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

ORDER MO-2088

Appeal MA-050318-1

City of Kingston

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NATURE OF THE APPEAL:

The City of Kingston (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a copy of the successful tender package submitted for an identified project. After notifying and hearing from two parties whose interests may be affected by the disclosure of the information (the affected parties), the City responded to the request by denying access to the responsive record on the basis of the exemptions in section 10(1) (third party information) and sections 11(c) and (d) (economic and other interests) of the *Act*.

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

In his appeal letter, the appellant confirmed that access was not being sought to any personal information which may be contained in the records.

During mediation, the City confirmed that it was specifically relying on the exemptions in sections 10(1)(a), (b) and (c) of the *Act*, as well as sections 11(c) and (d). Also during mediation, the appellant took the position that the bid/tender process is a public process in which members of the public have an overriding public interest. Accordingly, the appellant confirmed that the application of section 16 (public interest override) was raised as an issue in this appeal.

Mediation did not resolve the issues in this appeal, and it was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the City and two affected parties, initially, and received representations from them. I then sent the Notice of Inquiry, together with a complete copy of the representations of the City and an affected party, and the non-confidential portions of the representations of the other affected party, to the appellant. The appellant did not provide representations in response to the Notice.

As stated above, the appellant raised the possible application of the "public interest override" in section 16 of the *Act*. The City and the affected parties addressed this issue in their representations, taking the view that section 16 does not apply. These representations were shared with the appellant, who has chosen not to provide representations addressing this issue. In the absence of representations in support of the position that section 16 applies, I will not address this issue in this appeal.

RECORDS:

The record remaining at issue is the entire successful tender package for the identified project, except for the personal information contained in it (which includes the employment history of identified individuals contained on portions of pages 4-9 of the proposal, a slide containing information about key personnel, and all of the resumes contained in Appendix D).

Accordingly, the records remaining at issue consist of a cover letter, a proposal with various attachments including six remaining appendices, a number of slides from a slide show or power point presentation which summarizes the proposal, and a series of 19 questions and answers relating to the proposal.

DISCUSSION:

THIRD PARTY INFORMATION

As identified above, the City denied access to portions of certain records on the basis of section 10(1)(a), (b) and (c) of the *Act*. The affected parties also took the position that all of the records were exempt from disclosure under these sections of the *Act*.

The relevant part of section 10(1) reads:

> 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;
>
> (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency;

Section 10(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions [*Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.)]. Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace [Orders PO-1805, PO-2018, PO-2184, MO-1706].

For section 10(1) to apply, the City 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 institution in confidence, either implicitly or explicitly; and

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 10(1) will occur.

I will now review the records at issue and the representations of the parties to determine if the three-part test under section 10(1) has been established.

Part one: type of information

The City and the affected parties take the position that the records contain "financial" and "commercial" information for the purpose of the first part of the three-part test. One of the affected parties also takes the position that certain information in the record constitutes "technical" information. These terms have been defined in previous orders 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 fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information [P-1621].
>
> *Financial information* refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs [Order PO-2010].
>
> *Technical information* is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. While 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 [Order PO-2010].

I adopt these definitions for the purpose of this appeal.

The City identifies that the records at issue were provided to it as part of the process to solicit proposals to purchase, remediate and redevelop a particular property. The City also describes the detailed information required from proponents, including detailed cost estimates for all phases of the project, estimated revenues and projected occupancy rates, calculations and land values based on remediation and redevelopment, and business plan information. The City states:

> As such, the proposal contains ideas, processes, procedures, plans and reveals information of a commercial and financial nature, including the proposed price and payment plan, and the rationale for arriving at the price.

One of the affected parties states that the information contained in the records constitutes financial information, and states:

> Financial information revealed in the RFP response includes information relating to the acquisition of other properties, information provided by our bank relating to our business with them, as well as financial projections relating to the [project].

The other affected party also identifies that the information in the records contains financial information as it includes "cost estimates", as well as information that was developed based on the affected parties' "respective cost accounting methods and pricing practices and includes profit distribution data". This affected party also provides representations specifically identifying the information in the record which it considers to be "technical" and "commercial" information.

On my review of the records, I am satisfied that much of the information contained in it constitutes either commercial or financial information for the purposes of section 10(1) of the *Act*. Small portions of the records also include technical information, as defined by previous orders.

Part 2: supplied in confidence

The requirement that it be shown that the information was "supplied" to the institution reflects the purpose in section 10(1) of protecting the informational assets of third parties [Order MO-1706]. Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party [Orders PO-2020, PO-2043].

In order to satisfy the "in confidence" component of part two, the parties resisting disclosure must establish that the supplier had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis [Order PO-2020].

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 that would not entail disclosure [Order PO-2043]

One of the affected parties states:

> [The affected parties] supplied the records to the City of Kingston in response to a public request for proposal from the City of Kingston. This is explicitly stated in the records. The records are a proposal, not a contract.
>
> The records were supplied to the City with the expectation of confidentiality as explicitly stated in the records.
>
> At no time since providing the records to the City of Kingston has [the affected party] been inconsistent in its concern for maintaining the confidentiality of the records. [The affected party] has not otherwise disclosed this information or made it available to sources to which the public has access. Finally, the records were prepared for a purpose that would not entail disclosure.

In support of the position that the records were supplied to the City in confidence, the City refers to an earlier statement by one of the affected parties that "the proposal was clearly marked on all pages as being 'Business Confidential – Do Not Distribute to any Third Party'. The proposal was submitted under the expectation that the information would remain confidential."

It is true that all of the pages of the proposal itself are marked "Business Confidential – Do Not Distribute to any Third Party". In the circumstances, I am satisfied that the information contained in the proposal was supplied to the City in confidence, and that it was supplied with a reasonable expectation of confidentiality, as explicitly stated throughout the proposal. In the circumstances, I am also satisfied that the slides and questions and answers, which contain information that is contained in the proposal, were also supplied to the City with a reasonably-held expectation of confidentiality.

Part 3: harms

General principles

To meet this part of the test, the parties resisting disclosure 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 (C.A.)].

The failure of a party resisting disclosure to provide detailed and convincing evidence will not necessarily defeat the claim for exemption where harm can be inferred from other circumstances. However, only in exceptional circumstances would such a determination be made on the basis of anything other than the records at issue and the evidence provided by a party in discharging its onus [Order PO-2020].

Section 10(1)(a)

The City and the affected parties claim that the records are exempt under section 10(1)(a), as their disclosure could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

One of the affected parties states that the disclosure of the financial information relating to the acquisition of other properties, banking information, and financial projections relating to the proposed development could be used in the particular market in which the affected party operates to:

> … impact decisions made relating to other potential opportunities that we are currently negotiating…. It can also be used by competitors in the business community to develop competing projects in the area targeting the identified markets that are discussed.

With respect to the release of information relating to the proposed development, the affected party states that it has not yet completed the "due diligence" related to the potential purchase of the identified site. It identifies the numerous "development challenges" relating to the site of the project, and states that, as a result, the affected party is unable to state with any certainty that the project, as proposed, will proceed. The affected party then provides representations with respect to the harms and prejudice that it argues may result in the event that plans relating to a potential development proposal are disclosed prematurely. In addition, the affected party states that the development of the site will ultimately require municipal approvals that will, at that point, allow the public to provide input into the process. The affected party states:

> … we are extremely concerned that the plans and discussion presented in the response material not be available to the public until such time as we are able to determine their ultimate feasibility and are ready to present the final development proposal.

The other affected party states that the disclosure of the records could significantly prejudice its competitive position, as the records:

> … detail [the affected party's] unique approach to remediation and redevelopment of contaminated properties as well as our strategic cost accounting approach which, if disclosed, could be exploited by a competitor.

The City also provides representations in support of the position that disclosure of the proposal could significantly prejudice the competitive position of the affected parties. The City refers to material provided by one of the affected parties to it in earlier correspondence, where that affected party stated:

> … any release of the information could prejudice the completion of the purchase and therefore our competitive position with respect to the project.

The City also confirms that the proposal includes "detailed discussions of valuing the property that is directly connected to the proposed build out of the project. Occupancy rates, estimated construction costs, including remedial and servicing costs, are detailed in the proposal. Disclosure of this information would prejudice the competitive position of the proponent."

As identified above, the requester did not provide representations in the course of this appeal.

Findings

After reviewing the records at issue, as well as the representations of the two affected parties and the City, I am satisfied that the disclosure of certain portions of the records remaining at issue could reasonably be expected to result in the harms identified in section 10(1)(a). I find that the City and the affected parties have provided sufficient evidence to demonstrate that disclosure could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of the affected parties. I make this finding on the basis of the specific detailed financial information contained in the proposal relating to the affected parties and the project, as well as the representations of the parties that indicate that a number of matters must be addressed before the affected parties can state "with any degree of certainty" that the proposed project will proceed. This finding applies to information about the potential purchase of the identified site, as well as information detailing the specific proposed methods of remediation of the site and the detailed information relating to the specifics of the plans for the site.

Specifically, I find that the portions of the proposal which contain the information about the financial resources of the affected parties and the financial impact of the proposal (including Appendix G), as well as the specific information relating to the remediation and development plans (including the information in the closing portion of the proposal and Appendix A), qualify for exemption under section 10(1)(a). Furthermore, the slides which contain references to this information, as well as the detailed questions and answers which refer to it, also qualify for exemption under section 10(1)(a) of the *Act* for the reasons set out above.

However, I am not satisfied that the other portions of the records qualify for exemption under section 10(1)(a).

In my view, the following portions of the records do not contain information which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization:

- the cover letter to the proposal,
- the table of contents,
- the lists of figures, tables and appendices,
- the first 15 pages of the proposal (excluding personal information) which include the introduction and information about the project team, including its experience,
- the slides which contain the information set out above, and
- Appendices B, C, E and F, which relate to the overview of the affected parties and their qualifications.

In my view, I have not been provided with representations which satisfy me that the information contained in these portions of the records qualifies for exemption under section 10(1)(a). Some of the information in these portions of the records which contain information about the affected parties and their qualifications appears to be of a public nature, and I have not been provided with sufficiently detailed representations to satisfy me that specific information of this type could reasonably be expected to result in the harms set out in section 10(1)(a). The representations of the parties do not specifically refer to this information and, on my review of it, I am not satisfied that I have been provided with sufficiently detailed and convincing evidence supporting the position that the disclosure of this information would result in the identified harms.

With respect to the information contained in the table of contents, and information which may disclose the manner in which the proposal is structured, such as the headings and titles, the affected parties as well as the City have made general representations regarding the concern that disclosure of "any part" of the proposal would result in the identified harms. However, the representations of the parties focus on the unique aspects of the proposal (which I understand to be the specifics of the remediation and building plans), as well as the affected parties' financial information, and I have found that this information qualifies for exemption under section 10(1)(a). With respect to the more general information regarding the form and structure of a proposal (as opposed to its detailed content), I recently reviewed a similar argument in Order PO-2478. In that case the arguments were put forward by an affected party and the Ministry of Energy in respect of a proposal received by the Ministry, and in which the exemption in section 17(1)(a) and (c) of the *Freedom if Information and Protection of Privacy Act*, which is similar to section 10(1)(a) and (c) of the *Act*, was raised. After reviewing the argument, I stated:

> In general, I do not accept the position of the Ministry and affected party concerning the harms which could reasonably be expected to follow the disclosure of the record simply on the basis that the disclosure of the "form and structure" of bid would result in the identified harms under sections 17(1) (a) and (c), as it would allow competitors to use the information contained in the successful bid to tailor future bids. In a recent Order, Assistant Commissioner

> Beamish addressed similar arguments regarding the possibility that disclosure of a proposal would result in the identified harms. In Order PO-2435, Assistant Commissioner Beamish made the following statement:
>
> > The fact that a consultant working for the government may be subject to a more competitive bidding process for future contracts does not, in and of itself, significantly prejudice their competitive position or result in undue loss to them.
>
> I accept the position taken by the Assistant Commissioner. In my view the arguments put forward by the Ministry and affected party regarding their concerns that disclosure of the "form and structure" of the bid, or its general format or layout, will allow competitors to modify their approach to preparing proposals in the future would not, in itself, result in the harms identified in either section 17(1)(a) or (c).

I adopt the approach I took in Order PO-2478 and apply it to the circumstances of this appeal. Accordingly, I am not satisfied that the disclosure of general information contained in the proposal which discloses the "form and structure" of the proposal (but does not disclose the specific financial information, or details of the remediation and development plans) could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization. Therefore, I conclude that these portions of the record are not exempt under section 10(1)(a).

Section 10(1)(b)

The City takes the position that the records are exempt under section 10(1)(b), as their disclosure could reasonably be expected to result in similar information no longer being supplied to the City, where it is in the public interest that similar information continue to be so supplied. The City states:

> The disclosure of the companies' proposals could have a chilling effect on the ability of the City to attract suitable proposals in the future. The release of the RFP information could very realistically result in companies not submitting proposals for future contracts because of the potential negative impact it could have on their company. The information … is supplied to the City on the understanding that it will be kept confidential. Failure to maintain this expectation of confidentiality may have a negative impact on the willingness of future suppliers to submit proposals in response to the City's RFP's. Commercial parties have specifically warned us of their fear in relation to this type of disclosure. It is important to ensure that the City is able to attract the best proponents possible and potential release of information could result in

> appropriate companies no longer submitting proposals for contracts due to the potential lack of ability to maintain confidence.

One of the affected parties also states:

> The disclosure of the records submitted in confidence to the City … could result in similar information no longer being provided to the City in response to their requests for proposals. Unique approaches such as that provided by [the affected party] in response to the City's request for proposal will no longer be made available to the City … in response to their requests for proposals if the City is unable to demonstrate that it can maintain confidentiality. It is clearly in the public interest that the City … continue to have access to unique approaches for solving problems ….

I am not persuaded that disclosing the specific information which I have found does not qualify for exemption under section 10(1)(a) could reasonably be expected to result in similar information no longer being supplied to the City in the context of future construction projects, as contemplated by section 10(1)(b). The information remaining at issue is not confidential financial information, nor the specific information about the details of the proposed remediation and development plans; rather, it is information about the project team, including its experience, information which relates to the overview of the affected parties and their qualifications, and general information contained in the proposal. The City's representations refer to general statements about concerns regarding the disclosure of information that it has heard from unidentified commercial parties; however, I find that there is a lack of detailed information to support the City's assertions on this issue.

The representations of one of the affected parties focus on the unique approaches which it employs, and I have found that the specific detailed information in the records regarding remediation and development plans qualifies for exemption under section 10(1)(a). In my view companies doing business with public institutions, such as the City, understand that the identity of the team assembled by it, as well as past work experience on similar projects, is often an important part of a competitive selection process. I find that it is simply not credible to argue that the City would be provided with less information of this nature in future. In addition, I do not accept that the prospect of the release of the type of information contained in the portions of the records which I have found do not qualify under section 10(1)(a) could reasonably be expected to result in a reluctance on the part of companies to participate in future projects.

Accordingly, I am not satisfied that it is reasonable to expect that companies will no longer supply similar information to the City, and I find that the requirements for section 10(1)(b) have not been met.

Section 10(1)(c)

The City and the affected parties objecting to disclosure claim that the records are exempt under

section 10(1)(c), as their disclosure could reasonably be expected to result in undue loss or gain to any person, group, committee or financial institution or agency.

The representations of the affected parties, as well as some of the City's representations on the application of section 10(1)(c), focus mainly on the "financial proposal" as well as the "specifics of planning and design" of the development. I have found that those portions of the record are exempt from disclosure under section 10(1)(a).

The City also states:

> By disclosing the financial and business details provided by [the affected party], it may be placed at a disadvantage in subsequent proposals for similar projects as its competitors would have information as to how the proponent assembles a team, prepares a proposal and what specific elements it includes in a proposal that distinguishes it from others. …
>
> The affected party would not have similar information about its competitors. This advantage could also result in an undue gain to the affected party's competitors. The affected party's competitors would be in a better position to submit proposals against the affected party. The ideas contained in the proposal may continue to give the successful proponent a competitive advantage in the future and their competitors have no right to these ideas.

In the circumstances of this appeal, I am not satisfied that the information which I have found does not qualify under section 10(1)(a) qualifies under section 10(1)(c). As identified above, I have found the specific information about the proposal and the financial details to be exempt under section 10(1)(a). The information remaining at issue includes information about the background and experience of the affected parties, the proposal generally, and the manner in which the proposal is structured, and some information about the team assembled by the affected parties. In my view the disclosure of information of this nature could not reasonably be expected to result in undue loss or gain to any person, group, committee or financial institution or agency.

Information regarding the background and experience of the corporate affected parties relates to other projects they have been involved in and the nature of these projects, much of which appears to be of a public nature. With respect to the disclosure of the form or structure of the proposal, as identified in the discussion under section 10(1)(a), I adopt the approach I took in Order PO-2478 and apply it to section 10(1)(c) in the circumstances of this appeal. I am not satisfied that the disclosure of general information contained in the proposal which discloses the "form and structure" of the proposal (but does not disclose the specific financial information, or details of the remediation and development plans) could reasonably be expected to result in undue loss or gain to any person, group, committee or financial institution or agency.

With respect to the information about the team the affected parties have assembled, the representations do not specifically refer to the possibility of any harm flowing from the

disclosure of this type of information. I am not satisfied that the disclosure of information (not including personal information) regarding the team assembled by the affected parties, which would become public in the event the project proceeds, could reasonably be expected to result in the harms identified in section 10(1)(c) if it is disclosed earlier in the process.

In summary, I find that the disclosure of the remaining portions of the records will not result in the harms identified in sections 10(1)(a), (b) or (c). As all three parts of the test under section 10(1) must be met, the records do not qualify for exemption under section 10(1).

ECONOMIC AND OTHER INTERESTS

As noted above, the City has claimed the application of sections 11(c) and (d) to the records remaining at issue. These exemptions state:

> A head may refuse to disclose a record that contains,
>
> (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
>
> (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;

The purpose of section 11 is to protect certain economic interests of institutions. 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) explains the rationale for including a "valuable government information" exemption in the *Act*:

> 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.

For sections 11(c) or (d) to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution 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 (C.A.)].

Representations

Section 11(c): prejudice to economic interests

The purpose of section 11(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].

With respect to the application of section 11(c), the City states:

> It is in the City's best economic interests to protect the details of a company's proposal … because disclosure would telegraph precisely what the City is looking for …. Disclosing the proposal would disclose the resources that could give a future proponent an unfair advantage. Proponents could tailor their proposals to reflect what the City has looked for in the past and therefore prejudice the City's economic and financial interests. This prejudice could create a benchmark for other companies, which would stifle innovation. The proponents would then no longer supply the City with original proposals and innovative solutions to [identified issues]. It is in the best interests of the City to have the information provided by the proponents themselves as a true reflection of their company, for each aspect of the project.

Section 11(d): injury to financial interests

Concerning section 11(d), the City states that disclosing the information in the records could reasonably be expected to be injurious to the financial interest of the City because:

> Disclosing proposal information from the successful proponent may cause qualified companies not to submit proposals for future contracts with the City. To prepare a proposal for a [site of this nature] requires expertise in a variety of specialized fields and considerable time and expense. Unless the proponents are assured that the time and money expended on the proposal will be confidential, no creditable firm will expend the resources necessary to prepare a quality proposal. This could result in the awarding of contracts to less qualified companies. This could reasonably be expected to be injurious to the financial interests of the City.
>
> Also, if companies have prior knowledge about the details of a successful proponent, then these companies will be able to tailor their proposal for future contracts so it reflects what they feel the City is looking for. This could be injurious to the financial interest of the City.

Findings

As identified above, I have found that the portions of the records that contain information about financial resources and impact, as well as the specifics of the remediation and development plans, are exempt under section 10(1)(a). The portions remaining at issue consist of information about the background and experience of the affected parties, the proposal generally, the manner in which the proposal is structured, and some information about the team assembled by the affected parties.

In the circumstances, I am not satisfied that the portions of the records remaining at issue qualify for exemption under sections 11(c) and/or (d). I have not been provided with sufficiently detailed and convincing evidence to satisfy me that the disclosure of the portions of the records remaining at issue could reasonably be expected to lead to the harms set out in sections 11(c) or (d) of the *Act*.

The City's representations focus on possible harms resulting from the disclosure of the specifics of a proposal. In this case, I have found that much of the specific, detailed information contained in the proposal is exempt under section 10(1)(a). What remains at issue is the more general information referred to above, including information about the background and experience of the affected parties, which is information specific to the affected parties themselves and cannot be "copied" by competitors. With regard to the information about the team assembled by the parties, as identified earlier, this information will eventually become public if the proposal proceeds, and I have not been provided with sufficient evidence to support a finding that disclosure of this information at an earlier stage would result in the identified harms.

In addition, with respect to the City's position that disclosure would signal to parties bidding on future contracts what the City is looking for, it seems to me that not disclosing information could equally result in similar harm to the City. If the successful proponent was the sole party aware of what information was required in order to submit a successful bid, based on the City's representations, it would have an unfair advantage in future proposals, because it would be aware of "exactly what the City was looking for". I reject the City's argument that disclosure of the records remaining at issue would result in harm on that basis.

In summary, I find that the disclosure of the information remaining at issue could not reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution, nor could its disclosure reasonably be expected to be injurious to the financial interests of an institution. Accordingly, I find that that the remaining portions of the records do not qualify for exemption under sections 11(c) and/or (d) of the *Act*.

ORDER:

1. I uphold the City's decision that the portions of the records that contain information about financial resources and impact (including Appendix G), information detailing the remediation and development plans (including the information in the closing portion of the proposal and Appendix A), and the slides and the detailed questions and answers which contain references to this information, qualify for exemption under section 10(1)(a) of the *Act*.

2. I order the City to disclose the remaining portions of the records to the appellant by providing him with copies by **November 2, 2006**, but not before **October 27, 2006**. This information includes the cover letter to the proposal, the table of contents, lists of figures, tables and appendices, the first 15 pages of the proposal (excluding personal information), the portions of the slide show which reflect this information, and Appendices B, C, E and F. For greater certainty, I am providing the City with a copy of the portions of the slide show which are to be disclosed, as well as a highlighted copy of the first 15 pages of the proposal. The highlighted information on these pages is not to be disclosed.

3. In order to verify compliance with Order Provision 2, I reserve the right to require the City to provide me with copies of the records that are disclosed to the appellant.

Original signed by: September 26, 2006
Frank DeVries
Adjudicator