



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

# **ORDER MO-1257**

**Appeal MA-990079-1**

**Regional Municipality of Ottawa-Carleton**



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>

## **NATURE OF THE APPEAL:**

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Regional Municipality of Ottawa-Carleton (the Region). The request was for access to all records relating to “Request for Proposal 0961-94-PO1/98 - Comprehensive Review of Legal Services”. The appellant specifically identified nine types of records that were included within the scope of his request.

The Region identified 33 records as responsive to the request. After contacting the seven companies whose interests could be affected by the disclosure of the records, the Region granted access in full to those records produced internally by the Region and to 23 records relating to five of the companies. The Region decided to grant partial access to the records relating to two of the companies, one of which was the successful bidder, withholding all or parts of these records under the exemptions in sections 10 (third party information) and 14 (invasion of privacy) of the Act. The Region also informed the appellant that parts of the records contained information which was not disclosed because it was not responsive to the request.

The appellant appealed the Region’s decision with respect to certain aspects of his request. During mediation of this appeal, the appellant agreed to narrow the scope of his appeal to the information relating to the ability of the successful bidder to carry out the contracted work in French and English and its knowledge and experience with the delivery of legal services in a municipal environment.

Further mediation was not possible, and I sent a Notice of Inquiry to the Region, the appellant and the successful bidder. Representations were received from the Region only. The appellant indicated that he wished to rely on the information he provided earlier in this process.

## **RECORDS:**

The parts of the records which contain the information at issue in this appeal are:

- Review of Legal Services Interview Questions - severed portion of page 32
- Handwritten and typed notes - portions of pages 7 and 8
- Proposal - portions of pages 44 and 45

The information at issue on pages 7, 8, 32, 44 and 45 was highlighted by the Mediator and sent to the Region with the Mediator’s Report. In my view, there is some additional responsive information on page 8, which I highlighted on a copy of the record and attached to the Region’s copy of the Notice of Inquiry.

The Region indicated that certain responsive information under the headings “Project Experience” and “Legal Services - Government Environment” on page 8 cannot be linked back to identifiable individuals, and is not the type of information listed in section 10 of the Act. The Region, accordingly, does not object to the disclosure of these parts of the record.

## **DISCUSSION:**

### **Invasion of Privacy**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

The Region indicates that some of the information at issue on pages 7, 8, 44 and 45 relates directly to identifiable individuals. I have reviewed these parts of the record and I find that they contain information which outlines the educational and work history of named employees of the successful bidder and identifies whether the individual employee is bilingual. In my view, this information is recorded information about the named employees and qualifies as their personal information.

I agree with the Region that certain responsive information under the headings "Project Experience" and "Legal Services - Government Environment" on page 8 is not information about an identifiable individual, and does not qualify as personal information. Because section 14 applies only to personal information, these parts of the records do not qualify for this exemption.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 14(1)(f) of the Act reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates, except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the head to consider in making this determination. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 14(2) [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

The Region submits that the parts of the record which relate to whether or not certain individuals are bilingual is personal information and cannot be disclosed without the consent of that individual.

This information, in my view, does not fall within any of the presumptions listed in section 14(3). Having reviewed the factors listed under section 14(2), I find that none apply. Section 14(1)(f) applies only if disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy. The information before me does not establish this and, accordingly, I find that section 14(1)(f) does not apply.

The Region submits that the information about the education and employment background of the individuals named in the records falls within the presumption found in section 14(3)(d) of the Act. This section states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

relates to employment or educational history;

Previous orders of this office have held that the disclosure of information contained in resumes (Orders M-7, M-319 and M-1084, for example) and work histories (Order M-1087) would constitute a presumed unjustified invasion of personal privacy under section 14(3)(d) of the Act. I agree, and find that the presumed unjustified invasion of personal privacy provided by section 14(3)(d) applies to this personal information.

I also find that sections 14(4) and 16 do not apply to the personal information in the records at issue.

In summary, I find that the personal information in the records is exempt from disclosure under section 14(1) of the Act, and that certain information under the headings “Project Experience” and “Legal Services - Government Environment” on page 8 is not exempt from disclosure under section 14(1).

### **Third Party Information**

The Region relies on sections 10(1)(a) and (c) to withhold information which relates to the successful bidder’s past experience as a consulting firm. This information has been severed from pages 7, 8 and 32. These sections 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; or

For a record to qualify for exemption under sections 10(1)(a) or (c), the Region 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**

[IPC Order MO-1257/December 7, 1999]

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 harms specified in (a) or (c) of subsection 10(1) will occur.

[Order 36. See also Orders M-29 and M-37]

The Ontario Court of Appeal recently overturned the Divisional Court's decision quashing Order P-373 and restored Order P-373. In that decision the Court stated as follows:

With respect to Part 1 of the test for exemption, the Commissioner adopted a meaning of the terms which is consistent with his previous orders, previous court decisions and dictionary meaning. His interpretation cannot be said to be unreasonable. With respect to Part 2, the records themselves do not reveal any information supplied by the employers on the various forms provided to the WCB. The records had been generated by the WCB based on data supplied by the employers. The Commissioner acted reasonably and in accordance with the language of the statute in determining that disclosure of the records would not reveal information supplied in confidence to the WCB by the employers. Lastly, as to Part 3, the use of the words “**detailed and convincing**” do not modify the interpretation of the exemption or change the standard of proof. These words simply describe the quality and cogency of the evidence required to satisfy the onus of establishing reasonable expectation of harm. Similar expressions have been used by the Supreme Court of Canada to describe the quality of evidence required to satisfy the burden of proof in civil cases. If the evidence lacks detail and is unconvincing, it fails to satisfy the onus and the information would have to be disclosed. It was the Commissioner's function to weigh the material. Again it cannot be said that the Commissioner acted unreasonably. Nor was it unreasonable for him to conclude that the submissions amounted, at most, to speculation of possible harm. [emphasis added]

[Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner) (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 (Div. Ct.)]

## **PART 1**

### **Commercial Information**

I accept the Region's submission that the information which relates to the successful bidder's experience in providing legal services in a municipal government environment is commercial information. Accordingly, for the purposes of this order, I find that the first part of the test has been met.

## **PART 2**

[IPC Order MO-1257/December 7, 1999]

## **Supplied in Confidence**

It is clear on the basis of the records and the submissions before me that the information at issue was supplied to the Region by the successful bidder.

In regards to 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 on the part of the supplier at the time the information was provided. It is not sufficient that the business organization had an expectation of confidentiality with respect to the information supplied to the institution. Such an expectation must have been reasonable, and must have an objective basis. The expectation of confidentiality may have arisen implicitly or explicitly. (Order M-169)

The Region submits:

This information was supplied to the Region in response to a Request for Proposals (RFP). The RFP documents provided by the Region were silent with respect to any confidentiality that the Region may have attached to responses provided by potential bidders. However, it is possible to argue that the [successful bidder] had an implicit expectation of confidentiality with respect to its company information provided in its response, given the context of the particular RFP, namely, it was for a very specialized review of a particular area of the Region: its legal services. The [successful bidder] had reasonable grounds to expect that other consulting firms would respond to the RFP, many of which would be in the same area of business as [the successful bidder]. Given the absence of any explicit warning as to the confidentiality of responses in the Region's RFP documents, it is reasonable to expect that [the successful bidder] provided its response to the RFP to the Region with the expectation that the Region would keep it confidential and would not disclose any of its company information to its competitors.

Although the successful bidder did not respond to my Notice of Inquiry, it did provide submissions to the Region while the request was being processed which indicated an expectation that the information had been supplied in confidence.

I find that the information was not supplied **explicitly** in confidence, as the Region and the successful bidder have not produced any documentation providing evidence of confidentiality and do not submit that any assurances of confidentiality were given.

In determining whether there was a reasonably held implicit expectation of confidentiality, it is necessary to consider all the circumstances of the case. Here, it appears that the successful bidder's understanding was that the information was communicated to the Region on the basis that it was confidential and that it was to be kept confidential, and it has been treated that way by the Region. Because the information relates to the successful bidder's past work history, it is reasonable to assume that the same information would be disclosed in furtherance of other proposals to satisfy reference requirements. However, in such circumstances disclosure would normally be at the discretion of the successful bidder. Accordingly, having

considered all of the circumstances of this appeal, I find that the information was supplied in confidence and the second part of the test has been met.

### **PART 3**

#### **Harms**

To discharge the burden of proof under the third part of the test, the parties opposing disclosure must present evidence that is detailed and convincing, and must describe a set of facts and circumstances that could lead to a reasonable expectation that one or more of the harms described in section 10(1) would occur if the information was disclosed (Order P-373).

In its letter objecting to disclosure at the request stage, the successful bidder indicated that its methodologies, business processes and pricing strategies are critical competitive tools, and that disclosure of any record containing or alluding to this information would severely prejudice its competitive position. It submits that disclosure of this information would dramatically impair its financial position and enhance the position of potential competitors. It also submits that if this information were disclosed, it would change its practice of including this information in response to an RFP.

Methodologies, business processes and pricing strategies are not at issue in this appeal. The only information at issue is references to the successful bidder's past experience in the area of delivery of legal services in a municipal government environment.

The Region submits that because the information at issue is only a part of the successful bidder's overall response package, disclosure of that information alone might create an inaccurate perception of the successful bidder's past consulting experience, which may result in a loss of competitive position as prospective employers may obtain an inaccurate picture of its experience and capabilities.

The arguments provided by the Region are not, in my view, sufficiently detailed and convincing to establish a reasonable expectation of any of the harms described in section 10(1) resulting from disclosure of the information at issue. The information is very obviously only a snippet of the response package, and could not reasonably lead to a perception that this is the sum total of the successful bidder's experience and capabilities. Further, I am not convinced that the successful bidder's ability to provide a complete picture of its experience to other prospective employers would be impaired through disclosure of this information.

Accordingly, I find that the requirements of section 10(1) have not been met, and this exemption does not apply.

#### **ORDER:**

1. I order the Region to disclose the severances which relate to the successful bidder's past experience in the area of delivery of legal services in a municipal government environment and

certain information under the headings "Project Experience" and "Legal Services - Government Environment" on page 8 which does not relate to any identifiable individual.

2. I order the Region to disclose the information referred to in Provision 1 by sending the appellant a copy no later than January 14, 2000 but not before January 7, 2000.
3. I uphold the Region's decision to deny access to the remaining severances at issue in this appeal.
4. In order to verify compliance with the terms of this order, I reserve the right to require the Region to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by \_\_\_\_\_  
Holly Big Canoe  
Adjudicator

\_\_\_\_\_ December 7, 1999