



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1738**

**Appeal MA-020208-4**

**City of Toronto**



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## **NATURE OF THE APPEAL:**

On September 11, 2003, I issued Order MO-1684, which disposed of the issues in Appeal PA-020208-2 involving the City of Toronto (the City).

After receiving the various records ordered disclosed, the appellant sent me a letter dated November 5, 2003 indicating his reasons for believing that an additional responsive record should exist. The record he identified is an attachment referred to on page 2 of a July 19, 1999 letter received by the appellant during the course of Appeal PA-020208-2.

The City took the position that this record did not exist, and Appeal PA-020208-3 was opened to deal with the issue of whether the City had conducted an adequate search for the record. The City subsequently located the record, and Appeal PA-020208-3 was closed.

The record consists of a 73-page property appraisal dated April 1, 1999 for a property located at 453 Spadina Road in Toronto. It was prepared by a professional appraisal firm.

The City then issued a decision letter to the appellant, denying access to the record on the basis of the following exemption in the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

- section 6(1)(b) - closed meeting
- section 10 - third party commercial information
- section 11 - economic interests of the City
- section 12 - solicitor-client privilege
- section 14 - invasion of privacy

The appellant appealed the City's decision.

The appeal was streamed directly to the adjudication stage of the appeals process.

I sent a Notice of Inquiry to the City and the appraisal firm (the affected party) seeking representations. In the case of the City, I asked for submissions on all identified exemptions. I asked the affected party to respond only to section 10.

The affected party and the City both submitted representations. In its representations, the City withdrew all exemption claims with the exception of section 10. As far as section 10 is concerned, the City only seeks to apply the exemption to page 72 of the record, which consists of a list of the affected party's clients that was included with the appraisal report.

Therefore, the only exemption that remains at issue in this appeal is section 10. The City claims this exemption for page 72 of the record, and the affected party submits that the record should be withheld in its entirety.

I have determined that it is not necessary to seek representations from the appellant before issuing my decision in this appeal.

## **RECORD:**

The record is a 73-page property appraisal dated April 1, 1999 for a property located at 453 Spadina Road in Toronto. It was prepared by the affected party.

## **DISCUSSION:**

### **THIRD PARTY COMMERCIAL INFORMATION**

For a record to qualify for exemption under sections 10(1)(a), (b) or (c), the City 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
2. the information must have been supplied to the City 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), (b) or (c) of subsection 10(1) will occur.

(Orders 36, P-373, M-29 and M-37)

### **Harms**

I have decided to deal with part 3 of the section 10(1) test first.

For part 3 to apply, the City and/or the affected party must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the parties resisting disclosure must provide "detailed and convincing" evidence to establish a "reasonable expectation of probable harm". Evidence amounting to speculation of possible harms is not sufficient (*Ontario (Workers Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.)).

The harms identified in sections 10(1)(a), (b) and (c) are:

#### ***City's representations***

The City's representations on the harms component of section 10(1) are as follows:

With respect to section 10(1)(a), the City submits that release of the client list would prejudice significantly the competitive position of the appraisal firm. Disclosure of the firms' format, style and details of its client base could result in

reducing any competitive edge that it has by allowing other firms to copy the format and detail contained therein.

The City submits that disclosure of the application would result in the harm set out in section 10(1)(b) because the appraisal firm may no longer supply similar information to the City when it is in the public interest that the City make an informed decision when retaining appraisal services.

The City submits that disclosure of the record could result in undue loss to the applicant and undue gain to other groups or agencies. The list of clients could be used to advantage in the hands of any agency competing for business in the same area of expertise.

### ***The affected party's representations***

The affected party's representations do not address the client list on page 72 of the record.

The affected party's representations focus on its expectations of confidentiality and do not deal directly with any of the harms identified in section 10(1). The affected party points to a statement included in its retainer with the City, wherein the City agrees not to generally circulate or to publish the appraisal report without the affected party's permission. The affected party also submits that it has obtained information used to prepare the record from a wide variety of sources, some of which are confidential. The affected party identifies certain sections of the record that confirm these confidential arrangements.

### ***Analysis and Findings***

Based on the representations from the City and the affected party, and my independent review of the record, I find that I do not have the type of detailed and convincing evidence required to establish any of the harms under sections 10(1)(a), (b) or (c) of the *Act*.

The affected party's representations, which do not address any of the harms in section 10(1), are clearly not the type of detailed and convincing evidence necessary to establish part 3 of the test for exemption under section 10(1). I should also note that any confidential information gathered by the affected party in preparing the appraisal is not at issue in this appeal. Only the appraisal itself is at issue, and it does not include information gathered by the affected party in the process of preparing the appraisal that is not otherwise contained in the record itself.

As far as the City's representations are concerned, I find that they are speculative at best, and are not sufficient to establish any of the section 10(1) harms. Page 72 of the record is simply a partial list of the affected party's clients. Its "format, style and details" could not, in my view, reasonably be expected to result in competitive harm to the affected party, particularly in the absence of any representations of this nature from the affected party. As far as the harms in sections 10(1)(b) and (c) are concerned, the City's representations are simply re-statements of the

harms with no evidence or argument to establish how any of the harms could reasonably be expected to result from disclosure of the partial list of clients comprising page 72 of the record.

For these reasons, I find that the part 3 harms under section 10(1)(a), (b) or (c) have not been established. Because all three parts of the test must be established in order for a record to qualify for exemption, I find that the section 10(1) of the *Act* does not apply in the circumstances of this appeal, and the record should be disclosed.

**ORDER:**

1. I order the City to disclose the record to the appellant by **February 16, 2004** but not before **February 9, 2004**.
2. In order to verify compliance with this order, I reserve the right to require the City to provide me with a copy of the record disclosed to the appellant, upon request.

Original Signed By: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

\_\_\_\_\_  
January 12, 2004