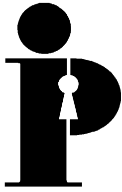

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-2200

Appeal PA-020154-1

Management Board Secretariat

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NATURE OF THE APPEAL:

Management Board Secretariat (MBS) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to the government's dealings with [a named company]. The request read:

> Management Board Chairman David Tsubouchi has said twice in the Legislature (Oct. 3 and Dec. 11, 2001) that he asked ministry staff to review all the government's contracts with [a named company]. I would like copies of all memos, reports and documents concerning Mr. Tsubouchi's request that staff look into these contracts, and all memos, reports and documents concerning staff's findings and response to Mr. Tsubouchi.

The Ministry identified 18 responsive records.

Before issuing its decision, MBS notified the named company and another company (the consultant) whose interests might be affected by the disclosure of the responsive information. Both of these affected parties objected to the disclosure of their information.

MBS then issued a decision to the requester, granting partial access to the records. The Ministry relied on the exemptions in section 15(b) (relations with other governments) and sections 17(1)(a) and (c) (third party information) as the basis for denying access to the undisclosed portions.

The requester, now the appellant, appealed MBS's decision.

During the course of mediation, MBS provided the appellant with access to the following records:

- Records 1, 3, 4, 5, 13 and 14 - full disclosure
- Records 2, 6-12 and 15-18 - partial disclosure

Mediation was not successful in resolving the remaining issues, and the file was transferred to the adjudication stage of the appeal process. I sent a Notice of Inquiry to MBS, the named company and the consultant, setting out the issues and seeking representations. All three parties responded with representations. At the request of MBS, I sent the Notice to the City of Toronto and to the Government of British Columbia and received representations from both of them as well. I then sent the Notice to the appellant along with non-confidential portions of the representations provided by MBS, the City of Toronto, the Government of British Columbia and the named company. The appellant chose not to provide representations.

RECORDS:

All the records at issue in this appeal are either briefing notes or House Notes prepared for the Chair of the Management Board of Cabinet (the Minister) by MBS's Procurement Policy and IT Procurement Branch. The information in the records relates to contracts between the Ontario government and the named company.

Record 2 is a briefing note dated December 20, 2001, which outlines the various leasing contracts entered into by the Ontario government and the named company. Record 11 is a previous version of Record 2, dated October 31, 2001. The only undisclosed portions of these records are the name of the consultant that appears on pages 1, 2, 3, 4 and 5 of Record 2 and pages 1 and 3 of Record 11; and one phrase that appears on page 7 of Record 2 and page 6 of Record 11.

Record 12 is briefing note dated October 26, 2001, concerning the City of Toronto and the named company. All portions of this 3-page of this record, with the exception of the title, have been withheld.

Record 6 is a House Note dated December 12, 2001, used to prepare the Minister for Question Period in the Legislative Assembly. It outlines the status of various leasing contracts between the Ontario government and the named company. Records 7-10 and 15-18 are previous versions of the same House Note, dated between September 18, 2001 and December 11, 2001. Most portions of these records have been disclosed to the appellant.

Record 6 contains a paragraph summarizing contracts between the named company and the Government of British Columbia, some of which has been withheld. Records 6-10 and 15-18 all include a discussion of the arrangements between the named company and the City of Toronto, which has also been withheld.

MBS has also denied access to small portions of Record 6 that make reference to financial arrangements between the Ontario government and the named company on various leases.

DISCUSSION:

THIRD PARTY INFORMATION

General Principles

Sections 17(1)(a) and (c) of the *Act* read:

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

For a record to qualify for exemption under sections 17(1)(a) or (c), the parties resisting disclosure 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 MBS 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 17(1) will occur.

[Orders 36, P-373, M-29 and M-37]

Part 1: Type of Information

This office has defined the terms “commercial information” and ‘financial information” as follows:

> ***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***
>
> Financial information refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples include cost accounting method, pricing practices, profit and loss data, overhead and operating costs. [Orders P-47, P-87, P113, P-228, P-295 and P-394]

Records 2 and 11

MBS has withheld the name of the consultant in a number of places on Records 2 and 11. MBS submits:

> As set out in the information released by MBS in the briefing notes, [the consultant] was retained by several government ministries to conduct a review, and provide analysis in respect of contracts between those ministries and [the named company]. In Order PO-1818, [the Commissioner’s Office] held that the name of consultants can be characterized as commercial information. In this

> order, the IPC held that "the provision of consulting services to government is a highly competitive field … [and] I find that some commercial value exists in the names of "players" were identified by the affected parties as having particular areas of expertise in this marketplace." On this basis, MBS respectfully submits that the consultant retained by the ministries to review and evaluate [the named company's] contracts has specialized consulting expertise in this area and thus, the consultant's identity has intrinsic commercial value.

The consultant's representations do not deal specifically with its name. In fact, the consultant would appear to consent to disclosing its name, where it states in its representations:

> The decision of [MBS] to release references to [the consultant] within the subject documents, as provided to us, is acceptable. We understand that only internal MBS records and not those of [the consultant] are currently the subject of this process to the [Commissioner's Office].

The representations go on to express concern should any records prepared by the consultant or records containing its proprietary information be disclosed. No such records are at issue in this appeal.

Even if the consultant's position does not constitute consent to disclose its name to the appellant, I do not accept MBS's position that the name constitutes "commercial" information.

In Order PO-1818, referred to by MBS, Adjudication Donald Hale determined that the names of *individual consultants* qualified as "commercial" information in the context of that appeal. He stated:

> This information [i.e. the names and job titles] 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.

In the present appeal, no individual is identified by name. The only severed information is the name of the company retained to review the various leasing contracts between the Ontario government and the named company. While I accept that the services provided by the consulting company are commercial in nature, I am not persuaded that the name of the company itself, which is no-doubt well known in its area of expertise, has the commercial connotation necessary to meet the requirements of part one of the section 17(1) test.

The other information withheld from Records 2 and 11 is one phrase relating to the named company. In this regard, MBS submits:

> … this information is commercial information as it relates to the nature of the commercial relationship between members of a business consortium that is a vendor to the government.

I concur with MBS's position, and find that part one of the section 17(1) is established for the withheld phrase that appears on page 7 of Record 2 and page 6 of Record 11.

Records 6-10, 12 and 15-18

Records 6-10, 12 and 15-18 all contain information about the City of Toronto and its relationship with the named company. MBS makes the following submissions with respect to this information:

> …all of the information is related to the City's commercial contractual relationship with [the named company]. The [Commissioner's Office] has held in previous orders that commercial information relates to the buying, selling or exchange of merchandise or services [Orders P-493, P-742]. The City of Toronto information also contains financial figures. The [Commissioner's Office] has also held that financial information relates to finance or money matters. [Orders #47, P-607, P-610].

The City of Toronto also submits that the records contain commercial information.

Record 12 is titled "City of Toronto and [the named company]" and consists of a summary of the business relationship between these two organizations. Some of the withheld portions of Records 6-10 and 15-18 contain summaries of the information in Record 12. I find that all of the information relating to the City of Toronto falls squarely within the definition of "commercial" information for the purposes of section 17(1). The City of Toronto and the named company have a contract or series of contracts for the provision of goods and services, and the information under consideration here relates directly to these commercial arrangements. Some of these same portions of records also include "financial" information relating to the various contract terms.

Accordingly, I find that part one of the section 17(1) test has been established for the portions of Records 6-10, 12 and 15-18 that contain information relating to the City of Toronto.

Record 6 also contains one paragraph outlining lease arrangements between the Government of British Columbia and the named company. MBS submits that the leasing pricing information withheld from this paragraph qualifies as "financial" information. The Government of British Columbia's representations support MBS.

I concur. The information relating to the Government of British Columbia consists of the financial basis upon which the leasing rate paid to named company is calculated. This is clearly "financial" information as this office has defined that term.

Accordingly, I find that part one of the section 17(1) test has been established for the information on page 4 of Record 6 that relates to the Government of British Columbia.

The only other information withheld by MBS is leasing pricing information for various contracts between the Government of Ontario and the named company that appears on pages 3 and 4 of Record 6. I find that it too qualifies as "financial" information.

In summary, I find that part one of the section 17(1) test has been established for the withheld portions of Records 6-10, 12, 15-18 and the severed phrase that appears on page 7 of Record 2 and page 6 of Record 11. I also find that the name of the consultant that appears in various places on Records 2 and 11 does not qualify as "commercial" information, or any of the other types of information identified in section 17(1). Because all three parts of the section 17(1) test must be established, the name of the consultant does no qualify for exemption under this section of the *Act*.

Part 2: Supplied in Confidence

In order to satisfy part 2 of the test, the parties resisting disclosure must show that the information was "supplied" to MBS "in confidence", either implicitly or explicitly.

Supplied

Because the information in a contract is typically the product of a negotiation process between an institution and an affected party, the content of contracts generally will not qualify as originally having been "supplied" for the purposes of section 17(1) of the *Act*. A number of previous orders have addressed the question of whether the information contained in a contract entered into between an institution and an affected party was supplied by the affected party. In general, the conclusion reached in these orders is that, for such information to have been "supplied" it must be the same as that originally provided by the affected party. In addition, information contained in a record would "reveal" information "supplied" by the affected party if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the institution. [See, for example, Orders P-36, P-204, P-251, P-1545, PO-2018]

In Confidence

In order to satisfy the "in confidence" component of part two, the parties resisting disclosure must establish that there was a reasonable implicit or explicit expectation of confidentiality on the part of the supplier at the time the information was provided. This expectation must have an objective basis. [Order M-169]

In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was:

- Communicated to the institution on the basis that it was confidential and that it was to be kept confidential.

- Treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization.

- Not otherwise disclosed or available from sources to which the public has access.

- Prepared for a purpose which would not entail disclosure.

[Order P-561]

Records 2 and 11

I have already determined that the name of the consultant that appears on Records 2 and 11 is not "commercial" information for the purposes of part one of the section 17(1) test. I also find that this information was not "supplied in confidence". The records at issue in this appeal are all internally generated documents. As noted earlier, the consultant appears to have consented to the disclosure of information about it that appears in the records. In any event, there is nothing in the consultant's representations to suggest that its name was "supplied" to MBS, or that supplying its name was done with any expectation of confidentiality. MBS points out in its representations that part two of the section 17(1) test must be dealt with contextually, which I accept. In the particular context of this appeal, and taking into account the nature of the records, I do not accept that the name of the consultant was either "supplied" for the purposes of section 17(1) or supplied "in confidence", as that term has been interpreted in past orders.

It is also significant to note that names of organizations participating in competitive processes for government business are routinely disclosed (Orders MO-1239, P-610, PO-1722).

MBS makes the following submissions regarding the withheld phrase on page 7 of Record 2 and page 6 of Record 11:

> The information that relates to the contractual relationship between the parties in the business consortium was supplied to MBS in a proposal by the consortium, in response to an RFP for the Government Mobile Communications Project. It is MBS's normal and consistent practice to treat contractors' bid information as confidential information. Consequently, the information relating to the contractual relationship between consortium members was received by MBS in confidence as part of the consortium's bid proposal. In PO-1722, the IPC held that bidders have a reasonably held expectation of confidentiality with respect to the commercial and financial details of their bid submissions. By analogy, MBS submits that contractors have a reasonably held expectation of confidentiality with respect to their commercial relationships outlined in their bid proposals.

Although I accept that bids submitted during the selection process by companies competing for government contracts are often "supplied in confidence" for the purposes of section 17(1), I find that the withheld phrase is not this type of record. The information contained in this phrase is a statement of fact that reflects a negotiated arrangement between MBS and the named company. Following the approach of past orders dealing with negotiated agreements, I find that the information in this phase was not "supplied" by the named company, and it therefore fails part two of the section 17(1) test for that reason.

Records 6-10, 12, and 15-18

MBS submits that all information relating to the City of Toronto was supplied by the City in confidence:

> …[I]t is clear, on the face of Record #12, that the information contained in the briefing note was supplied in confidence by the City of Toronto. Each record contains, to varying degrees, the information outlined in Record #12. MBS submits that the City of Toronto Information contained in each briefing note was, therefore, 'supplied" to MBS by the City of Toronto. Moreover, MBS has treated this information in the strictest confidence by limiting access to the information (as demonstrated on the face of the record #12).

MBS takes a similar position for the information provided by the Government of British Columbia:

> … [T]he information severed on page 4 of Record #6 was supplied in confidence to the ministry by the government of British Columbia. A staff member in the ministry contacted a colleague in the government of British Columbia in the course of conducting an intergovernmental comparison of desktop leasing. The information contained in record #6 was supplied to the MBS staff member on condition that the information be maintained in confidence.

The City of Toronto and the Government of British Columbia both support MBS's position on part two of the test.

It is clear on the face of the records that MBS contacted the City of Toronto and the Government of British Columbia in order to obtain information regarding their relationships with the named company in the context of preparing the briefing notes and House Notes for the Minister, and that both of these organizations provided the information that is reflected in the records. As such, I find that this information was "supplied" to MBS for the purposes of section 17(1).

As MBS points out, Record 12 includes an explicit reference to the confidential nature of the information contained in the briefing note, and it is clear from the text of the various other records about the City of Toronto that the withheld portions are derived from Record 12. MBS states that its staff treated this information in strict confidence. Accordingly, I find that the

information relating to the City of Toronto that appears in Records 6-10, 12 and 15-18 was supplied by the City with a reasonably held explicit expectation that it be treated confidentially by MBS, thereby satisfying the requirements of part two of the section 17(1) test.

Based on the representations of MBS and the Government of British Columbia, I find that the financial information contained on page 4 of Record 6 was supplied by the Government of British Columbia to MBS in confidence. Accordingly, part two of the section 17(1) test has also been established for this information.

As far as the financial on pages 3 and 4 of Record 6 is concerned, MBS submits:

> Although the contents of agreements do not usually qualify as having been "supplied", the IPC has consistently held that it the information at issue in the agreement is the same as that which was actually supplied to the Ministry by the affected party, then the information is "supplied" for the purposes of section 17. In this case, the pricing information contained in the briefing notes was collected from contracts entered into between the Ontario government and three different vendors. This pricing information was originally "supplied" to the government by each vendor in their bid proposals (provided in response to three different Request for Proposals "RFP"s for leasing services). This pricing information was subsequently incorporated into three Agreements between the government and each vendor, unchanged. The prices reflected in these contracts were not negotiated, they were supplied in each vendors' bid, and accepted by the government. As the IPC concluded in Order P-1611, where information contained in a company's proposal provided to a ministry in the context of a commercial bidding process "is one and the same" as that incorporated into the agreement, the information was "supplied".
>
> It is MBS's normal and consistent practice to treat contractor's pricing information as confidential information. In the present case, the pricing information contained in the contracts reference in the briefing notes was supplied both implicitly and explicitly in confidence by the vendors to the government in their proposal under each RFP. In each case the price bid was subsequently incorporated into the contract.
>
> In PO-1722, the IPC held that bidders have a reasonably held expectation of confidentiality with respect to the commercial and financial details of their bid submissions. MBS respectfully submits, therefore, that contractors have a reasonably held expectation of confidentiality with respect to prices supplied in confidence in their bid proposals that are subsequently incorporated, unchanged, into formal contracts.

The named company submits that the information was "supplied in confidence to the Crown" and has been "consistently dealt with in a confidential manner." It also submits that the named

company's general practice is "to indicate that bid documents, proposal and pricing information are supplied to lessees and prospective lessees on a confidential basis", and submits:

> Although the briefing notes in question were not prepared or provided by [the named company] directly, the underlying information used to generate the report was provided by [the named company] (in the form of FQ responses, or lease contracts) and understood to be confidential.

To meet the "supplied" aspect of part 2 of the test, it must first be established that the information in the record was actually supplied to MBS, or that its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied (Orders P-203, P-388 and P-393).

As noted earlier, the contents of contracts involving an institution and an affected party will not normally qualify as having been "supplied" for the purposes of section 17(1) of the *Act* since the information in a contract is typically the product of a negotiation process between two parties. A number of past orders of this office have followed this principle (see, for example, Orders P-36, P-204, P-251, P-1545, PO-2018).

In general, the conclusions reached in these orders is that for information to have been "supplied", it must be the same as that originally provided by the affected party, not information that has resulted from negotiations between the institution and the affected party. However, the fact that a contract is preceded by little negotiation, or that the contract substantially reflects terms proposed by an affected party, does not lead to a conclusion that the information in the contract was "supplied" within the meaning of section 17(1). The terms of a contract have been found not to meet the "supplied" criterion, even where they were proposed by the affected party and agreed to with little discussion (see Order P-1545).

A total of six portions containing financial information have been severed from pages 3 and 4 of Record 6. One portion concerns the Government of British Columbia, which I have already dealt with. Two portions deal with leasing agreements with suppliers other than the named company, and I find that these portions are not responsive to the appellant's request and should be withheld on that basis.

The remaining three portions relate to leasing agreements between the named company and three ministries of the Ontario government, including MBS. In each case, the withheld text describes the basis for calculating leasing costs for these agreements. Although MBS takes the position that this information was provided by the named company in its bid proposals for the various leasing contracts, in my view, it comprises an essential term of any agreement for leasing services of this nature, and is properly characterized as having been "negotiated" not "supplied" for the purposes of section 17(1) of the *Act*. While the named company may have proposed the specified leasing cost basis, the Government of Ontario was not bound to accept it. If the proposed term remained unchanged in the leasing agreements themselves, it is reasonable to conclude that the Government considered the proposal put forward by the named company in

each instance and found it to be acceptable. In my view, a process of this nature is a negotiation, regardless of whether any actual discussion on the proposed term took place, or whether the contract contains the same wording as the named company's bid proposal.

Accordingly, I find that the financial information concerning the three ministries contained on pages 3 and 4 of Record 6 was not "supplied" for the purposes of section 17(1), and fails to meet the requirements of part two of the test without any need for me to consider the parties' submissions on the "in confidence" component of the test.

In summary, I find that part two of the section 17(1) test has been established for the portions of Records 6-10, 12 and 15-18 that contain information relating to the City of Toronto and the Government of British Columbia; that two portions on page 4 of Record 6 fall outside the scope of the appellant's request; and that the remaining portions of Records 2, 6 and 11 do not meet the requirements of part two of the test.

Part 3: Harms

I will now consider the harms component of section 17(1) for the portions of records relating to the City of Toronto and the Government of British Columbia.

Under part 3, MBS and/or the City of Toronto or Government of British Columbia must demonstrate that disclosing the information that was supplied by these organizations to MBS in confidence "could reasonably be expected to" lead to a specified result. To meet this test, the parties must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient. [*Ontario* (*Workers' Compensation Board)* v. *Ontario (Assistant Information and Privacy Commissioner*) (1998), 41 O.R. (3d) 464 at 476 (C.A.)]

City of Toronto - Records 6-10, 12 and 15-18

MBS submits that disclosing information supplied by the City of Toronto would impair the City's ability to negotiate and would result in undue loss for the City. MBS identifies that the City of Toronto and the named company are embroiled in a dispute concerning various leasing arrangements and that "disclosure of the information supplied by the City to MBS in respect of [the named company] would impair the city's ability to negotiate with [the named company] in relation to outstanding issues."

The City's representations support this position. The City submits that disclosing the information "could reasonably prejudice the City's position in the ongoing investigations/inquiries and any future negotiations subsequent to these investigations/inquiries."

The information in the records that was supplied by the City of Toronto deals directly with the subject matter of its ongoing dealings with the named company and the unresolved issues between them. The City points out that further negotiations with the named company on these

very issues will take place in future. In these particular circumstances, I am persuaded that disclosing information now, before these negotiations are completed, could reasonably be expected to interfere with the pending negotiations and could also reasonably be expected to result in undue loss to the City in this context. In my view, MBS and the City of Toronto have provided the detailed and convincing evidence necessary to establish the harms in sections 17(1)(a) and (c), thereby satisfying part three of the section 17(1) test.

Government of British Columbia - page 4 of Record 6

MBS and the Government of British Columbia both submit that disclosing the Government of British Columbia's pricing information "could reasonably be expected to prejudice significantly that government's negotiating position for future computer leasing contracts." The Government of British Columbia points out that information of this nature would be withheld under the mandatory third party exemption in its freedom of information legislation.

Based on the Government of British Columbia's position that this type of information would qualify under the mandatory exemption in its particular access regime, I accept that disclosing it in the context of this appeal under Ontario's *Act* could reasonably be expected to interfere significantly with that province's future contractual negotiations. Therefore, the withheld information relating to the Government of British Columbia on page 4 of Record 6 satisfies part three of the section 17(1)(a) test.

In summary, I find that all three parts of the section 17(1) test have been established for the portions of Records 6-10, 12 and 15-18 containing information relating to the City of Toronto and the Government of British Columbia, and I uphold MBS's decision to denying access to this information. I also find that the withheld portions of Records 2 and 11, and all remaining responsive portions of Record 6 do not qualify for exemption under section 17(1) of the *Act*.

Because of my findings under section 17(1) it is not necessary for me to deal with MBS's section 15(b) exemption claim.

PERSONAL INFORMATION/INVASION OF PRIVACY

For the first time in its representations, MBS claims that the name of the consultant contained in Records 2 and 11 constitutes "personal information", and disclosing this information would constitute an unjustified invasion of privacy under section 21(1) of the *Act*.

MBS submits:

> … [The Commissioner's office] has found that in certain circumstances, disclosure of the identities of individuals reviewing, for example, drug products for the Ministry of Health (Order P-235) or films as a member of the Ontario Film review board (Order P-611), would also reveal other personal information relating to the individuals because it would reveal that a particular person reviewed a

> particular product. On this basis, the [Commissioner's office] has concluded that the information at issue constituted the reviewers' personal information.
>
> In the present case, MBS respectfully submits that the Assistant Commissioner should follow Order P-235 and P-611 and find that disclosing the identity of the consultant would have the effect of releasing the name or names of the individuals who prepared the reports) as the names would generally be known in the IT Community and leasing community) and further that such disclosure would also reveal the personal information of the individual or individuals who reviewed and evaluated the [named company's] contracts.

I do not accept this position.

In order to qualify as "personal information" under the definition in section 2(1) of the *Act*, the information must be "about an identifiable individual". Unlike the records at issue in the two orders referred to by MBS, no individual is named in Records 2 and 11, only a consulting company. Based on the argument put forward by MBS, I am not persuaded that any information about an identifiable individual acting in a personal capacity would be revealed through the disclosure of the name of the consultant company.

The consultant was notified by MBS in the context of responding to the appellant's request and it would appear that no issues regarding "personal information" were raised at that time. MBS's decision to deny access to the requester was based on its view that the name of the consultant qualified for exemption under section 17(1) of the *Act*, which applies to business entities not individuals. The representations provided by the consultant in response to my Notice of Inquiry are signed by the president of this incorporated business, and its submissions focus on the potential harm to the consultant "as a private company".

In the circumstances, I find that the name of the consultant does not qualify as "personal information" as the term is defined in section 2(1) of the *Act*. Because the section 21(1) exemption only applies to "personal information", it cannot apply in the circumstances of this appeal.

ORDER:

1. I order MBS to provide the appellant with a copy of the undisclosed portions of Records 2 and 11, and the undisclosed portions of page 3 of Record 6 and the first undisclosed portion of page 4 of Record 6 by **December 4, 2003** but not before **November 27, 2003**.

2. I uphold MBS's decision to deny access to the undisclosed portions of Records 7-10, 12 and 15-18, and the undisclosed portions on page 4 of Record 6 under the headings "Other Leasing Agreements" and "Intergovernmental Comparisons".

3. In order to verify compliance with the terms of this order, I reserve the right to require MBS to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1.

Original signed by: October 29, 2003
Tom Mitchinson
Assistant Commissioner