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

ORDER PO-1818

Appeal PA-990459-1

Ministry of Natural Resources

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NATURE OF THE APPEAL:

Management Board of Cabinet (MBC) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to:

> . . . copies of all proposals submitted in response to Proposal P-Pet-99-008 undertaken by the Management Board for the evaluation of the current business processes associated with customer service to the public and for copies of all evaluation documentation in connection with such proposals.

Pursuant to section 25 of the Act, MBC transferred the request to the Ministry of Natural Resources (the Ministry) as it appeared that the Ministry had a greater interest in the responsive records. The Ministry notified the firms which submitted proposals (the affected parties) in accordance with section 28 of the Act. Ten of the companies who submitted proposals responded to this notification. Three of them consented to the partial disclosure of their proposal to the appellant while the others objected to the release of any part of it. The Ministry decided to deny access to the responsive records, in their entirety, claiming the application of the exemptions contained in sections 17(1)(a) and (c) of the Act. The Ministry applied the exemptions to both the proposals themselves and to the evaluation materials generated by the Ministry.

The appellant appealed the Ministry's decision to deny access to the records.

During the mediation stage of the appeal, the appellant advised the Mediator that he was not seeking access to any personal information which may be contained in the records in the form of resumes or other background information relating to any identifiable individuals. The appellant indicated, however, that he continues to seek access to the current position titles held by these individuals. In addition, the Ministry disclosed to the appellant certain information contained in the proposals submitted by the three affected parties whose consent to such disclosure had been granted.

This office sent a Notice of Inquiry first to the Ministry and to the 15 affected parties, seeking their submissions on the application of the exemptions in sections 17(1)(a) and (c) to the records. Representations were received from the Ministry and 11 of the affected parties. The non-confidential portions of these representations and an amended Notice of Inquiry were then provided to the appellant, who also made submissions with respect to the issues raised in the appeal.

In their representations, a number of the affected parties have indicated that they have no objection to the disclosure to the appellant of much of the information contained in their proposals. I will not list in this order those portions of the records for which such consent to disclosure has been granted. Rather, I will provide the Ministry with a highlighted copy of the records indicating only those portions of them which are **not** to be disclosed. The remaining portions of the records which are not highlighted should be disclosed to the appellant in accordance with the order provisions set forth below.

RECORDS AT ISSUE:

There are 1091 pages of records identified as responsive by the Ministry. The records consist of the proposals made by the 15 affected parties and other records generated by the Ministry in the course of its evaluation of each of the proposals. For each proposal, there are three one-page evaluation forms. For three of the proposals, there are four four-page interview scoring documents. For one of the proposals, there are two four-page interview scoring documents, and for another there is a four-page assessment of proposal. There is also a three-page letter written by the Ministry to one of the affected parties responding to a request for feedback regarding its proposal.

Additionally, there is a six-page record which evaluates the bid of each affected party to determine the top candidates, a one-page record which compares the costs of the bids (two copies), a one-page e-mail message (two copies) with an attached one-page draft scoring sheet, a one-page e-mail message regarding times for interviews, and a one-page e-mail with attached draft questions for the interviews.

DISCUSSION:

THIRD PARTY INFORMATION

General Principles

For a record to qualify for exemption under sections 17(1)(a) or (c), the Ministry and/or the affected parties 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 the Ministry 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 section 17(1) will occur.

[Orders 36, 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]
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> [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 One of the Test - Types of Information

The Ministry submits that the records contain information which qualifies under section 17(1)(a) and (c) as "commercial" or "technical" information. One or more of the affected parties also contend that the records contain information which qualifies as "trade secret", "technical", "commercial" or "financial" information within the meaning of the section 17(1) exemption.

The terms trade secret and technical, commercial and financial information have been defined in previous orders of the Commissioner's office.

Trade Secret

"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.

[Order M-29]

Technical Information

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.

[Order P-454]

Commercial Information

Commercial information is information which relates solely to the buying, selling or exchange of merchandise or services. The term "commercial" information can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises.

[Order P-493]

Financial Information

The term refers to information relating to money and its use or distribution and must contain or refer to specific data. For example, cost accounting method, pricing practices, profit and loss data, overhead and operating costs.

[Orders P-47, P-87, P-113, P-228, P-295 and P-394]

The Ministry's Position on Part One of the Test

The Ministry submits that the records contain information which qualifies as commercial information as it relates to the affected parties' offer of an exchange of services to the Ministry. It also submits that the information in the records is technical information as they:

> . . . contained specifics directly or indirectly relating to workplans outlining project phases. Each phase, as described in the records, includes a number of strategies to be implemented such as the development of business and software models, mapping, needs analysis, communication strategies, processes design/reengineering, implementation plan and evaluation strategies. Thus it is the Ministry's position that the records contain technical information.

The Ministry argues that because the evaluation documentation similarly discusses the information contained in the proposals, it too contains technical information for the purposes of sections 17(1)(a) and (c).

The Affected Parties' Position on Part One of the Test

Several of the affected partes who made representations object to the disclosure of their proposals and the accompanying evaluation documentation on the basis that the information may be properly characterized as a trade secret in that it describes in detail the methodologies which each intended to make use of in meeting the Ministry's proposal requirements. They rely on the principles enunciated in Order P-500 in which information relating to a unique methodology developed by a consulting firm for the evaluation of child care centres was found to qualify as a trade secret for the purposes of section 17(1). Each of these affected parties argues that the unique methodologies contained in their proposals were specifically created to respond to the Ministry's needs, as outlined in the Request for Proposals (RFP) and that they have an economic value from not being generally known in the consulting industry.

Several of the affected parties also maintain that their proposals contain information which qualifies as "financial" information as contemplated by section 17(1). In Order M-250, it was held that pricing information contained in a tender bid may be properly characterized as financial information. By analogy, these affected parties argue that the proposed fees and pricing information contained in their proposals would similarly qualify as financial information.

Representations from several affected parties also indicate that, in their view, the names and titles of the individuals employed by their firms who were designated as the assigned consultants to this proposal constitute commercial information within the meaning of section 17(1). They argue that because the appellant seeks access to this information, it is commercially valuable and sensitive in nature and would be useful to a potential "headhunter" or competitor seeking to recruit staff members.

Findings with Respect to Part One of the Test

I have no difficulty in finding that the pricing information contained in each of the proposals and the evaluation documentation qualifies as commercial information within the meaning of sections 17(1)(a) and (c). The pricing practices of each of the affected parties which are outlined in each proposal and the evaluation records clearly relate to the selling of the services provided by them.

Similarly, the methodologies for meeting the Ministry's needs which are set forth in each proposal by the affected parties also qualifies as commercial information as they describe, often in great detail, precisely how the work is to be performed. In my view, this information is commercially valuable and unique to each of the affected parties. While each proposal is responsive to the same request from the Ministry, they take very different approaches to meeting the requirements of the RFP. The manner in which the work is to be performed is central to each of the proposals. This information distinguishes one proposal from another and, in most cases, is clearly the result of very careful study and preparation. I find that this information may be properly characterized as commercial information for the purposes of sections 17(1)(a) and (c).

The appellant is also seeking the names and titles of the individual employees or consultants identified by the affected parties in their proposals. This information describes who will actually perform the work on behalf of each firm. In my view, this information may also be characterized as commercial information. The provision of consulting services to government is a highly competitive field. I find that some commercial

value exists in the names of the "players" who were identified by the affected parties as having particular areas of expertise in this marketplace. Several of the affected parties have no objection to the disclosure of this information or have indicated that it is available publicly through their internet web sites. In those cases, I will order that the Ministry disclose this information.

Part Two of the Test - Supplied in Confidence

In order to satisfy the second requirement, the Ministry and/or the affected parties must show that the information was supplied to the Ministry, either implicitly or explicitly in confidence. In addition, information contained in a record will be said to have been "supplied" to an institution, if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the Ministry (Orders P-179, P-203, PO-1802 and PO-1816).

Supplied

It is clear that the proposals themselves were supplied to the Ministry by each of the affected parties in response to the RFP. Similarly, the evaluation documentation also contains references to information which was included in the affected parties' proposals. I find that the references contained in the evaluations to this information would permit the drawing of accurate inferences with respect to the information actually supplied to the Ministry by the affected parties in their proposals.

The remaining information contained in the evaluation records, however, was generated by the Ministry staff who performed the evaluations. Addressing the question of whether the names of the affected parties and the scores which were awarded to each by the evaluators is more difficult. In Order PO-1816, Adjudicator Laurel Cropley examined the findings in a number of previous orders of the Commissioner's office and made the following comments:

> In dealing with the names of business entities, Assistant Commissioner Mitchinson has found generally that the names of entities doing business with the government would not normally be considered to have been "supplied", simply because they appear on a record. To date he has applied this approach to the names of purchasers of land (Order PO-1786-I), the names of service providers for government funded programs (Order PO-1802), and the name of a commercial fish farm that has commercial involvement with Ontario Hydro (Order P-1574).
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> In Order MO-1237, Senior Adjudicator Goodis noted comments made by Assistant Commissioner Mitchinson in Order P-373 and concluded:
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> > In Order P-373, Assistant Commissioner Mitchinson stated:
> >
> > > Records 1, 2, and 3 list the names and addresses of the employers with the fifty highest surcharges in 1991, together with the amount of surcharge for each employer. Records 4 and 5 list only the names and addresses of the

> employers with the highest penalties in 1990 under the relevant program.
>
> In my view, the surcharge amounts were not "supplied" to the Board by the affected persons; rather, they were calculated by the Board. While it is true that information supplied by the affected parties on the various forms was used in the calculation of the surcharges, it is not possible to ascertain the actual information provided by the affected persons from the surcharge amounts themselves.

In my view, the reasoning in Order P-373 applies to the scores assigned to the contractors with respect to each of the criteria. In each case, disclosure of these scores would not reveal the specific information actually supplied to the architect (as agent for the Board). Rather, the architect calculated or derived the scores based on the information that was actually supplied, or in some cases the architect arrived at the scores based on a subjective evaluation of the information actually supplied. Further, the number of submissions received and the name of the engineering firm clearly does not constitute information supplied to the Board, or to the architect as agent for the Board.

To conclude, none of the information at issue qualifies as having been "supplied" to the Board, or to the architect as agent for the Board. As a result, I find that part two of the test has not been met with respect to the information at issue.

In my view, the principle that the names of entities doing business with the government would not normally be considered to have been "supplied" simply because they appear on a record underlies the decisions in this line of orders. I find that it also applies in the circumstances of this appeal. In this case, the candidates are seeking to do business with the government and have approached the Ministry on this basis. In my view, "supplied" in the context of the exemption in section 17 implies the provision of something of substance. I find that the mere identification of a business entity in the context of entering into a business relationship with the government falls short of the meaning of this term under section 17. I accept that where this information is contained on a record and is inextricably tied to other information that was supplied, the principles underlying the reasoning in previous orders becomes less clear. However, this is not the case insofar as Record 12 is concerned.

The majority of the information in Record 12 was generated by the Ministry. Similar to the findings in Order MO-1237, disclosure of the scores assigned to each candidate would not reveal the specific information in the other records which were supplied to the Ministry. In my view, the link between information generated by the Ministry and information which

> identifies the candidates on this record is not sufficient to alter the character of this information. Therefore, I find that the names of the candidates do not constitute information supplied to the Ministry. As a result, I find that part two of the test has not been met with respect to Record 12.

I adopt the approach taken by Adjudicator Cropley in Order PO-1816 for the purposes of the present appeal. In my view, the disclosure of the scores assigned to each of the affected parties, along with their names, would not reveal the information which is contained in the proposals which they provided to the Ministry. Accordingly, I find that the evaluation documents, except where they contain specific references to the information contained in an affected party's proposal, do not contain information which was supplied to the Ministry for the purposes of part two of the section 17(1) test.

In Confidence

In order to establish that the records were supplied either explicitly or implicitly in confidence, the Ministry and/or the affected parties must demonstrate that an expectation of confidentiality existed at the time the records were submitted, and that this expectation was reasonable and had an objective basis (Order M-169). All factors are considered in determining whether an expectation of confidentiality is reasonable, including whether the information was:

> (1) Communicated to the Ministry on the basis that it was confidential and that it was to be kept confidential.
>
> (2) Treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the Ministry.
>
> (3) Not otherwise disclosed or available from sources to which the public has access.
>
> (4) Prepared for a purpose which would not entail disclosure.
>
> (Order P-561)

The Ministry's Submissions on Confidentiality

The Ministry submits that the proposals from the affected parties were submitted to it in response to an RFP and that the process which governs such bids is set out in a Procedure entitled SM 1-0714 and published by the Ministry. Part 2 of the Procedure describes in detail the types of information which is to be made public, as well as the categories of information which are to be held by it in confidence. The Ministry also indicates that the affected parties would have an expectation that the detailed proposal information contained in their bids would be treated in a confidential manner by the Ministry, in accordance with its usual practice.

At the time the tender documents were opened, the Ministry disclosed to those present only the names of the bidders, but not any of the information contained in their proposals. The Ministry also points out that

many of the proposals contained explicit statements indicating that the information contained therein was to be treated confidentially and not be made public. The Ministry concludes by arguing that there is an objective basis for an expectation of confidentiality on the part of the affected parties with respect to the information contained in their proposals.

The Affected Parties' Submissions on Confidentiality

The affected parties reiterate the position of the Ministry that the proposals were submitted with a reasonably-held expectation of confidentiality. One of the affected parties refers to Article 7.1(b) of the RFP which indicated to the potential bidders that, upon submission to the Ministry, their proposals may be subject to the provisions of the Act. Moreover, this clause of the RFP goes on to advise potential bidders to clearly designate those portions of their proposals which they wish to have treated confidentially by the Ministry. In many cases, this is precisely what was done by the affected parties in their proposals. In addition, as described by the Ministry, several of the affected parties included their own confidentiality provisions in their proposals, arguing that the information contained therein was proprietary and to be treated in a confidential manner by the Ministry.

Several of the affected parties also indicate that, in accordance with their past experience with the Ministry and other agencies of the Government of Ontario, they had an implicit expectation that the contents of their proposals would be treated confidentially by the Ministry.

Findings with Respect to Confidentiality

I find that the affected parties have established that, at the time of the submission of their proposals, they maintained a reasonably-held expectation that the information they provided would be treated by the Ministry in a confidential fashion. This is evidenced by the explicit confidentiality provisions included in several of the proposals, as well as the circumstances surrounding the submission and opening of them. At the time of their submission, the proposals were sealed and delivered to a designated official in the Ministry. When the proposals were opened, only the names of the affected parties were made public. In my view, this treatment of the information contained in the proposals is consistent with an expectation of confidentiality on the part of the participants to the process.

Past practices of the Ministry and the Government of Ontario generally also point to the conclusion that the affected parties had a reasonably-held expectation of confidentiality. While Article 7.1(b) of the RFP alerted the affected parties to the fact that their proposals would be subject to the access provisions of the Act, I find that this did not have the effect of removing the expectation of confidentiality on the part of both the Ministry and the affected parties. Rather, these provisions had the effect of requiring those who submit proposals to identify the information which they consider to be confidential, which will then be held in confidence unless ordered disclosed under the Act (Order PO-1753).

In conclusion, I find that the commercial information contained in the proposals themselves, as well as any references to that information which may be contained in the evaluation documents, were supplied to the Ministry with a reasonably-held expectation of confidentiality and that the second part of the section 17(1) test has been met with respect to this information.

Part Three of the Test - Reasonable Expectation of Harm

The words "could reasonably be expected to" appear in the preamble of section 17(1), as well as in several other exemptions under the Act dealing with a wide variety of anticipated "harms". In the case of most of these exemptions, including section 17(1), in order to establish that the particular harm in question "could reasonably be expected" to result from disclosure of a record, the party or parties with the burden of proof must provide "detailed and convincing" evidence to establish a "reasonable expectation of probable harm" [see Order P-373, two court decisions on judicial review of that order in 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 at 40 (Div. Ct.), and Ontario (Minister of Labour) v. Big Canoe, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)].

In the present appeal, the Ministry and the affected parties, as the parties resisting disclosure, must provide detailed and convincing evidence to establish a reasonable expectation of probable harm, in this case one or more of the harms outlined in sections 17(1)(a) or (c) of the Act.

Harm to Competitive Position and Undue Loss or Gain

Submissions of the Ministry

The Ministry acknowledges that it is not in the best position to present evidence as to the possible prejudice to the affected parties' competitive position should disclosure occur. However, the Ministry again reiterates the fact that the business/management consulting industry is a highly competitive one.

The Ministry makes reference to a number of past orders where it was held that the disclosure of similar information to that in issue in the present appeal, particularly information with respect to pricing and the contents of bids, would result in harm to a firm's competitive position. It argues that disclosure of such information would enable competitors to adjust their bids in future and underbid the party whose information was released.

The Ministry goes on to submit that:

> The disclosure of intellectual property and information could undermine the competitive position of these corporations in the marketplace, interfere with their existing business and undermine their confidence in competing for future MNR bids by allowing other companies to access their intellectual property, thus gaining a competitive advantage. For example, the proposals contain development and implementation plans, technical approaches to business solutions, list [sic] of clients and projects completed, financial information outlining project fees broken down by assignment and individual fees, lists of consultants and position titles, etc. Competitors could use another competitor's business strategy, adjust their bids, underbid in future business contracts, or solicit consultants to join their company once they know the position titles of the individuals.

Submissions of the Affected Parties

The representations of the affected parties are remarkably similar to each other in describing their objections to the disclosure of the information contained in their proposals. Several outline in detail the efforts which they have expended in preparing each proposal and have attempted to demonstrate the unique nature of the work which went into its formulation. Each firm has its own way of responding to RFPs, as is reflected in the various proposals themselves. They submit that the proposals are the product of significant research and development, derived from their experience in the industry in supplying similar services to public and private sector clients. The research which went into each proposal required the expenditure of time and money. The affected parties argue that by disclosing the fruits of these efforts, their competitors would gain an unfair advantage and they would suffer an undue loss. As I noted above, the business/management consulting industry is highly competitive, as is evidenced by the number of firms which made submissions in response to this RFP.

The affected parties concern about disclosure extends not only to the format of the proposals themselves, but also to the recommended strategies and methodologies contained therein. In other words, not only the form, but also the content, of the proposals have a commercial value and ought not to be disclosed.

Each of the affected parties who made representations expressed particular concern about the disclosure of their pricing practices, the methodologies for performing the work required by the RFP, their previous clients and, in some cases, the names and titles of the employees who would perform the work. They argue that the disclosure of pricing strategies would enable competitors to undercut them in future competitions for similar work, thereby gaining an unfair advantage. In addition, the disclosure of the methodologies contained in the proposals would result in competitors being able to make use of the expertise of the firm at no cost to them in future competitions for similar work.

Similarly, the affected parties expressed concern with the disclosure of any information from their proposals which may be contained in the evaluation documentation. The comments made by the evaluators about the strengths and weaknesses of each proposal could allow a logical inference to be made as to the actual contents of the proposal.

Findings with Respect to Harms

In my view, the affected parties have provided me with the kind of detailed and convincing evidence which demonstrates that the disclosure of certain portions of their proposals could reasonably be expected to result in significant prejudice to their competitive position and an undue loss to them, along with a corresponding gain to their competitors. As noted above, the business/management consulting industry is extremely competitive. The affected parties who participated in this RFP range in size from large international accounting firms to small, "boutique" consulting organizations. Each has developed its own unique style for responding to RFPs which is the result of a significant expenditure of time and resources and the accumulated experience of the firm. In my view, the disclosure of the format used by the affected parties in each of the proposals could reasonably be expected to result in significant prejudice to them. If this information were to be disclosed, a competitor could reasonably be expected to imitate the style, as

well as the substance, of the affected parties' proposals in preparing for future consulting competitions initiated by the Ministry or any other government or private sector RFP.

I also find that the affected parties have provided me with sufficient evidence to enable me to find that the disclosure of the pricing information and the specific methodologies for the performance of the work required by the RFP could reasonably be expected to result in undue loss to them. If pricing information were to be made available to competitors, I find that it is reasonably likely that they would make use of this information to attempt to undercut the affected parties' pricing in future competitions, thereby resulting in prejudice to their competitive positions.

Similarly, the disclosure of the methodologies outlined in each proposal, the actual description of "here's how we will perform the work required", could also reasonably be expected to result in prejudice to the competitive position of the affected parties. Again, competitors could make use of the methodologies described in the proposal and tailor their own proposals to imitate those of the successful bidders. The same reasoning may be applied to the information contained in the proposals which identifies previous clients of the affected parties. I find that this information may be used by competitors to gain a significant competitive advantage in seeking future consulting work.

Several of the affected parties also raised concerns about the disclosure of the names and titles of the individuals listed in their proposals who would perform the work required by the RFP. One affected party provided me with evidence that the disclosure of the names and titles of employees of consulting firms such as those who responded to this RFP could reasonably be expected to result in the "poaching" of such employees by recruiters for other firms or "headhunters" seeking to lure their employees away. I note that a number of the affected parties list the names and titles of all of their consultants on their internet web sites or freely provide this type of information to potential clients in the brochures and other written materials they distribute. In Order PO-1816, Adjudicator Cropley addressed a similar situation with respect to material contained in a response to an RFP-type competition which was not, strictly speaking, directly related to the proposal itself. She stated that:

> The proposals also contain other types of information. In general, each one describes the organization and its members, its philosophy and/or mandate and the various services and programs it provides, incorporation information and associations. Much of this type of information is already publicly available or is the type of information that the organizations would make available to anyone interested in the services they provide. Several of the candidates have or are developing web sites which contain elements or variations of this background information and/or produce newsletters containing various types of information about the organization and its programs.

In my view, the disclosure of the names and titles of the individuals engaged by each firm for the work required by the RFP could not reasonably be expected to result in harm to the affected parties' competitive position. I find that the risk of losing staff to competitors or to "headhunters" as a result of the disclosure of this information to be remote at best. As stated by the "headhunter" who provided a letter in this regard along with the representations of one of the affected parties,

> In today's very competitive employment market, I use many sources in order to respond to my clients' needs, including research on the internet, extensive networking, advertising, and in-depth research. Having a list of the names and positions of specialists within a leading consulting firm would be a valuable **starting point** to recruit candidates. [my emphasis]

In my view, the other recruitment techniques described by the "headhunter" are much more likely to yield the results sought than by cold-calling existing employees of a firm with a view to "poaching" them for a competitor. I find that the affected party in this case has not provided me with the kind of detailed and convincing evidence required to establish a reasonable expectation of harm should the names and titles of the firm's employees be disclosed.

By way of summary, I find that all three aspects of the test in sections 17(1)(a) and (c) have been satisfied with respect to the information relating to the affected parties' pricing practices and methodologies, as well as the information relating to previous clients, which each submitted in response to the RFP. I have provided the Ministry with a highlighted copy of the records which are to be disclosed along with a copy of this order.

ORDER:

1. I order the Ministry to disclose to the appellant copies of those records or portions of the records which are **not** highlighted on the copy of the records which I have provided to the Ministry along with a copy of this order by **October 27, 2000** but not before **October 23, 2000**.

2. I uphold the Ministry's decision to deny access to those records or portions of the records which are highlighted on the copy of the records which I have provided to the Ministry with a copy of this order.

3. In order to verify compliance with the terms of Provision 1, I reserve the right to require the Ministry to provide me with a copy of the material which it discloses to the appellant.

Original signed by: September 22, 2000
Donald Hale
Adjudicator