



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2197

Appeal MA-060028-1

Halton Regional Police Services Board



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

BACKGROUND:

The requester submitted a request to the Regional Municipality of Halton (the Municipality) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to Police Towing and Storage Services Proposal Bid #P-026-05 (the Bid). The requester, whose company unsuccessfully competed in the Bid process, specifically sought access to:

...photographs, field notes, submissions, meetings, e-mail, letters/faxes, references, agenda meetings and minutes, recommendations and conclusions and any or all other information the [Act] can provide, used to determine the score criteria for awarding the tender to [named company].

The Municipality wrote to the requester to advise him that the portion of his request relating to “photographs, field notes, submissions, meetings, etc.” about the successful company’s involvement in the Bid process was being forwarded to the Halton Regional Police Services Board (the Police) pursuant to section 18(2) of the *Act*. Section 18(2) of the *Act* permits an institution to forward access requests for records it does not have “in its custody or under its control” to an institution that does have custody or control of the records.

The requester was also advised that the portion of his request relating to the selection criteria evaluation (the Evaluation Report) for the named company would remain with the Municipality for separate processing. That specific portion of the request, and the Municipality’s processing of it, is not addressed by Appeal MA-060028-1, or this order.

NATURE OF THE APPEAL:

Upon receipt of the forwarded request, the Police identified approximately 230 pages of responsive records, including a copy of the Evaluation Report, and denied access to the information in full. In the decision letter issued on January 4, 2006, the Police informed the requester that the denial of access was based upon the application of sections 7(1) (advice or recommendations), 8(1)(e) & (l) (law enforcement), 10(1)(a), (b) & (c) (third party information), and 14(1) (invasion of privacy), in conjunction with the presumption against disclosure at section 14(3)(d), as well as the factors in section 14(2)(f) and (h). The Police also advised the requester that records relating to meeting minutes do not exist.

The requester, now the appellant, appealed the decision of the Police to this office.

A mediator was appointed to try to resolve the issues between the parties. During mediation, the appellant confirmed that he was not appealing the position put forward by the Police that meeting minutes do not exist, nor was he seeking access to the police codes and employee background (criminal) checks withheld under section 8. The appellant also confirmed that he was not appealing the decision by the Police that certain information in the records, including the named company’s financial information, is non-responsive to his request.

Therefore, the possible application of the discretionary law enforcement exemptions in sections 8(1)(e) and (l), the adequacy of the Police's search for records and the information identified as non-responsive in the records were removed as issues in this appeal. This reduced the number of pages remaining at issue in the appeal considerably from more than 200 to 67.

In a further effort to resolve this appeal, the mediator contacted the representative for the company named in the request (the affected party) to determine if its consent could be obtained to release the remaining records. Although the affected party's representative initially indicated that he was willing to provide consent, he ultimately chose not to do so. With no additional resolution possible, this appeal was moved to the adjudication stage of the process where it was assigned to me to conduct an inquiry.

Initially, I sent a Notice of Inquiry setting out the facts and issues in the appeal to the Police and to the affected party to seek representations. The affected party chose not to submit representations, but its representative advised staff from this office that it objected to the release of the information sought by the appellant. I received representations from the Police, in which they advised that they were withdrawing their reliance upon section 7(1) to deny access to page 67 of the records. Accordingly, this discretionary exemption was also removed from the scope of this appeal.

I sent a complete copy of the representations of the Police, along with a modified Notice of Inquiry, to the appellant and received representations from him as well.

RECORDS:

The records remaining at issue are comprised of 67 pages, namely:

- Group 1 – notebook excerpts for three police officers (10 pages);
- Group 2 - the Evaluation and its accompanying documents, including invoices, customer contact records, inspection forms and reports, and an internal "Incident File" (57 pages); and
- Group 3 - a CD-ROM containing 42 photographs of the affected party's premises and equipment.

DISCUSSION:

THIRD PARTY INFORMATION

The Police have claimed that sections 10(1)(a), (b) and (c) apply to exempt the responsive portions of pages 1 to 63 (of the 67 pages at issue) in their entirety. For the reasons set out below, I find that section 10(1) does not apply to the records.

Section 10(1): the exemption

Section 10(1) is a mandatory exemption that applies to exempt the information of a third party if certain requirements are met. Section 10(1) of the *Act* states, in part:

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, if 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; or

Section 10(1) recognizes that in the course of carrying out public responsibilities, government agencies often receive information about the activities of private businesses. 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 Police and/or the affected party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the 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.

Part 1: type of information

The Police submit that the records contain the commercial and financial information of the affected party.

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 [Orders P-493 and 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 [Order 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].

I adopt these definitions for the purpose of this appeal.

Representations

The Police submit that the records contain information provided to the Police by the affected party in response to the Bid proposal request and information that was gathered by the Police in its review of the proposal. The basis for the Police's assertion that Part 1 of the section 10(1) test has been met is articulated in the following manner:

The records include information about the [affected party] company's towing and storage facilities, equipment, number of employees, towing and storage rates and customer invoices. All of the information is directly related to the company's business conduct and, therefore, clearly contains commercial and financial information.

The appellant rejects the suggestion that the records contain commercial information, or any information related to the exchange of merchandise or services. The appellant also argues, based on his own company's involvement in the Bid, that the records do not contain specific financial data such as operating costs, overhead, etc. He reiterates the position he says he took during mediation, which is that he is not interested in obtaining access to information which might be construed as the financial information of the affected party, including invoice pricing.

Analysis and Findings

Having considered the representations of the parties and the records themselves, I am satisfied that the records contain commercial information for the purposes of part 1 of the section 10(1) test.

I note that in previous orders of this office, records prepared by a company in response to an institution's request for proposals have been found to contain commercial information. Commercial information has also been found to include such things as price lists, supplier and customer lists (see Order MO-1237). Moreover, past orders from this office have also established that the scoring of competing contractors in a bid constitutes commercial information because of its relation to the process designed by the institution for the selection of bidders who will provide commercial goods or services to that institution (Orders PO-1993, PO-1957, and MO-1462).

Applying these principles then, I find that the information contained in the portions of pages 5 to 7 of Group 1 and pages 11 to 20 and 22 to 63 of Group 2 remaining at issue, and which pertains to the affected party, qualifies as commercial information.

However, I am not convinced by the Police's submissions that any of the information in the records constitutes the affected party's financial information. Indeed, from my own review of the records, I find that they do not contain specific data or other information which could be construed as satisfying the definition of financial information established by previous orders of this office, such as Order PO-2010.

Moreover, I am not persuaded either by the representations or the records themselves that there is any information in pages 1 to 4 and pages 8 to 10 of Group 1 or on pages 21 and 39 of Group 2 that could be construed as commercial, financial, or any other of the types of information enumerated in section 10(1) of the *Act*. At most, the information in pages 1 to 4 and 8 to 10 of the officers' notebooks is comprised of small snippets of detail, such as dates, related to arrangements for the Evaluation team's inspection of the affected party's premises.

Page 21 contains a list of the affected party's drivers, their drivers' license numbers and the month and year their employment commenced. In my view, this is not commercial information of the kind contemplated by section 10(1) since it is not directly connected to the buying, selling or exchange of goods or services. Accordingly, I find that it does not qualify as the commercial or financial information of the affected party.

Furthermore, page 39 contains only two photocopied business cards, with what appears to be the same license plate number handwritten on each card. I find that this information does not meet the requirements of Part 1 of the section 10(1) test and cannot be withheld under this exemption.

Accordingly, I will address the possible application of section 14(1) to the information on pages 1 to 4 and 8 to 10 from Group 1, and pages 21 and 39 of Group 2 below.

In summary, with the exception of the pages enumerated directly above, I find that the information at issue meets Part 1 of the test under section 10(1) and I will proceed with my review of Part 2 of the section 10(1) test in relation to it.

Part 2: supplied in confidence

In order to satisfy Part 2 of the test under section 10(1), the Police must establish that the information at issue was “supplied” to them by the affected party “in confidence”, either implicitly or explicitly.

Representations

In the representations provided by the Police on this part of the section 10(1) test, they concede that pages 64-67 of the records – as part of the Police Towing Coordinator’s [internal] Incident File – cannot qualify as information “supplied” by the affected party or for the protection of this exemption.

The Police make the following submissions about the information contained in pages 22 to 35 of Group 2 of the records:

Pages 26-35 of the records... consist of customer invoices that were directly provided to this institution by the [affected] party as part of the proposal review process. These records were, therefore, supplied. In addition, pages 22-25 consist of the contacts this institution made with the customers identified from the invoices and the results of those contacts. It is submitted that since this information comes directly from the invoices themselves, it would reveal the information that was supplied.

In relation to the remainder of the information at issue, the Police concede that it is information generated by the members of their “Evaluation Team” and not the affected party, but contend that:

... unlike the circumstances as described in previous Orders (for example Order MO-1893) where it has been determined that information consisting of **general** conclusions and observations made by employees of an institution about the practices of a third party does not qualify as “supplied”, the information at issue here is the result of a **direct** review of the material submitted by the [affected] party in response to the proposal [emphasis in original].

In other words, should the information contained in these records be disclosed, it would permit the drawing of accurate inferences about the information actually supplied by the [affected] party to this institution in its proposal bid.

The Police submit that all of the information obtained by members of the Bid evaluation team was received in confidence and was consistently treated in a confidential manner because it contained the commercial information of third parties. The Police add that the “Bid Solicitation” also contained a specific notation that the information collected would only be used to evaluate the bid itself and not for any other purpose. Finally, the Police submit that the Bid evaluation team intended at all times to treat the information gathered in a confidential manner.

The appellant's representations on the "supplied" component of Part 2 are brief and state, in part:

Since ... the information I seek was compiled by the Police department's inspections and evaluation of facilities and trucks etc. and the tow companies, I believe it ... [is] mutually generated rather than supplied.

With respect to the "in confidence" requirement, the appellant disputes the suggestion that there was written notification to the parties that their bid, or information, would be held in confidence by the Police. He notes that the Bid itself was open to the public and suggests that the parties understood that once the successful bidder entered a contract, the contract would be public.

As I understand the appellant's other main argument, he submits that because the physical assets and properties of the bidding companies appear in public on a day to day basis due to the nature of the towing business, the listing of these items for the purposes of a bid proposal does not render that information confidential. The remainder of the appellant's representations are directed at other concerns about the awarding of the contract to the affected party.

Analysis and Findings

Supplied

The requirement that the information be shown to have been "supplied" reflects that the purpose of section 10(1) of the *Act* is to protect 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].

Following my consideration of the representations and a review of the records themselves, I have concluded that the evidence fails to establish that the information contained in most of the pages remaining at issue was "supplied" by the affected party or that its disclosure would reveal information so provided. With one exception to be described below, I find that the information was not "supplied" within the meaning of section 10(1) of the *Act*. My specific findings are as follows:

- Pages 5 to 7: excerpts from one of the police officer's notebooks, which detail his observations and inspection of the affected party's vehicles and premises;
- Pages 11 to 20: the Evaluation report (8 pages) and accompanying documentation (2 pages) completed by the Police evaluation team;
- Pages 22 to 25: records created by the Police which reflect their efforts to contact customers of the affected party;
- Pages 36 to 38 and 40 to 47: Police tow vehicle inspection forms filled out by members of the Police Evaluation team.

- Pages 48 to 56 and 59 to 63: commercial vehicle inspection reports (Ministry of Transportation standard forms) related to Police inspections of vehicles belonging to the affected party;
- Pages 57 and 58: worksheets related to several of the inspection reports; and
- 42 digital photographs: taken by the police officer(s) on the date of the inspection.

In support of the assertion that the information was supplied within the meaning of section 10(1), the Police seek to rely on Order MO-1893. The Police submit that former Adjudicator Sherry Liang distinguished between the *general* conclusions and observations of an employee of an institution about the practices of a third party and information created as a result of the *direct* review of material submitted by a third party in a bid process. The Police argue that the information at issue in this appeal falls into the latter category and that it qualifies as having been “supplied” because its disclosure would permit the drawing of accurate inferences about the information actually supplied.

I take a different view of the findings of former Adjudicator Liang in Order MO-1893. At issue in that appeal was an audit report (and schedules) related to the management of a restaurant located in the City of Cornwall’s Civic Complex. Former Adjudicator Liang found that certain components of the report contained or revealed financial information supplied by the third party because the record included entire schedules of the third party’s internal audit information. She also made that finding because information from the internal audit or the third party’s internal auditors was repeated elsewhere in the report. That is not the case here.

In my view, the following excerpt from the reasons of former Adjudicator Liang in that appeal is relevant in the present appeal:

I am not convinced, however, the portions of the report discussing the results of the City auditors’ review and testing of the appellant’s records or interviews with the appellant’s employees reveal or contain information “supplied” by the appellant.

These portions, in my view, are similar in quality to other parts of the report that contain the City auditors’ more general conclusions about the appellant’s financial practices and performance under its contract with the City. The results of the City auditors’ review and testing of the appellant’s accounting methods and procedures may be viewed as derived from information supplied by the appellant, in that it was based on analyses of the appellant’s financial records or interviews with employees. The City auditors’ more general conclusions about the appellant’s financial practices and performance were also derived from information supplied by the appellant in a broad sense, in that all of the raw material for these assessments necessarily originated with the appellant. However, **I find it more in keeping with the purpose of section 10(1) to treat all of this type of**

information as having been generated or produced by the City auditors during the course of their review, rather than as information “supplied” by the appellant. As I have noted, the purpose of section 10(1) is to protect the “informational assets” of third parties. Although undoubtedly the appellant has an interest in the conclusions of the City’s auditors, the audit report is rooted in the City’s institutional objective of assessing the financial performance under an important City contract [emphasis added].

I agree with this approach and adopt it for the purposes of this appeal.

The records speak for themselves. Although the information I have identified in the bulleted list may have been derived, in part, from the affected party’s commercial information submitted through the Bid proposal, it does not qualify as “supplied” because, in my view, it was generated through the subjective evaluation of such information by the Police Evaluation team (see Orders PO-1993, MO-1237 and MO-1462).

Given my finding that the information in the bulleted list above fails this part of the three-part test for section 10(1), none of this information can be exempt on this basis and I will no longer consider the application of this exemption to it.

However, I accept the submission of the Police that the customer invoices at pages 26-35 of Group 2 of the records were directly provided by the affected party to the Police as part of the proposal review process. Therefore, I find that they were “supplied” for the purposes of this part of the section 10(1) test and I must continue to examine the possible application of section 10(1) to these pages.

In Confidence

In order to satisfy the “in confidence” component of Part 2, 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].

It is important, in my view, to consider the nature of the records remaining for analysis under this part of the section 10(1) test, which consist solely of copies of the affected party's customer invoices. It is also worth emphasizing that the question to be answered in relation to these records is whether or not the affected party had a reasonable expectation of confidentiality regarding those customer invoices at the time it provided them to the Police.

Before me for consideration are two divergent perspectives from the Police and from the appellant as to the expectation of confidentiality during the bid process generally. The Police state that the "Bid Solicitation" contained a specific notation that any information collected would be used solely for the purpose of evaluating each proposal. They add that the members of the Evaluation team received and treated the "business information" of each bidder confidentially.

On the other hand, based on his own participation in the process, the appellant has argued that none of the companies competing for the Bid were given written assurances of confidentiality as regards their bid proposal or the information it contained. He also contends that he and the other bidders knew that the contract ultimately awarded as a result of the process was itself to be made public. As I understand this argument, the appellant is suggesting that in the circumstances described by him, a reasonably-held expectation of confidentiality did not exist.

It is regrettable that I have not received the affected party's views - other than the general objection to disclosure - regarding the information, and in particular, the customer invoices. I find that there is no information before me to establish, or even suggest, a concern on the part of the affected party to protect information contained in the invoices prior to them being supplied to the Police, nor is there any marking on the records themselves to suggest such a concern.

Moreover, even if it could be said that the affected party supplied copies of its customer invoices to the Police as a component of its proposal and that it did so with the expectation that these invoices would be kept confidential, I am not persuaded that such an expectation would be reasonable. I do not think that it can be said that customer invoices are prepared for a purpose that does not entail disclosure. By its very nature, an invoice is a document that gives a public face to a business, which explains, in part, why the Police wished to review samples of them from each bidder. Furthermore, an invoice provides evidence of a transaction between a business and its customers which may be used for other purposes by either party, including applications for reimbursement of the expense through one's insurance company.

For all these reasons, I find that the customer invoices at pages 26-35 of Group 2 of the records were not supplied with a reasonably-held expectation of confidentiality for the purpose of the third party information exemption.

Having found that none of the information at issue satisfies the second part of the section 10(1) test, the claim for exemption by the Police under this section fails and it is not necessary for me to determine whether the requirements of the third part of the test regarding a reasonable expectation of harm upon disclosure have been satisfied.

I will continue, however, with a review of the information the Police have sought to withhold under the personal privacy exemption in section 14(1) of the *Act*.

SEVERANCE OF PERSONAL INFORMATION

The Police have withheld information from the records based on the assertion that its disclosure would constitute an unjustified invasion of another individual's personal privacy under section 14(1). The Police also cite the presumption against disclosure in section 14(3)(d) and the factors in sections 14(2)(f) and (h).

In order to determine whether disclosure of information would constitute an unjustified invasion of personal privacy under section 14(1), I must first determine whether the record contains personal information as defined in section 2(1) of the *Act*, and, if so, to whom it relates.

Novel Circumstances

In this appeal, however, I take note of the appellant's comments on the subject of personal information:

Yes, the records contain personal information but as mentioned... in mediation and again in this document, it is not information ... I have requested. ... [It] may be blocked out just as it was when the same information was supplied to myself with respect to my own company and staff...

Once again, there is no request for ... personal information nor any expectation to release personal information.

In my view, the appellant's representations are clear and it is at the very least regrettable that the Police did not consider the records with a view to applying the principle of severance and releasing all of the information which was not subject to the section 14(1) exemption. Indeed, where a record contains exempt information, section 4(2) of the *Act* requires a head to disclose as much of the record as can reasonably be severed without disclosing the exempt information.

The key question raised by section 4(2) is one of reasonableness. A head will not be required to sever the record and disclose portions where to do so would reveal only "disconnected snippets", or "worthless", "meaningless" or "misleading" information.

Acknowledging the appellant's confirmation that he does not seek access to any personal information in the records, while simultaneously taking into account the concerns expressed by the Police on the subject, I will approach this issue intentionally.

In my view, any information in the records that qualifies as “personal information” for the purposes of the definition in section 2(1) of the *Act* can be dealt with by removing it from the scope of the request, as has been indicated by the appellant. When personal information is severed in accordance with the principles of section 4(2), the result is that it is no longer possible to identify individuals. Accordingly, the remainder of the information will no longer be about identifiable individuals and will no longer constitute personal information [Order M-264].

Therefore, the redaction of any personal information which may be found in the records at issue in accordance with my findings and the appellant’s wishes will render it unnecessary for me to consider the possible application of the personal privacy exemption claimed by the Police.

Is there personal information in the records?

As previously noted, the appellant concedes that the records contain personal information although he provides no further elaboration on the nature of that information.

For their part, the Police claim that pages 16, 21, 36-37, 40-41, 43, 44, 46-56, 59-65, and 67, and several of the digital images on the CD-ROM, contain information that qualifies as “personal information” of employees and staff of the affected party, as defined in section 2(1) of the *Act*. The types of information specifically listed by the Police are names, addresses, telephone numbers, dates of birth, drivers’ license numbers, and “employment status”. The Police also state that pages 22 to 35 contain the personal information of the affected party’s customers.

It is helpful to briefly detail portions of the representations provided by the Police under sections 14(3)(d), 14(2)(f) and 14(2)(h) since these contribute context to my consideration of this issue.

Information contained in page 21 identifies the staff and employees of the towing company by name, driver’s license number and years of employment. In addition, pages 36-37, 40-41, 43, 44, 46-56 and 59-65 contain specific information about employee qualifications, duties and Ministry of Transportation inspections. Finally, pages 65 and 67 refer to matters involving employees during the performance of their duties...

Page 16 contains some of the information obtained during the employee background checks, pages 22-35 contain information about towing company customers ...

The definition of “personal information”

Section 2(1) of the *Act* defines “personal information”, in part, 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 if they relate to another individual,
- ...
- (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, 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.)].

Analysis and Findings

Page 16

This page forms part of the Evaluation Report and relates to the evaluation of the background of the drivers employed by the affected party.

I agree with the Police that the page “contains some of the information obtained during the employee background checks”; however, the information appearing in these two segments of page 16 does not, in my view, constitute personal information within the meaning of the definition in section 2(1) of the *Act*. The information in the “Records Checks” section simply

consists of the generic scoring to be applied to various background findings and a numbered list with brief notations about the findings for six individuals. The information in the section titled "Experience" simply lists six different years. Based on my own review of the records, neither of these lists is directly cross-referenced with any identifiable individual or individuals on this, or any other, page. In my view, this information cannot be said to be "about" an identifiable individual and I find that it does not, therefore, qualify as "personal information" for the purposes of the definition of that term in section 2(1) of the *Act*.

Page 21

Page 21 contains supplementary information about the drivers employed by the affected party, namely their names, drivers' license numbers and the year each driver started employment.

I note that previous orders from this office have held that information about an individual in his or her professional or employment capacity does not constitute that individual's personal information where the information relates to the individual's employment responsibilities or position (see Reconsideration Order R-980015 and Order PO-1663) unless the information about the individual involves an evaluation of his or her performance as an employee or an investigation into his or her conduct (see Orders P-721, P-939, P-1318 and PO-1772).

However, in my view, the names of the drivers and their license numbers is not *about* those individuals in their employment capacity since the drivers' license number is a personal identifier that follows them regardless of the context. Based on my consideration of all of the circumstances of this appeal, I am satisfied that the names and drivers' license numbers contained on page 21 constitute personal information and I find that they fit within paragraphs (c) and (h) of section 2(1) of the *Act*.

Given that the names and drivers' license numbers will be severed (since they are not of interest to the appellant), the month and year each driver commenced employment may be disclosed to the appellant, since each month and year combination can no longer be connected to an identifiable individual. This is consistent with my findings as regards that same information on page 16.

Pages 22 to 25

Pages 22 to 24 contain a list of customers' names, addresses, telephone numbers, license plate numbers, and invoice numbers, as well as notes about the Evaluation team's attempts to contact these individuals to discuss the towing services received from the affected party. I find that this information constitutes the personal information of the individuals named therein, pursuant to paragraphs (c), (d) and (h) of the definition in section 2(1) of the *Act*.

Furthermore, I do not think the principle of severance can reasonably be applied to these pages since severing the information I have found to qualify as personal information would leave only meaningless, or disconnected, snippets of information. Accordingly, I will order these pages withheld in their entirety on the basis that the appellant is not seeking personal information.

Page 25, on the other hand, is a mostly blank form with information generated as a result of contacting a customer of the affected party. Only the presence of a license plate number ties this form to the pages preceding it. For the sake of consistency, I find that the plate number is personal information under paragraph (c) of the definition in section 2(1) and it will be severed accordingly.

Pages 26 to 35

These pages consist of copies of 10 customer invoices. While the invoices contain names, addresses and the license plate numbers of the towed vehicles, only those invoices at pages 27 and 31 contain names and addresses and other contact information that is obviously related to *identifiable* individuals, in their personal capacity. In relation to these pages only, I find that these invoices contain information that fits within paragraphs (c), (d) and (h) of the definition of the term found in section 2(1).

The remaining eight invoices are filled out using the names and addresses of corporate entities, such as dealerships or auto body shops. I find that this information does not qualify as the personal information of other identifiable individuals under paragraphs (d) and (h), but that the plate numbers of the vehicles qualify as personal information under paragraph (c) of section 2(1).

Furthermore, I note that the invoices at page 29, 33 and 35 also contain vehicle identification numbers. While I have no representations on this point from either of the parties, I note that in Order PO-2410, Assistant Commissioner Brian Beamish found that vehicle identification numbers are not information “about an individual”, identifiable or otherwise. I agree. Accordingly, I find that this information does not constitute personal information for the purposes of the definition in section 2(1).

Finally, I note that the name of an individual appears on the invoice at page 33 in an unusual place (i.e., not the “Charge To” line). I cannot discern from my review of the record what this individual’s connection is with the transaction. However, given that the name appears in conjunction with the plate number of the vehicle, it is reasonable to conclude that this name constitutes personal information according to paragraph (h) of the definition in section 2(1) and I find that it is so.

Pages 36 to 47

This segment of Group 2 of the records is comprised mostly of Tow Vehicle Inspection forms filled out by the Evaluation team as part of the review of the affected party’s proposal.

All of these forms contain the license plate number of the tow vehicle, which the Police have acknowledged are “commercial plates”. I find, therefore, that this information is not personal information as that term is defined in section 2(1).

Most of these forms contain the name and driver's license number of the affected party's employees as owners or operators of these tow vehicles. Some of these pages also contain information about the insurance policy held by the owner or operator, including the policy number. I find that on those pages where both the name and the driver's license number appear together, or where the insurance policy number appears, this information qualifies as the personal information of these individuals within paragraphs (c) and (h) of the definition of the term in section 2(1) of the *Act*. The pages containing this personal information are 36, 37, 40 to 44, 46 and 47.

Page 38 and 45 are anomalous in that although they are also Tow Vehicle Inspection forms, they do not contain a name or driver's license number, or other information which may serve to identify an individual. Accordingly, I find that pages 38 and 45 do not contain personal information that fits within the definition of that term in section 2(1).

Furthermore, page 39 consists solely of photocopies of two business cards with the plate number of the one of the tow vehicles handwritten on them. I find that this is not personal information about an identifiable individual according to the definition of the term in section 2(1) of the *Act*.

Pages 48 to 63

Pages 48 to 56 and 59 to 63 are commercial vehicle inspection reports filled out on Ministry of Transportation forms by the Police officers who inspected vehicles belonging to the affected party. Pages 57 and 58 are worksheets related to the findings of several of the inspection reports.

The names of the drivers of the vehicles, as well as their drivers' license numbers, appear on pages 48 to 56 and 59 to 63. In accordance with my earlier findings, I find that this information qualifies as personal information under paragraphs (c) and (h) of section 2(1).

However, no other information on these pages fits within the definition of personal information. I refer specifically to the information in the "Jurisdiction" and "[license] Class" boxes, which the Police seek to exempt under section 14(1). In my view, the removal of the names and drivers' license numbers, pursuant to my findings above, voids any connection between the information in those boxes and identifiable individuals. Accordingly, I find that this information does not constitute personal information. Similarly, I find that there is no information on pages 57 and 58 which can fit within the parameters of the personal information definition in section 2(1) of the *Act*.

Pages 64 to 67

The Police have referred to this segment of Group 2 of the records as their internal Incident File for the affected party. Page 64 is referred to as a Performance Index and contains brief handwritten notes regarding follow-up to be taken, including two first names. However, these names do not appear in conjunction with any other personal information to put it under paragraph (h) of the definition of the term in section 2(1) and I find that this page contains no information that could qualify as personal information for the purposes of that section of the *Act*.

Pages 65 and 67 are an incident report and an email contained in the internal Police Incident File. I agree with the Police that these two pages contain information related to employees of the affected party solely in the performance of their duty and that other identifying details are provided about these individuals. In keeping with the Orders of this office mentioned under the discussion for page 16, above (P-721, P-939, P-1318 and PO-1772), I find that pages 65 and 67 contain information about identifiable individuals because it relates to evaluations of their performance or conduct as employees. As such, it fits within paragraphs (b), (c), and (g) of the definition in section 2(1) of the *Act*. In my view, the personal information on these pages cannot reasonably be severed and I will order the pages withheld in their entirety.

Page 66 is titled Rotational Year End Summary for the year 2004. Most of this document has been severed as non-responsive and I note that the issue of responsiveness is not before me in this appeal. The only part of this page that could be construed as responsive is a single line about the affected party. No component of the information in that line can be construed as personal information and I find that it is not pursuant to the definition of that term in section 2(1).

Photographs

The CD-ROM provided contains 42 digital images of the affected party's premises and equipment. Based on my own review of these images, I note that photographs labelled P0003030, P0003058, P0003061, and P0003065 also include images of various individuals who may be employees of the affected party, or members of the Evaluation team. The inclusion of such individuals in the images appears to be merely incidental.

While I acknowledge that personal information is not defined in any paragraph of section 2(1) to mean photographs, I am mindful of the comments of former Commissioner Sidney Linden in Order P-11 on the subject:

It is clear from the wording of the statute that the list of examples of personal information under subsection 2(1) is not exhaustive. This leaves it open for [the adjudicator] to decide whether or not information contained in the records which does not fall under subsections (a) to (h) . . . constitutes personal information.

I also note that in Order M-528, involving a request for photographs of police officers, former Inquiry Officer (now Senior Adjudicator) John Higgins found that the photographs constituted the personal information of the subject individuals. I agree with, and adopt the findings of, both former Commissioner Linden and (now) Senior Adjudicator John Higgins that information may qualify as personal information, despite the fact that it does not fall within any of the listed categories in paragraphs (a) through (h) of section 2(1).

In my view, while these specific photographs all depict individuals from a distance, I find that these individuals are, for the most part, readily identifiable in the circumstances. The exception to this is that much of one of the individuals in image P0003061 is hidden behind a garage door; however, that one questionably depicted individual appears along with five other individuals who are readily identifiable. I find that these four photographs are "about" the identifiable

individuals depicted in them and, therefore, qualify as personal information pursuant to section 2(1) of the *Act*.

Having considered these photographs in the context of the broader circumstances of this appeal, I have determined that it would not be reasonable to require the Police to sever the identifiable individuals from the photographs in question and I will order these four photographs withheld in their entirety.

ORDER:

1. I do not uphold the decision of the Police to deny access to the records pursuant to section 10(1) of the *Act*.
2. Following my findings as regards “personal information” under section 2(1) of the *Act*, and in view of the appellant’s decision not to seek access to “personal information”, I order of the Police to:
 - a. withhold pages 22 to 24, 65 and 67, and images P0003030, P0003058, P0003061, and P0003065 in their entirety; and
 - b. sever the exempt information from pages 21, 25 to 37, 40 to 44, 46 to 56, and 59 to 63.
3. I order the Police to disclose all non-exempt responsive information from Groups 1, 2 and 3 of the records, in accordance with Order Provision 2, above.
4. For greater certainty, I am providing the Police with a copy of the records with the information **not** to be disclosed marked **in orange** highlighter. The original severances of non-responsive information and those made by the Police under section 8, which are not under appeal, are marked in **blue** highlighter.
5. I order the Police to send the appellant a copy of the records ordered to be disclosed no later than **July 6, 2007**, but not before **July 2, 2007**.
6. In order to verify compliance with the provisions of this order, I reserve the right to require the Police to provide me with a copy of the records which are provided to the appellant.

Original Signed by: _____
Daphne Loukidelis
Adjudicator

_____ May 31, 2007