonably be expected to result from the disclosure of the information.

The affected party submits that significant prejudice to its competitive position would result from the disclosure to the appellant of the unit price, sales, marketing and service delivery information, along with the agreement between the affected party and its telephonic translators. Again, the affected party refers to the fact that the appellant is its only major competitor and is a much larger entity than itself.

I have reviewed both the records and the submissions of the affected party. I find that, given the nature of the information contained in the undisclosed portions of the records, there is a strong basis for the information to be protected. In my view, its disclosure could have a significant negative impact on the affected party's competitive position in the future provision of telephonic translation services to businesses such as GO Transit.

The third part of the test has, therefore, been satisfied with respect to all of the undisclosed information contained in the records. Accordingly, this information is exempt under section 17(1).

ORDER:

I uphold GO Transit's decision to deny access to the undisclosed information in the records.

Original signed by: _____
Donald Hale
Adjudicator

September 17, 1998