



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2151

Appeal MA-050459-1

Town of Oakville



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NATURE OF THE APPEAL:

The Town of Oakville (the Town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for copies of all proposal submissions received for an identified community centre expansion project.

The Town responded to the request by stating that the third parties whose interests may be affected were given the opportunity to make representations about the release of the records pursuant to the notification requirements in section 21 of the *Act*. After receiving the third party responses, the Town advised the requester that it had decided not to release copies of any proposal submissions received for the expansion project on the basis of the mandatory exemption in section 10(1) (third party information) of the *Act*.

The requester (now the appellant) appealed the Town's decision.

During mediation, the appellant advised that he was only interested in certain proposal submissions. Following further mediation, two affected parties identified for the mediator those portions of their proposals which each was prepared to release to the appellant. The appellant then received those portions of the proposals from the Town, following which the appellant indicated that he was only pursuing access to the winning proposal submission.

Portions of the winning proposal submission include the resumes of identified individuals associated with the firm that submitted the successful proposal. Also during mediation, the appellant indicated that he is not pursuing access to the names of the individuals in those resumes, but continues to pursue access to the remaining portions of them. This raised the possible application of the mandatory exemption in section 14(1) (invasion of privacy) as an issue in this appeal.

Mediation did not resolve the remaining issues, and this file was transferred to me to conduct the inquiry.

I sent a Notice of Inquiry to the Town and the remaining affected party, initially, and received representations from the affected party only. I then sent the Notice of Inquiry, along with the non-confidential representations of the affected party, to the appellant. The appellant did not provide me with representations.

RECORDS:

The records remaining at issue are the withheld portions of the successful proposal submission for an identified expansion project. The pages of the record remaining at issue are:

- pages H649 to H678 – consisting of a slide show or power point presentation
- pages H679 to H699 – the cover page, introductory letter, table of contents, body of the proposal and attachments
- pages H700 to H722 (Appendices A through E),
- the undisclosed portions of pages H723 to H733 (Appendix F),

- pages H734 to H744, which consist of the resumes of a number of individuals (minus the names of the individuals whose resumes are included in these pages), and
- pages H745 to H746 (Appendices H and I).

DISCUSSION:

PERSONAL INFORMATION

The section 14(1) personal privacy exemption only applies to “personal information”. That term is defined in section 2(1) as follows:

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual’s name if it appears with other personal information relating to the individual or where the disclosure of

the name would reveal other personal information about the individual;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Representations and findings

The affected party takes the position that the names of the individuals who are employed by it, along with other information relating to them, constitute their personal information. The affected party then identifies the information that it believes relates to these employees in their personal capacities. Some of this information simply identifies these individuals as employees of the affected party, whereas other information identifies the education, previous employment and/or qualifications these individuals have. In addition, some of the records contain the resumes of some of these individuals. Although the affected party takes the position that all of this information is the personal information of these individuals, the affected party does not provide specific representations on the definition of “personal information” found in section 2(1).

I have carefully reviewed the records which the affected party argues contain the personal information of its employees. In my view, the names of the individuals and their job titles do not qualify as the “personal information” of these individuals, as this information simply identifies these individuals in their professional or business capacity. Based on the orders referred to above, information associated with an individual in a professional or business capacity is not considered to be “about” the individual in a personal capacity, and is not, therefore, their personal information for the purposes of the *Act*. Accordingly, I find that the names of these individuals do not constitute their personal information as defined in section 2(1) of the *Act*.

However, information relating to these named individuals which would disclose their employment or education history does constitute their personal information as defined in section 2(1)(b) of the definition of “personal information”. This information includes the employment or education history of these individuals as found on portions of pages H658 - H660, H689 and H734 – H744. In addition, I find that the names of individuals who worked on previous projects (as found on pages H723 – H733) would constitute the employment history of these individuals for the purpose of section 2(1) of the definition.

Finally, as identified above, pages H734 to H744 consist of the resumes of a number of individuals who are employees of the affected party. I find that these records contain the personal information of the individuals whose resumes are found there. The resumes contain

each individual's name along with information relating to their education or employment history as contemplated by paragraph (b) of the "personal information" definition of section 2(1). Previous orders issued by this office have found that resumes typically include personal information within the definition of that term in section 2(1) [see for example Orders P-727, P-766 and MO-1444].

In this appeal, however, the appellant takes the position that the names of the individuals in the resumes could be severed out, and that the remaining information ought to be disclosed to him.

The affected party responds to this position as follows:

It is not enough to simply redact the name of the individuals where connected to their educational and employment history. It is not difficult to take this personal information and without knowing the individual's name, discover whose personal information it is, when you know the individual is one of our key employees.

Previous orders have established that, to qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

I have reviewed the information contained in the resumes, which are detailed accounts of the education and employment history of the named individuals. Even if the names of the individuals are severed from the records, the resumes contain sufficiently detailed information about the individuals such that, in my view, it is reasonable to expect that each of the individuals may be identified. Accordingly, I am satisfied that the information contained on pages H734 to H744 qualifies as the personal information of individuals other than the appellant.

In summary, I find that the employment or education history of identified individuals (but not their names) as found on portions of pages H658 - H660 and H689, all of pages H734 to H744, and the names of identified individuals on pages H723 - H733 contain the personal information of identifiable individuals for the purpose of section 2(1) of the *Act*.

INVASION OF PERSONAL PRIVACY

Where a requester seeks the personal information of another individual, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies. The only exception with potential application in the circumstances of this appeal is section 14(1)(f) which reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

In order for the section 14(1)(f) exception to the mandatory exemption in section 14(1) to apply, it must be established that disclosure would not be an unjustified invasion of personal privacy. Sections 14(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Section 14(2) provides some criteria for the institution to consider in making this determination; section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy; section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure under section 14(3) has been established, it cannot be rebutted by either one or a combination of the factors set out in 14(2). A section 14(3) presumption can be overcome, however, if the personal information at issue is caught by section 14(4) or if the “compelling public interest” override at section 16 applies (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

Furthermore, as previously noted, where the record contains the personal information of an individual other than the appellant, the only way that such a record can be disclosed is if I find that disclosure would not constitute an unjustified invasion of personal privacy of that individual. The appellant has not provided representations in support of the position that any factors favouring disclosure of the portions of the records at issue apply. Accordingly, in the absence of factors favouring disclosure, I find that disclosure of the portions of the record which I have found contain the personal information of identifiable individuals would constitute an unjustified invasion of personal privacy and section 14(1) applies.

THIRD PARTY INFORMATION

As identified above, the Town denied access to the responsive record on the basis of section 10(1) of the *Act*. The affected party provides representations in support of its position that the record is exempt under sections 10(1)(a), (b) and (c) of the *Act*. Those sections 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;
- (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 and MO-1706].

For section 10(1) to apply, 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 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 record at issue and the representations of the affected party to determine if the three-part test under section 10(1) has been established.

Part one: type of information

The affected party takes the position that the record contains “commercial” and “labour relations” information for the purpose of the first part of the three-part test. These terms have been discussed in prior 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].

Labour relations information has been found to include:

- discussions regarding an agency’s approach to dealing with the management of their employees during a labour dispute [P-1540]

- information compiled in the course of the negotiation of pay equity plans between a hospital and the bargaining agents representing its employees [P-653],

I adopt the definitions of these terms as set out in the prior orders.

The affected party states that that record contains commercial information, and submits:

The Record was prepared by professionals, who are experts in structuring proposals, and it contains our ideas, processes and procedures for performing the services required pursuant to the Town's community centre expansion. In essence, the Record represents a detailed description of our business. The Record discloses the approach we take to compete in the very competitive construction and project management market, including the specialized proposal drafting techniques we utilize in order to prepare professional proposals and processes and procedures used in the actual construction of the project. The ideas, processes and procedures found in the Record and the structure of the Record itself are the result of our experience, expertise and investment of a significant amount of time, money and effort ...

The Record contains sensitive information concerning the price quoted for the services provided to the Town....

In support of its view that the record contains labour relations information, the affected party states:

The Record contains confidential information about the names, duties and qualifications of our employees.

On my review of the record, I am satisfied that much of the information contained in it constitutes commercial information for the purposes of section 10(1) of the *Act*.

However, based on the definition of labour relations information set out above, I am not satisfied that the record contains such information for the purpose of section 10(1). I find that the names, duties and qualifications of individual employees are not "labour relations information" under section 10(1). Based on my review of the record, I conclude that it does not contain information relating to labour disputes, labour negotiations, or any other labour relations related information.

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 party 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]

The affected party states that the record was supplied to the Town in response to a Request for Proposal (an RFP) concerning a community expansion project. With respect to whether the information was supplied in confidence, the affected party states:

The RFP contained a statement that could be added to the Record to explicitly state that the Record was to remain confidential. We mistakenly omitted this statement in preparing the Record; however, this is not determinative of the issue of whether the Record was supplied in confidence. The confidentiality of the Record was implicit. In fact, the RFP states that the Town’s current practice is not to disclose proposals other than publicly opened and read tender prices

We have treated the Record consistently as confidential and have not revealed it to anyone outside of the Town or our organization. The Record is not available to the public.

I accept the position of the affected party that a record can be supplied “in confidence”, notwithstanding that it did not explicitly state that the record was to remain confidential. In the circumstances of this appeal, and based on the representations of the affected party, I am satisfied that the information contained in the proposal, including the appendices, was supplied to the Town, and that it was supplied with a reasonably-held expectation of confidentiality. Furthermore, I am also satisfied that the slide show or power point presentation, which contains some of the information that is contained in the proposal, was also supplied to the Town with a reasonably-held expectation of confidentiality.

Part 3: harms

General principles

To meet this part of the test, the party 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 affected party claims that the record is exempt under section 10(1)(a), as its 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.

With respect to the information in the proposal, it states:

If disclosed to a third party, the ideas, processes and procedures outlined in the Record could be copied by our competitors in future RFP processes which will significantly prejudice our competitive position by eliminating the competitive advantage that our proposal structures, and our processes and procedures for completing construction projects, have given us. As mentioned above, the construction and project management industries are extremely competitive. It is more than merely price that distinguishes us from our competitors, but also our proposal format and other information related to providing the services that is revealed in those proposals. It is inevitable that the Record will be used as a template by others because it was the winning proposal.

Concerning the price quoted for the services provided to the Town, the affected party states that the disclosure of this information will result in the following harm:

Disclosure of the price prejudices our competitive position by allowing our competitors to simply offer the services at a lower price. The disclosure of the price also interferes with our ability to negotiate the cost of services with other customers. Prices quoted depend on a number of factors and knowledge of the price quoted to the Town may cause confusion or discontent with our current or

future customers, despite the fact that services provided to them may be very different.

With respect to the names, duties and qualifications of the affected party's employees, the affected party states:

Our employees are our most valuable asset. If the Record is disclosed, it would give our competitors a shopping list of our employees. While the movement of employees amongst firms is a reality of business, the way in which our employees are listed and presented, along with their qualifications, resumes, and duties makes it extremely easy for our competitors to target our employees for hiring. The loss of employees to competitors would not only prejudice our competitive position because of our loss, but doubly prejudice it because of our competitors' gain. Even if our employees are not hired by our competitors, our competitive position is prejudiced because the Record reveals to our competitors, our formula for the type of employees and the skill sets necessary to produce and execute winning proposals and build successful construction projects.

As indicated above, the appellant did not provide representations in the course of this appeal.

Findings

As a preliminary point, it should be noted that certain information relating to the education and employment history of a number of individuals is no longer at issue, as I have found it to be exempt under section 14(1) of the *Act*. Accordingly, with respect to the information about identifiable employees, I need only address the application of section 10(1) to the names of the employees of the affected party mentioned in the record that remain at issue.

After reviewing the record, as well as the representations of the affected party, I am satisfied that the disclosure of small portions of the record, as well as a number of the appendices attached to the proposal which form part of the record, could reasonably be expected to result in the harms identified in section 10(1)(a). I find that the affected party has provided me with 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.

Specifically, I find that the portions of the proposal which contain the information contained under point 6.17 on page H688 and the last paragraph under point 6.18 on page H689, the financial information under point 7.8, the banking and reference information contained on pages H696 to H699, and the information contained in Appendix B (sample project schedule), Appendix C (sample cost tracking log), Appendix D (sample monthly status report), Appendix E (sample daily site report), Appendix H (the affected party's quality management system) and Appendix I (reference information) qualify for exemption under section 10(1)(a).

I make this finding on the basis of the specific detail contained in those portions of the proposal that identify the specific information relating to the affected party's proposed approach to the project. In my view, the unique information contained in those small portions of the proposal discloses a particular approach to the project taken by the affected party. I also find that the disclosure of the specific information contained in the appendices identified above, which includes specific samples of the types of reporting records used by the affected party in carrying out the project, and the specific manner in which this information is recorded, could reasonably be expected to prejudice significantly the competitive position of the affected party, as it provides specific templates of those types of documents. Accordingly, I am satisfied that these portions of the record qualify for exemption under section 10(1)(a).

However, I am not satisfied that the other portions of the record, nor the portions of the slide show remaining at issue, qualify for exemption under section 10(1)(a).

In my view, the remaining portions of the record 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. I find that I have not been provided with sufficiently persuasive representations which satisfy me that the information contained in these portions of the record qualify for exemption under section 10(1)(a). Some of the information is information about the affected party and its history, experience and qualifications. This information appears to be of a public nature, and I have not been provided with sufficiently detailed and convincing evidence supporting the position that the disclosure of this information could reasonably be expected to result in the harms set out in section 10(1)(a).

The other information contained in the proposal (which is also described in less detail in the slide show), contains information about the manner in which the affected party proposes to meet the requirements of the RFP. The affected party has made general representations with respect to the concern that disclosure of the proposal would result in the identified harms. The affected party also identifies its concern that the disclosure of the form and structure of the proposal will allow others to use their successful proposal as a "template". 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 of 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. On that basis, I am not satisfied that the disclosure of general information contained in the proposal which discloses the “form and structure” of the proposal 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. Furthermore, on my review of the particular information contained in the proposal, I find that much of it is of a general nature, with some of the information referring to the specifics contained in the appendices (a number of which I have found qualify for exemption under section 10(1)(a)). I have not been provided with sufficiently detailed and convincing evidence to demonstrate that the disclosure of this general information could reasonably be expected to result in the harms set out in section 10(1)(a). Therefore, I conclude that these portions of the record are not exempt under that section.

Section 10(1)(b)

The affected party takes the position that the record is also exempt under section 10(1)(b), as its disclosure could reasonably be expected to result in similar information no longer being supplied to the Town, where it is in the public interest that similar information continue to be so supplied. The affected party states:

If the Record is made public, it will result in fewer responses to the Town's requests for proposals being made by quality firms. Firms like us will be reluctant to respond to the Town's future requests for proposals and to do business with the government because the disadvantages of disclosure (ie. prejudice to competitive position and undue gain) will far outweigh the benefits. It is in the public interest that as many firms as possible respond to every Town or other government RFP, so that firm that offers the best combination of price and quality maybe selected for the project.

... if we, or other companies like us, must risk the prejudice to our competitive position and the undue loss to us and gain to our competitors that will occur if proposals like the Record are made public, then we (and other companies like us) will stop responding to the Town's requests for proposal. As mentioned above, this is not in the public interest because the pool of cost effective, quality service providers willing to respond to the Town's contracts will shrink, resulting in an increased likelihood of such contracts being performed by more expensive, less qualified firms.

I am not persuaded that disclosing the 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 Town in the future, as contemplated by section 10(1)(b). I have found that certain specific information in the record, which could prejudice the competitive position of the affected party, qualifies for exemption under section 10(1)(a). With respect to the remaining information at issue, in my view companies doing business with public institutions, such as the Town, understand that certain information regarding how it plans to carry out its obligations will be public. Furthermore, 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 the disclosure of this information will have the effect that companies will no longer supply similar information to the Town. Accordingly, I find that the requirements for section 10(1)(b) have not been met.

Section 10(1)(c)

The affected party claims that the record is exempt under section 10(1)(c), as its disclosure could reasonably be expected to result in undue loss or gain to any person, group, committee or financial institution or agency. The affected party states:

We are not in the business of training other companies to prepare proposals or training other companies on how to efficiently build large construction projects. We have incurred the expense and invested the enormous amount of time required to plan and prepare winning proposals and develop the project management and construction procedures contained in the Record. If the Record is disclosed, then our competitors would have a gain to which they are not entitled because they could simply copy the format of the proposal and the procedures contained in the Record.

...

The ability of our competitors to offer the services at a lower price will be assisted by the fact that they will not have had to put the same time, effort or resources into preparing a proposal or planning how to best provide the services that we have had

to, because of the fact that they were able to obtain, at no cost to themselves, a template for winning proposals and the plans for how to provide the construction services.

The affected party also makes representations on how the disclosure of the information relating to its employees, including their education and employment experience, could result in the harms identified in section 10(1)(c). However, as identified above, I have found that much of that information (except for the names of certain employees) is exempt from disclosure under section 14(1).

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 that certain specific information concerning the proposal is exempt under section 10(1)(a). This included information about the specifics of certain aspects of the proposal, and specific samples of documents. As identified above, the information remaining at issue includes other information about the affected party and its history, experience and qualifications, as well as information which I consider to be fairly general about the manner in which the affected party proposes to meet the requirements of the RFP. 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.

With respect to the affected party's concerns that competitors will use the proposal as a template for future proposals, 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 could reasonably be expected to result in undue loss or gain to any person, group, committee or financial institution or agency.

In summary, I have found that some portions of the proposal and a number of the appendices qualify for exemption under section 10(1)(a). I find that the disclosure of the remaining portions of the record 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 remaining information contained in the record does not qualify for exemption under section 10(1).

ORDER:

1. I uphold the application of the exemption in section 14(1) to portions of pages H658 - H660 and H689, all of pages H734 to H744, and the names of identified individuals on pages H723 - H733. For greater certainty, I have highlighted the portions of pages H658 - H660, H689, and H723 - H733 which are not to be disclosed on the copies of those pages sent to the Town along with this order.
2. I uphold the application of the exemption in section 10(1)(a) to portions of pages H688 and H689, all of pages H692 and H696 to H699, and Appendices B, C, D, E, H and I.

For greater certainty, I have highlighted the portions of pages H688 and H689 which are not to be disclosed on the copies of those pages sent to the Town along with this order.

3. I order the Town to provide the appellant with the remaining portions of the Record by sending him a copy by **March 7, 2007** but not before **February 28, 2007**.
4. In order to verify compliance with this order, I reserve the right to require the Town to provide me with a copy of the portions of the Record which are disclosed to the appellant pursuant to Provision 3.

Original signed by: _____
Frank DeVries
Adjudicator

January 31, 2007