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

ORDER PO-2308

Appeal PA-030332-1

Ontario Clean Water Agency

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/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

BACKGROUND

This appeal deals with records held by the Ontario Clean Water Agency (OCWA).

OCWA is an agency of the provincial government, created under the *Capital Investment Plan Act*, *1993*, for the purpose of providing water and wastewater services. It operates approximately 450 water and wastewater facilities for more than 200 municipalities and a small number of private and institutional clients within Ontario. According to OCWA, it is the largest supplier of municipal out-sourced water and wastewater services in the province. OCWA currently operates 31% of Ontario's municipal water facilities and 43% of the municipal wastewater facilities. Other facilities are operated directly by municipalities through a municipal public utilities commission or by one of OCWA's private sector competitors.

NATURE OF THE APPEAL:

OCWA received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

> A copy of the entire list of clients served by OCWA containing the following information:
>
> - each client name
> - each client address and phone number
> - each client key contact person name and phone number
> - start date of contract between OCWA and each client
> - end date of contract between OCWA and each client
> - nature of service(s) provided to each client (i.e. water treatment, waste water treatment, water distribution, waste water collection, management advisory services)
> - annual financial value of each contract
> - total project revenue to be received for each contract (for full term of contract).

OCWA identified the responsive record and denied access on the basis of the exemptions in sections 18(1)(a) (valuable government information) and 18(1)(c) and (e) (economic and other interests) of the *Act*.

The requester, now the appellant, appealed the decision.

During mediation, OCWA explained that it did not provide this office with a list of client telephone numbers or the total project revenue for each full-term contract because that data is contained in a different database and it would require cross-referencing to link the data sources. OCWA also explained that it did not produce the total revenue for each project because the total revenue varies depending on the conditions of each contract, and many contracts are ongoing. For example, the yearly revenue could vary depending on the volume of water usage. OCWA

explained that multiplying the yearly revenue by the length of the contract would provide a reasonable estimate of the total revenue for each project.

The appellant was satisfied with the explanations provided by OCWA with respect to the telephone numbers and the total revenue for each project and has agreed to proceed with the appeal based on the information contained in the one record OCWA has provided to this office.

Mediation efforts were not successful and the appeal was transferred to me for adjudication.

I started my inquiry by sending a Notice of Inquiry to OCWA, setting out the facts and issues in the appeal and seeking written representations. OCWA responded, and I then provided the appellant with a copy of the Notice and the non-confidential portions of OCWA's representations. The appellant also submitted representations. I then sent a Supplementary Notice of Inquiry to OCWA, seeking representations on public intent arguments put forward by the appellant in his representations. OCWA submitted representations in response. The appellant was given an opportunity to reply, but declined to do so.

RECORD:

The record consists of a computer-generated chart detailing information about OCWA's clients. Specifically, the chart lists the following information:

- client name
- client number
- contact person
- address
- start and end date of the contract
- nature of service
- total annual project revenue for 2002

DISCUSSION:

ECONOMIC AND OTHER INTERESTS

OCWA claims that all of the information contained in the record qualifies for exemption under sections 18(1)(a) and (c), and that the contract start and end dates, the service type and the total annual project revenue also qualifies for exemption under section 18(1)(e). These sections read:

> A head may refuse to disclose a record that contains,
>
> (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
>
> …

> (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
>
> …
>
> (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;

The report titled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980,* vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) provides the following rationale for including a "valuable government information" exemption in the *Act*, which is helpful in considering exemption claims under section 18(1):

> In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute… Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

Information that could prejudice the economic interest or competitive position of an institution: section 18(1)(c)

General principles

For section 18(1)(c) to apply, OCWA must demonstrate that disclosing the record "could reasonably be expected to" lead to the specified result. To meet this test, OCWA 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. 3(d) 464 (C.A.).].

The purpose of section 18(1)(c) is to protect the ability of institutions to earn money in the marketplace. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions [Order P-1190].

This exemption does not require the institution to establish that the information in the record belongs to the institution, that it falls within any particular category or type of information, or that it has intrinsic monetary value. The exemption requires only that disclosure of the information could reasonably be expected to prejudice the institution's economic interests or competitive position. [Order P-1190].

Representations

OCWA points out that it is a self-funded agency that competes for service contracts in the open market with other private sector companies that provide water and wastewater services. According to OCWA, contracts are obtained both through competitive bid processes and through negotiations with existing and potential clients. OCWA states:

> [It] is subject to intense competition from the private sector to gain market share. As a market competitor, OCWA has developed a dedicated client service and sales team and marketing department to maintain its client base and actively pursue new business opportunities.

OCWA submits that any advantage given to its competitors by disclosing information contained in the record "would allow them to assume OCWA's contracts and would affect OCWA's financial position". OCWA elaborates:

> The list of clients, addresses, telephone numbers, and contract dates represents the work of many staff at OCWA who prepare responses to Requests for Proposals, attend bidder meetings, negotiate with municipalities to manage and operate the water and waste treatment facilities, and provide ongoing client services. The date the contract expires is of significant value, as a competitor to OCWA could organize its resources to concentrate on those that are coming due in the near future. While OCWA is of the opinion that its bids are competitive, having to spend additional resources to compete with a company that may use different marketing strategies would be costly.
>
> The nature of the services provided, the financial value and revenue for each contract would permit a competitor to evaluate all of OCWA's contracts and focus their efforts on OCWA's most lucrative contracts. Some of OCWA's contracts are not profitable and knowing that information would provide a competitor with information that would likely impact future bids for such facilities.

OCWA explains that contract pricing takes into account the costs of operating the plant, marketing, product development, overhead costs, and unexpected costs to arrive at a revenue figure. OCWA argues that disclosing this information would enable competitors to evaluate the profitability of each facility and decide not to bid on those where there is not likely to be a significant profit.

OCWA describes the nature of the prejudice that could occur were the information disclosed:

> As the largest supplier of outsourced water and wastewater services in the Province, it is likely that OCWA's competitors would use a detailed client list to contact OCWA's key contacts to entice them to switch service providers leading to an erosion of OCWA's client base. This ability would be further enhanced by having a contract list including termination dates that would allow competitors to

> specifically target OCWA clients near the end of their current contracts who might otherwise choose to renew their service agreements with OCWA without going to a competitive bid process. Such processes require costs to be borne by [OCWA] to prepare a competitive bid, and its chances of maintaining the business is lessened.
>
> … Should contract values be made available to a competitor, it would provide them with a tremendous advantage that would allow them the opportunity to easily undercut each of OCWA's current contracts without even having to undertake the exercise of formulating their own price. This would significantly affect [OCWA's] competitive position and will harm [OCWA's] financial viability.

OCWA draws an analogy to Order M-67, which involved a request for access to client lists of the Metropolitan Toronto Conservation Authority, and contends it has put significant time and effort into promoting its services by soliciting both existing and prospective clients through direct advertising and marketing. OCWA submits it would be prejudicial to its economic interests and competitive position to provide either a contact list or contract information to competing entities.

OCWA also relies on Order PO-1791, where Adjudicator Sherry Liang found that disclosing unit pricing information could reasonably be expected to prejudice the competitive position of an affected party. OCWA argues:

> The value of each contract and total revenue is equivalent to unit pricing for the management and operation of a water or wastewater treatment facility. While each facility is unique, there are many similarities across OCWA-operated facilities that would allow a competitor to identify OCWA pricing methods, and use this to their advantage on future competitive bids.

OCWA takes the position that there is a reasonable expectation that its competitive position and economic interest would be prejudiced by disclosure of the information. It argues that if the information is disclosed to a private sector competitor, it is reasonable to expect that the competitor "would want to take whatever advantage available to it in order to improve their competitive position in the marketplace". OCWA reiterates that it does business in a highly competitive field.

OCWA points out that in Order MO-1609, which involved OCWA as an affected party resisting disclosure of its information, Adjudicator Donald Hale found that the annual financial value and total project revenue of one specific contract was exempted under section 17(1) of the *Act*, as commercial/financial information that could reasonably be expected to provide a competitor with an undue advantage if disclosed.

The appellant's representations do not specifically address the requirements of section 18(1)(c), but he does make the following submissions on how not disclosing the requested information would affect the competition between private sector companies and OCWA:

> I would also like to point out that allowing OCWA to withhold this information from the public also hinders municipalities' ability to receive competitive proposals from private sector companies that are also providing these services. There are numerous instances where OCWA has convinced municipalities to extend an existing contract without facing any competition, or the agency has sole source negotiated a contract renewal.
>
> Many of OCWA's clients are small municipalities with limited management resources. Many do not make any distinction between the agency (which is supposed to be independent of government and entirely self funded) and the Government of Ontario. They believe OCWA and the government to be one and the same and therefore go along with OCWA's suggestions regarding how to do business with the agency, lest they run the risk of alienating the government and miss out on opportunities to receive "free" technical support and/or financial funding.
>
> OCWA considers itself to be in a specially privileged and quasi-monopoly position, not unlike the attitude held by the former Ontario Hydro. It is doing everything it can to avoid free and open competition against private sector companies. For the good of Ontario's citizens and economy, this must come to an end. Double standards must not be tolerated by our government.

Analysis and findings

In my view, OCWA has provided sufficiently detailed and convincing evidence to establish a reasonable expectation that disclosing some of the information in the record, specifically the contract start and end dates and the total annual revenue for each of its clients, would prejudice its economic interests and/or competitive position. I accept the premise that the OCWA operates in a highly competitive field, in the sense that it competes with a variety of organizations for the same clients. I am satisfied that if the contract start and end dates and total annual revenue amounts are disclosed they would reveal OCWA's pricing methods as well as the profitability of each contract. I also accept that OCWA's competitors would find this information useful, to the financial detriment of OCWA whose ability to pursue contracts for the operation of water treatment would be prejudiced. Accordingly, I find that the contract start and end dates and the total annual revenue amounts are exempt under section 18(1)(c) of the *Act*.

On the other hand, I am not persuaded that disclosing the remaining information in the record, which consists of the client name, the client number assigned to the contract by OCWA, contact information, and the type of service provided under the terms of the contract (i.e. water or wastewater) could reasonably be expected to result in competitive harm to OCWA. In my view, the fact that OCWA has been retained by a particular municipality or other body to provide water or wastewater services, and the type of service provided by that agency to its client, is

information that would be generally known in the part of Ontario where the treatment facility is located. Similarly, the name and business address of the municipal official with contractual responsibilities for water and wastewater treatment is known or easily obtained through publicly available sources; and the client number assigned to the contract by OCWA is an administrative identifier having no meaning or value to competitors or other outsiders to OCWA. In my view, considerations of potential competitive harm that are relevant considerations in the context of substantive information contained in the actual contracts (i.e. start and end dates and total revenues) are not relevant to the other categories of information contained in the record.

Information that belongs to an institution and has monetary value: section 18(1)(a)

Because I have determined that the contract start and end dates and the total annual revenue for each contact qualifies for exemption under section 18(1)(c), I will restrict my discussion of section 18(1)(a) to the remaining parts of the record, specifically the client name, client number for each OCWA customer, contact information, and the service type indicator.

In order for a record to qualify to exemption under section 18(1)(a) of the *Act*, OCWA must establish that the information:

1. is a trade secret, or financial, commercial, scientific or technical information;

2. belongs to the Government of Ontario or an institution; and

3. has monetary value or potential monetary value [Orders 87, P-581].

Part 1: Type of Information

OCWA takes the position that the record contains both financial and commercial information.

The term "commercial information" has been defined in past orders of the office as follows:

> *Commercial information* is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises [Order PO-2010].

The OCWA submits that the record contains commercial information because it relates to its business transactions:

> At the time a contract is awarded to OCWA by a client, OCWA enters client names, billing addresses, contract start and end dates, scope of services and related financial information into an Agency database. At the time of negotiations, key contacts are established and contact information (telephone numbers) are gathered by OCWA employees and entered into a separate database. The information is updated as needed throughout the duration of the contract.

…

> OCWA submits that the identity of its client, key contacts, their telephone numbers, start and end dates of the contract and the financial value of the contracts satisfy the commercial aspect of the exemption.

The appellant's representations do not specifically address whether the record contains "commercial information" or any of the other types of information listed in section 18(1)(a).

I am satisfied that the record contains commercial information, as that term is used in section 18(1)(a). The information relates exclusively to various business arrangements entered into by the OCWA and its clients for the purchase and sale of water and wastewater services, primarily involving municipal corporations. These arrangements are clearly commercial in nature.

Accordingly, part 1 of the section 18(1)(a) test has been satisfied.

Part 2: Belongs to the Government of Ontario or an institution

OCWA submits that it:

> … [a]sserts ownership of this information, because it generated the list using its own resources and contractual agreements, and has proprietary interest in protecting both client and contract information from misappropriation by another party, namely, OCWA's competitors.

OCWA also distinguishes the information contained in the record from information contained in the ONBIS database maintained by the Ministry of Consumer and Business Services, which was at issue in Orders P-1114 and P-1281.

> OCWA is **not** the regulator of water and wastewater treatment facilities and as a result, the identity and details requested of each of the clients is solely as a result of OCWA's ability to enter into the marketplace and successfully bid on the management and operation of the municipal facilities. This differentiates OCWA's list from that of the Ministry of Consumer and Business Services in [Order P-1281]. The ONBIS database maintains lists of companies that are required to register business names with the institution. The provincial regulator for the water and wastewater treatment facilities is the Ministry of the Environment, not OCWA. None of OCWA's client are required to contract with OCWA to provide services. [OCWA's emphasis]

Again, the appellant does not deal with this part of the section 18(1)(a) test in his representations.

In Order PO-1783, Senior Adjudicator David Goodis reviewed my earlier Orders P-1114 and P-1281 and summarized my previous comments on the phrase "belongs to" in section 18(1)(a). He states:

> [Assistant Commissioner Mitchinson] has thus determined that the term "belongs to" refers to "ownership" by an institution, and that the concept of "ownership of information" requires more than the right simply to possess, use or dispose of information, or control access to the physical record in which the information is contained. For information to "belong to" an institution, the institution must have some proprietary interest in it either in a traditional intellectual property sense - such as copyright, trade mark, patent or industrial design - or in the sense that the law would recognize a substantial interest in protecting the information from misappropriation by another party. Examples of the latter type of information may include trade secrets, business-to-business mailing lists (Order P-636), customer or supplier lists, price lists, or other types of confidential business information. …

The record at issue in this appeal is a detailed client list that has been prepared and continually updated by OCWA staff for purposes of the agency's own business administration and not for the purpose of fulfilling a legislative requirement. I accept that in order to prepare this record OCWA has expended money and effort to gather the information and has an interest in protecting this information from disclosure to its competitors. Accordingly, I find that the OCWA has a proprietary interest in the information contained in the record and the second requirement of section 18(1)(a) has been established.

Part 3: Monetary value

OCWA submits that the record has monetary value:

> As defined earlier, both OCWA's client list, and its contract details have an inherent monetary value. InfoCanada, a supplier of business information, offers a mailing list of Ontario's Water Treatment Equipment Service and Supplies for $532.00 for a basic record including name, telephone number and mailing list.
>
> Based on the price of hiring a consultant to conduct telephone interviews for OCWA's annual customer satisfaction survey, OCWA estimates it would cost over $20,000 to solicit all of Ontario's municipalities to develop a complete list of OCWA's municipal clients and related information should OCWA's clients choose to volunteer this information. Since OCWA's client base includes a small number of non-municipal clients, this would not be the complete list of OCWA clients currently requested.
>
> The requester could attempt to create its own list of OCWA's clients, addresses, telephone numbers, key contacts, and financial value of the contract by contacting every municipality in the province of Ontario. This would require a significant

> amount of resources that it could avoid if disclosure of the record at issue is ordered. …

The appellant's representations do not specifically address whether the information contained in the record has any monetary value or potential monetary value.

In Order M-654, former Adjudicator Holly Big Canoe made the following statements under the municipal counterpart to section 18(1)(a):

> The use of the term "**monetary value**" in section 11(a) requires that the information itself have an intrinsic value. The purpose of section 11(a) is to permit an institution to refuse to disclose a record which contains information where circumstances are such that disclosure would deprive the institution of the monetary value of the information …

In Order P-636, Adjudicator Big Canoe found that a list of lottery retailers had monetary value as contemplated in part three of the section 18(1)(a) test because the institution provided evidence that the list had a market value that could exceed several thousand dollars.

The OCWA has identified a market for the client name and contact information found in the record and identified that records containing similar information are commercially available for a fee. Although the OCWA does not argue that its client list has been sold to others, or that it has the intention of pursuing potential purchasers or disseminating the requested information in a way that would generate income, I accept that the client name and contact information has potential commercial value that may be exploited if made available to OCWA's competitors. Therefore, I find that the client names and contact information contained in the record have potential monetary value as contemplated by part three of the section 18(1)(a) test. The internally generated client number and service type indicator are appropriately considered as part of the customer profile developed by OCWA and, in my view, should be treated in the same manner as the client names and contact information for the purposes of section 18(1)(a). Accordingly, I find that the third requirement of the section 18(1)(a) test has been established for all portions of the record under consideration here.

In summary, I find that the client names, client numbers, contact information and service type indicators qualify for exemption under section 18(1)(a) of the *Act*.

Because I have found that all of the information in the record is exempt under either section 18(1)(a) or (c), it is not necessary for me to consider the section 18(1)(e) exemption claim.

PUBLIC INTEREST OVERRIDE

As noted earlier, the appellant's representations do not specifically address the various section 18(1) exemptions. Rather, they focus generally on Recommendation 49 of the Walkerton Inquiry, which states, "municipal contracts with external operating agencies should be made public". The appellant submits:

> OCWA has used its position as a government agency and certain legislation (which is now superseded, or soon will be) to try to prevent the release of any information that it feels could be detrimental to its competitive position. Justice O'Connor's recommendations were clearly intended to take precedence over any previous legislation, regulations or policy. OCWA, in taking its stance, has completely ignored the recommendations made by Justice O'Conner resulting from his work on the Walkerton Inquiry. Furthermore, OCWA is ignoring the fact that the Conservative government of the day **and** the new Liberal government now in office have both agreed to implement each and every one of the recommendations resulting from the inquiry.
>
> …
>
> Justice/Commissioner O'Conner made it absolutely clear that he wanted **all** of his recommendations implemented by the Government of Ontario, without weakening, alteration or selective interpretation. OCWA should not be allowed the luxury of being selective in which recommendations the agency will observe, or to interpret a recommendation to suit its own purpose, simply because it is a government agency. If a private sector company tried to withhold this type of information in clear contradiction to the Walkerton Inquiry recommendations, subsequent legislation, regulations and government policy, it would at the very least be ridiculed and condemned by the government, the media and the general public and perhaps even charged by the government for failure to comply. [appellant's emphasis]

I determined that these representations raise the possible application of the public interest override in section 23 of the *Act*, and sought submissions from OCWA on the application of this provision in the context of this appeal.

General principles

Section 23 states:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

Is there a compelling public interest in disclosure?

In considering whether there is a "public interest" in disclosing a record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Order P-984]. Previous orders have stated that in order to

find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Order P-984].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347, P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

The word "compelling" has been defined in previous orders as "rousing strong interest or attention" [Order P-984]. Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4196 (Div. Ct.)].

As noted above, the appellant bases his public interest arguments on the outcome of the Walkerton Inquiry and the need for enhanced public disclosure of information relating to the operation and supervision of the province's water supply. He submits:

> Government and its agencies that serve the public should be setting the example and raising the standard for accountability and transparency in matters of significant concern to the citizens of Ontario - such as public water supply and wastewater treatment. OCWA is seeking to establish and maintain a double standard, one for the agency and another for private sector competitors.

OCWA disagrees with the appellant, and takes the position that, while the Walkerton Inquiry recommendations were clearly made in the public interest, the information at issue in this appeal does not fall within the policy intent of these recommendations. OCWA submits:

> The appellant identifies excerpts from Chapter 10 … of Part Two of the Walkerton Inquiry including Recommendation 49 that state: "Municipal contracts with external operating agencies should be made public". This recommendation relates to the public disclosure of contracts by Municipalities and <u>not</u> operating agencies such as OCWA: "A municipality contemplating the engagement of an external operating agency to deliver water services should ensure that the proposed transaction is fully transparent. This means that the appellant could obtain information from those municipalities that have entered into contracts with OCWA rather than obtaining a complete customer list and additional contractual information from OCWA. These means are currently available to any member of the public. [OCWA's emphasis]

OCWA also points out that section 14(4) of the *Safe Drinking Water Act*, passed by the Legislative Assembly in 2002 (but not yet proclaimed), confirms that municipalities and not an operating authority such as the OCWA, will be responsible for disclosing the content of water treatment agreements. That section reads:

> (4) The contents of every agreement referred to in subsection one between the owner of a drinking water system and an accredited operating authority shall be made public by the owner of the system in accordance with the requirements prescribed by the Minister.

In the OCWA's view, the purpose of section 14(4) is "so that the public can be informed about the quality of their drinking water", and not to "furnish a complete list of all of OCWA's clients to the public".

OCWA submits:

> In summary of OCWA's position, Justice O'Connor's report recommends that the disclosure of operating agreement should be the responsibility of municipal owners. O'Connor's recommendation has been adopted in section 14(4) of the *Safe Drinking Water Act*. This level of disclosure will allow the public being served in the municipality to be aware of their water service provider and enable the public to influence municipal decision-making regarding the selection of water service providers in their municipality. OCWA further contends that section 14(4) of the *Safe Drinking Water Act* represents a public process established to address the public interest consideration …

The OCWA also contends that, as a commercial competitor, the appellant's interest in receiving the OCWA's client list is essentially private in nature, and therefore outside the scope of section 23.

There is no doubt that the Walkerton Inquiry identified a strong and compelling public interest in the safety of the province's water supply. The wide public acceptance of the conclusions reached by the Inquiry, the government's stated commitment to implement the 93 specific recommendations stemming from the Inquiry, and the passage of the *Safe Drinking Water Act* all constitute evidence of this compelling public interest.

However, in my view, it does not necessarily follow that all records dealing in any way with water and wastewater treatment need to be disclosed in order to satisfy these public interest considerations. As OCWA points out, individual municipalities have primary responsibility and accountability for the public disclosure of information concerning water and wastewater operations, under both the Walkerton Inquiry recommendations and legislation. I recognize that full transparency has not yet been implemented, and until section 14(4) of the *Safe Drinking Water Act* has been proclaimed, significant gaps in the accountability framework remain outstanding. However, in my view, disclosing the record at issue in this appeal does not fill this gap. The record does not contain information relating to the actual operation of water or wastewater operations and its disclosure would not, in my view, shed light on the operation of

government in any meaningful way, as required in order to fall within the policy intent of section 23.

Although the appellant in this case frames his arguments in the context of the Walkerton Inquiry recommendations, I am not persuaded that the record at issue here speaks to the public policy considerations dealt with in that Inquiry. The appellant is a competitor of the OCWA and, based on his representations, it would appear to me that it is his business interests and not the public interest that is the primary focus of his request.

Accordingly, I find that there is no compelling public interest in the disclosure of the specific information contained in the record, and therefore, section 23 of the *Act* has no application in the context of this appeal.

ORDER:

I uphold the OCWA's decision.

Original signed by: August 13, 2004
Tom Mitchinson
Assistant Commissioner