



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

ORDER M-1131

Appeal M-9800065

City of Windsor



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BACKGROUND:

The City of Windsor (the City) and the Ontario Realty Corporation (the ORC) jointly own certain lands located west of the new Windsor Casino. The City and the ORC have decided that they wish to see the property in question, known as the “Western Super Anchor”, developed. To this end, a request for proposal soliciting tenders for the development of the site was made available to a number of developers from across North America.

NATURE OF THE APPEAL:

The City received a four-part request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to:

1. A copy of the final proposal package sent to potential developers, including the dates they were sent;
2. A copy of any letters which accompanied the package;
3. A full list of developers to whom the request for proposal was made;
4. A copy of all correspondence received from any or all developers who were contacted.

The City agreed to grant access to the information responsive to Part 1 and to some of the information responsive to Part 4 of the request upon payment of a fee of \$98.90. Access to records responsive to Part 2 of the request was denied on the basis that they do not exist. The City denied access to those records responsive to Part 3 and to portions of two records responsive to Part 4 of the request, claiming the application of the following exemptions contained in the Act:

- valuable government information - section 11(a)
- economic and other interests - sections 11(c) and (d)

The requester, now the appellant, appealed the City's decision to deny access to the information responsive to Parts 3 and 4 of his request. During the mediation stage of the appeal, and within the time period prescribed in the Confirmation of Appeal sent by this office, the City advised the appellant that it also intended to rely on the application of section 9(1)(d) of the Act.

A Notice of Inquiry was provided to the appellant and the City. Representations were received from the City only. The City has also made submissions on the possible application of the mandatory exemption contained in section 10(1) of the Act.

The records at issue in this appeal consist of a 47-page list of developers, which is responsive to Part 3 of the request, and the undisclosed information contained in two letters which is responsive to Part 4 of the request. The undisclosed information in these letters consists of the names and addresses of two developers who responded to the City's request for proposals.

DISCUSSION:

RELATIONS WITH OTHER GOVERNMENTS

Section 9(1)(d) provides that:

A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

an agency of a government referred to in clause (a), (b) or (c);

The City submits that the responsive records are exempt under section 9(1)(d) because a significant portion of the list was received in confidence from the ORC. It argues that the ORC is part of Management Board of Cabinet and is operated under the Real Estate Division as an agency of the Province of Ontario. It indicates that the ORC is a Crown Corporation which was incorporated in 1993 under the Capital Investment Plan Act as a Schedule Four agency, and that it reports directly to the Province through Management Board of Cabinet.

The City indicates that at the time the list was provided by the ORC, it gave a verbal undertaking that the information received from the ORC would be kept in confidence. It submits that the bulk of the information contained in the list of developers was received from the ORC as a result of the ongoing discussions and negotiations between the City and the ORC respecting the proposed land development.

Based on the information provided to me by the City and my review of the list of developers which is the subject of the appeal I find that, except as discussed below, the information contained in this record was supplied to the City by the ORC, which is an agency of the Government of Ontario within the meaning of section 9(1)(d). I also accept the position of the City that this information was provided to it in confidence by the ORC. In addition, the City contacted the ORC under section 9(2) and was advised that the ORC did not consent to the disclosure of this information.

Accordingly, I find that the list of developers, as well as the information relating to the two developers which is contained in the letters responsive to Part 4 of the request, were provided to the City by an agency of the Government of Ontario, the ORC, in confidence. This information is, therefore, exempt from disclosure under section 9(1)(d).

The City indicates that the list also contains the names of a number of local politicians and that this information did not form part of the confidential list which it received from the ORC. The City states that it has no objection to the disclosure of this information to the appellant. I find that this information is not subject to any of the mandatory exemptions contained in the Act and I order that it be disclosed to the appellant.

Because of the manner in which I have addressed the application of section 9(1)(d) to the records, it is not necessary for me to determine the possible application of sections 10(1) and 11(a), (c) and (d) to this information.

ORDER:

1. I uphold the City's decision to deny access to the list of developers contained in the records which it received from the ORC.
2. I order the City to disclose to the appellant the names of those individuals included in the records who were not on the list of developers received from the ORC by **August 11, 1998**.
3. In order to verify compliance with this order, I reserve the right to require the City to provide me with a copy of the records disclosed to the appellant pursuant to Provision 2.

Original signed by: _____

Donald Hale
Adjudicator

July 20, 1998