



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-192**

**Appeal M-9200397**

**City of Toronto**



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# ORDER

The City of Toronto (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for copies of records relating to a building in the City where a fire had occurred and the building was subsequently demolished. The City notified the company which demolished the building of the request under section 21 of the Act. The company objected to the disclosure of certain records which it had sent to the City; however, the City decided to give access to the requested records.

The company appealed the City's decision to grant access to the records on the basis that the records were exempt under section 10 of the Act.

Mediation of this appeal was not successful, and notice that an inquiry was being conducted to review the decision of the City was sent to the company (the appellant), the City, the original requester and five affected parties. Representations were received from the City only.

The appellant is the company which was hired by the City to demolish the building and the records at issue consist of invoices (27 pages) and letters (four pages) sent to the City by the appellant. Some of the invoices were originally submitted to the appellant by its subcontractors, the affected parties, and sent to the City by the appellant. The letters are clarification of the invoices or explanations of certain charges.

Neither the appellant nor the affected persons have made any representations regarding this appeal; however, based on the appellant's original letter of appeal, it appears that its objection to the records is based on sections 10(1)(a) and (c) of the Act.

Therefore, the sole issue in this appeal is whether the mandatory exemptions provided by sections 10(1)(a) and/or (c) of the Act apply to the records which the City has decided to disclose to the original requester.

Sections 10(1)(a) and (c) state:

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, if 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;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency;

The burden of proving the applicability of the section 10 exemption lies on the party resisting disclosure of the record (Orders 42, 101, P-228, M-10 and M-29). In the circumstances of this appeal, the City has decided to disclose the records at issue, and the appellant is the only party resisting their disclosure.

Therefore, the responsibility to establish that the records are exempt under sections 10(1)(a) and/or (c) of the Act rests with the appellant.

In order for the information at issue in this appeal to be exempt from disclosure under sections 10(1)(a) and/or (c) of the Act, the appellant must satisfy each 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 institution 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 types of harm specified in sections 10(1)(a) and/or (c) will occur.

Failure to satisfy the requirements of any part of this test will render the section 10(1) claim invalid (Orders 36 and M-10).

### **Part One**

Having reviewed the records at issue, I am satisfied that they reveal financial and/or commercial information. The records contain a description of the work done or services rendered by the appellant or its subcontractors and the corresponding prices and charges in connection with the demolition of the building. I find that the requirements of part one of the test have been met.

### **Part Two**

In order to satisfy the second part of the test, the appellant must prove that the information was supplied to the City and that it was supplied in confidence, either explicitly or implicitly.

As indicated previously, the records at issue are invoices or letters sent to the City by the appellant and I am satisfied that the "supplied" part of the test has been satisfied.

With regard to the issue of whether the information was supplied in confidence, part two of the test for exemption under section 10(1) requires the demonstration of a reasonable expectation of confidentiality at the time the information was supplied.

The appellant has indicated in its letter of appeal that the information in the records was provided in confidence to the City. It has provided no further evidence or argument to support its claim.

In its representations, the City disagrees with the appellant's position and states that "the information contained in the records was not supplied to the City explicitly in confidence and the documents were not treated as supplied implicitly in confidence."

There is nothing on the face of the records to suggest that they were supplied to the City in confidence nor has the appellant or the affected persons provided any evidence to support the claim that the records were supplied in confidence.

Having reviewed the contents of the records and the representations of the parties, and in the absence of evidence to support the conclusion that the information was supplied in confidence, I find that part two of the test has not been satisfied.

As stated previously, failure to satisfy any one of the three parts of the test renders the section 10 exemption claim invalid and accordingly, I find that the records are not exempt under section 10(1) of the Act and should be disclosed to the original requester.

### **ORDER:**

1. I uphold the City's decision.
2. I order the City to disclose to the original requester the records at issue within 35 days of the date of this Order and **not** earlier than the thirtieth (30th) day following the date of this Order.
3. In order to verify compliance with the provisions of this Order, I order the City to provide me with a copy of the record which is disclosed to the original requester pursuant to Provision 1, **only** upon request.

Original signed by: \_\_\_\_\_  
Asfaw Seife  
Inquiry Officer

\_\_\_\_\_ September 28, 1993