Information and Privacy Commissioner,
Ontario, Canada

Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-2715

Appeal MA11-147

City of Hamilton

April 11, 2012

Summary: The appellant made a request to the City of Hamilton for records relating to the city's Red Light Camera Program. At issue in this appeal are the unit costs, estimated costs and item costs in Schedules A and F of the contract between the city and the affected party, the invoices from the affected party to the city from August 31, 2009 to August 31, 2010, and the Program Settings for the red light cameras. The city and the affected party argued that sections 8(1)(c) and 8(1)(l) exempted the Program Settings from disclosure and that section 10(1) exempted the rest of the records from disclosure. The city's decision to withhold the Program Settings is upheld under section 8(1)(c) of the *Act*, as the disclosure could reasonably be expected to reveal investigative techniques or procedures currently in use in the enforcement of the *Highway Traffic Act*. However, the information severed from Schedules A and F and the invoices from the affected party to the city are ordered to be disclosed as they fail to meet the second part of the section 10(1) test, which requires that the information be supplied to the institution with a reasonable expectation of confidentiality.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 8 and 10.

Orders and Investigation Reports Considered: MO-2011, MO-2465, PO-2435, PO-2453.

OVERVIEW:

[1] The City of Hamilton (the city) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

1. A copy of the original contract (the Contract) between the government agency and the red light camera vendor including all updates, amendments, renewals, extensions, revisions, etc.;

2. All invoices from the red light camera vendor to the City from August 31, 2009 to August 31, 2010;

3. The maintenance record for the red light camera at a named intersection from July 15, 2010 to August 31, 2010;

4. Signal Timing Charts for the intersection; and

5. The source code used in programming the red light camera.

[2] The city issued an interim decision and fee estimate and responded to the five part request. The city noted that records responsive to parts 1 and 2 of the request contain information that may affect the interests of another party. Notice was given to the affected party and the city indicated that it would advise the requester of its access decision by a specific date.

[3] Upon completion of the third party notification, the city issued its final decision. In response to part 1 of the request, the city granted partial access. The responsive record was a contract between the city and an identified company. The city noted the following information about the Contract:

- Page 4 of "**Schedule A**" entitled *Estimated Agreement Quantities – City of Hamilton* contains "Item Unit Costs" and "Estimated Unit Costs";

- Tab I of "**Schedule D**" consists of 11 resumes totally 15 pages, containing employment and/or educational history, which are considered "personal information"; and

- One page entitled *Price Detail Form – Form 5* that forms part of "**Schedule F**" containing "Unit Costs" and "Total Costs" (estimated quantity + unit costs).

[4] The city then advised that:

- The "Item Unit Costs" and the "Estimated Units Costs" would be severed from page 4 of "**Schedule A**" in accordance with section 10(1) of the *Act* and only the "Total Contact Value" would be disclosed

- The "Unit Costs" and "Total Costs" would be severed from the *Price Detail Form – Form 5* in accordance with section 10(1) of the *Act* and only the "Total Proposal" amount would be disclosed

[5] The city indicated that the 11 resumes in Schedule 10 were exempt from disclosure in their entirety pursuant to section 14(1).

[6] In response to part 2 of the request, the city noted that there were 15 invoices from an identified company to the city, totalling a specified amount of money. The city confirmed that these invoices are exempt from disclosure in their entirety pursuant to section 10(1) of the *Act*.

[7] In response to part 3 of the request, the city confirmed that the eight pages entitled *Red Light Camera – Evidence Tracking Form* was mailed to the requester.

[8] In response to part 4 of the request, the city noted that the requester confirmed that he did not wish to pursue access to the signal timing information.

[9] In response to part 5 of the request, the city identified a responsive record titled [named company] *Program Settings* and denied access pursuant to section 8(1)(c) and 8(1)(l) of the *Act*.

[10] The appellant appealed the city's decision to this office.

[11] During the course of mediation, the appellant confirmed that he was not seeking access to the 11 resumes as listed in its response to part 1 of the request. Therefore, section 14(1) of the *Act* is no longer at issue in this appeal.

[12] At mediation, the appellant advised the mediator that he wished to pursue access to the records that were denied and the matter was moved to the adjudication stage. I am the adjudicator in this matter.

[13] During my inquiry into this appeal, I sought and received representations from the appellant, the city and the affected party. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction* number 7.

[14] In the discussion that follows, I find that the requester is entitled to access the records withheld by the city under section 10(1). However, the city's exemption of the *Program Settings* is upheld pursuant to sections 8(1)(c) and 8(1)(l) of the *Act*.

RECORDS:

[15] The records at issue are as follows:

1. Page 4 of Schedule "A" of the Contract, entitled *Estimated Agreement Quantities – City of Hamilton* (Schedule A);

2. One page entitled *Price Detail Form – Form 5* that forms part of Schedule "F" of the Contract (the Price Detail Form);

3. Invoices from the affected party to the city (the invoices); and

4. The affected party's Program Settings (the Program Settings).

ISSUES:

A. Do the discretionary exemptions under sections 8(1)(c) and 8(1)(l) apply to the records at issue?

B. Did the city exercise its discretion under section 8? If so, should this office uphold the exercise of this discretion?

C. Does the mandatory exemption under section 10 apply to the records at issue?

DISCUSSION:

A. Do the discretionary exemptions under sections 8(1)(c) and 8(1)(l) apply to the records at issue?

[16] The term "law enforcement" is used in several parts of section 8 of the *Act*, and is defined in section 2(1) as follows:

> "law enforcement" means:
>
> (a) policing,
>
> (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
>
> (c) the conduct of proceedings referred to in clause (b).

[17] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[1]

[18] The city and the affected party claim that the discretionary exemptions in section 8(1)(c) and (l) of the *Act* apply to the affected party's Program Settings. These sections read:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> (c) reveal investigative techniques or procedures currently in use or likely to be used in law enforcement;
>
> . . .
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.

Section 8(1)(c)

[19] In order to meet the "investigative technique or procedure" test in section 8(1)(c), the institution must show that disclosure of the technique or procedure to the public could reasonably be expended to hinder or compromise its effective utilization. The exemption normally will not apply or procedure is generally known to the public.[2] In addition, the techniques or procedures must be "investigative". The exemption will not apply to "enforcement" techniques or procedures.[3]

[20] In its representations, the city states that the Red Light Camera program is designed to prevent, detect and prosecute violations of section 144(18) of the *Highway Traffic Act*, a breach of which constitutes and offence punishable by a fine under section 144(31.2) of the *Act*. As a result, I am satisfied that, generally speaking, the city's Red Light Camera program qualifies as "law enforcement" as that term is defined in section 2(1) of the *Act*.

[21] The city and the affected party argue that the Program Settings reveal the parameters used in the operation of Red Light Cameras. The city and the affected party also allege that the information collected by the Red Light Cameras that are based on these Program Settings is used to assist in the enforcement of the *Highway Traffic Act* offence of entering an intersection against a red light. For example, the affected

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[1] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct).
[2] Orders P-170, P-1487.
[3] Orders PO-2034, P-1340.

party states that the Program Settings reveal the minimal red time or minimal speed time used by investigators to determine that an offence has been committed.

[22] In its representations, the city states that administering and maintaining the red light cameras in accordance with the Program Settings is an investigative technique used by the city to obtain and collected evidence:

- that a driver/vehicle failed to stop for a red traffic light contrary to section 144(18) of the *Highway Traffic Act*;
- that a driver/vehicle exceeded a prescribed rate of speed, contrary to the *Highway Traffic Act*; and
- to support the issuance of certificates of offence and offence notices under the *Provincial Offences Act* for contraventions of the *Highway Traffic Act*.

[23] The city asserts that the investigative technique of using particular camera settings is not known by the public and its disclosure would interfere with and negatively impact the city's Strategic Road Safety Program.

[24] In response, the appellant states that it is not his intention to undermine law enforcement in any way.

[25] After reviewing the representations and the Program Settings, I find that the city and the affected party have provided detailed and convincing evidence to establish that a "reasonable expectation" that the disclosure of the record would reveal investigative techniques and procedures currently in use in law enforcement. The Program Settings do not simply contain a safety technique and related administrative procedure that officers are required to follow,[4] but rather contain detailed information about the precise settings of the red light cameras used to determine whether an offence under the *Highway Traffic Act* was committed. Moreover, the Program Settings are not simply a type of user's manual that simply describes how the red light cameras operate[5] and are not available to the public. The Program Settings in this case clearly identify the precise settings that are used by the city to obtain and collect evidence that a driver has committed an offence under the *Highway Traffic Act*.

[26] Although the appellant states that he does not intend to use the Program Settings in a manner that would undermine law enforcement, I find that the record is exempt under section 8(1)(c) as there is a "reasonable expectation" that the disclosure

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[4] See Order MO-2347-I, in which the record at issue, Procedure 05-04 (Domestic Violence) of the Police's Policy and Procedure Manual, outlined the procedures the Toronto Police Services were required to follow when responding to domestic violence incidents.

[5] See Order MO-1790, in which Adjudicator Donald Hale did not find that a user's manual for a directional radar unit revealed the type of investigative techniques and procedures contemplated by the exemption. See also Orders MO-1873 and PO-2274.

of the record would reveal investigative techniques and procedures currently in use in law enforcement.

Section 8(1)(l)

[27] Since I have found that the records are exempt under section 8(1)(c) of the *Act*, I will not consider whether the exemption under section 8(1)(l) applies.

B. Did the city exercise its discretion under section 8? If so, should this office uphold the exercise of this discretion?

[28] Where appropriate, institutions have the discretion under the *Act* to disclose information even if it qualifies for exemption under the *Act*. On appeal, this office may review the institution's decision in order to determine whether it exercised its discretion and, if so, determine whether it erred in doing so.

[29] In this order, I have found the record entitled Program Settings is exempt in full under sections 8(1)(c). I will, therefore, assess whether the city exercised its discretion properly in applying these exemptions to those specific portions of that record.

[30] The Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose,
- it takes into account irrelevant considerations, or
- it fails to take into account relevant considerations.[6]

[31] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[7] This office may not, however, substitute its own discretion for that of the institution.[8]

[32] In its representations, the city lists the factors that it took into account in exercising its discretion under sections 8(1)(c) and (l) of the *Act*. It submits that it exercised its discretion in good faith and for a proper purpose. The appellant does not specifically address whether the city exercised its discretion properly in applying the section 8(1)(c) and (l) exemptions.

[33] In my view, the city exercised its discretion based on proper considerations in applying the section 8(1)(c) and (l) exemptions to the Program Settings. It took

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[6] Order MO-2365, page 18.
[7] Order MO-1573.
[8] *Municipal Freedom of Information and Protection of Privacy Act*, s. 43(2).

relevant factors into account and did not consider irrelevant factors. Therefore, I find that its exercise of discretion was proper.

C. Does the mandatory exemption under section 10 apply to the records at issue?

[34] The city and the affected party claim that section 10(1) applies to the following information contained in the Contract between the city and the affected party: page 4 of Schedule A that contains "Item Unit Costs" and "Estimated Unit Costs"; the part of the Price Detail Form in Schedule F that contains "Unit Costs" and "Total Costs"; and 15 invoices from the affected party to the city for the responsive period of August 1, 2009 to August 31, 2010.

[35] Section 10(1) states:

> 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,
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> (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
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> (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

[36] Section 10(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[9] Although one of the central purposes of the *Act* is to shed light on the operations of

[9] *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2581 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.).

government, section 10(1) serves to limit the disclosure of confidential information of third parties that could be exploited by a competitor in the market place.[10]

[37] For section 10(1) to apply, the institution and/or 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;

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

[38] Past orders of this office defined financial and commercial information 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.[11] The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.[12]
>
> *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.[13]

[39] I adopt these definitions for the purposes of this appeal.

[40] The records at issue relates to the provision of red light camera services to the city by the affected party and consist of invoices as well as schedules that contain unit prices and total prices for the services provided. As such, I find that the records contain both financial and commercial information for the purposes of section 10(1).

[41] Accordingly, the first part of the test for the application of section 10(1) has been met.

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[10] Orders PO-1805, PO-2018, PO-2184, MO-1706.
[11] Order PO-2010.
[12] Order P-1621.
[13] Order PO-2010.

Part 2: Supplied in Confidence

Supplied

[42] 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.[14]

[43] 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.[15]

[44] The contents of a contract involving an institution and a third party will not normally qualify as having been "supplied" for the purpose of section 10(1). The provisions of a contract, in general, have been treated as mutually generated, rather than "supplied" by the third party, even where the contract is preceded by little or no negotiation or where the final agreement reflects information that originated from a single party. This approach was approved by the Divisional Court in *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*.[16]

[45] There are two exceptions to this general rule which are described as the "inferred disclosure" and "immutability" exceptions. The "inferred disclosure" exception applies where disclosure of the information in a contract would permit accurate inferences to be made with respect to underlying non-negotiated confidential information supplied by the affected party to the institution. The "immutability" exception applies to information that is immutable or is not susceptible of change, such as the operating philosophy of a business, or a sample of its products.[17]

In Confidence

[46] 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.[18]

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[14] Order MO-1706.
[15] Orders PO-2020, PO-2043.
[16] *Supra* note 5. See also Orders PO-2018, MO-1706, PO-2496, upheld in *Grant Forest Products Inc. v. Caddigan*, [2008] O.J. No. 2243 and PO-2497, upheld in *Canadian Medical Protective Association v. John Doe*, [2008] O.J. No. 3475 (Div. Ct.).
[17] Orders MO-1706, PO-2384, PO-2435, PO-2497, upheld in *Canadian Medical Protective Association v. John Doe*, [2008] O.J. No. 3475 (Div. Ct.).
[18] Order PO-2020.

[47] 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.[19]

[48] In its representations, the city states that it relies upon the submissions of the affected party concerning the application of section 10 of the *Act* to the first three records at issue.

[49] The affected party submits that the Unit Costs and Total Costs in the Price Detail Form were supplied by itself in response to the Request for Proposal (the RFP) that lead to the contract. The affected party states that both the Item Unit Costs and Estimated Unit Costs in Schedule A and the invoices submitted pursuant to the Contract reflect the prices submitted in the Price Detail Form and permit a reader to accurately infer the pricing information supplied by the affected party.

[50] The affected party also alleges that the pricing information it supplied to the city was non-negotiated and supplied in confidence in response to the RFP. The affected party states that in the RFP process, all bidders operated under the understanding that the city would keep their pricing information in confidence.

[51] As evidence, the affected party states that the pricing information was submitted in a sealed envelope. This envelope was not opened by the city until after the committee evaluating the proposals was satisfied that the minimal technical criteria were met. The successful bidder was chosen on the basis of a weighted average of price and technical criteria. As such, the affected party alleges that there was no negotiation over the price.

[52] Finally, the affected party claims that the pricing information contained in the Contract and reflected in the invoices supplied under it has been kept confidential by the city.

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[19] Orders PO-2043, PO-2371, PO-2497.

[53] While I accept that the affected party had an implicit and explicit expectation of confidentiality when it submitted its bid, I find that Schedule A and the Price Detail Form were not supplied for the purposes of the section 10(1) exemption. Numerous decisions of this office have considered whether pricing information contained in a contract or bid proposal meet the "supplied" portion of the section 17(1) test.

[54] In Order PO-2435, I considered the Ministry of Health and Long-Term Care's argument that proposals submitted by potential vendors in response to government RFP's, including per diem rates, are not negotiated because the government either accepts or rejects the proposal in its entirety. After carefully reviewing the records and representations, I rejected that argument and concluded that the government's option of accepting or rejecting a consultant's bid is a "form of negotiation":

> The Ministry's position suggests that the Government has no control over the per diem rate paid to consultants. In other words, simply because a consultant submitted a particular per diem in response to the RFP release by [Management Board Secretariat (MBS)], the Government is bound to accept that per diem. This is obviously not the case. If a bid submitted by a consultant contains a per diem that is judged to be too high, or otherwise unacceptable, the Government has the option of not selecting that bid and not entering into a [Vendor of Record] agreement with that consultant. To claim that this does not amount to negotiation is, in my view, incorrect. The acceptance or rejection of a consultant's bid in response to the RFP released by MBS is a form of negotiation. In addition, the fact that the negotiation of an acceptable per diem may have taken place as part of the MBS process cannot then be relied upon by the Ministry, or [Shared Systems for Health], to claim that the per diem amount was simply submitted and was not subject to negotiation.[20]

[55] Similarly, in Order PO-2453, Adjudicator Catherine Corban addressed the application of the "supplied" component of part 2 of the section 10(1) test to bid information prepared by a successful bidder in response to a Request for Quotation issued by an institution. Among other items, the record at issue in PO-2453 contained the successful bidder's pricing for various components of the services to be delivered as well as the total price of its quotation bid. In concluding that the terms outlined by the successful bidder formed the basis of a contract between it and the institution, and were not "supplied" pursuant to part 2 of the test under section 17(1) (the equivalent to section 10(1) in the provincial *Act*), Adjudicator Corban stated:

> Following the approach taken by Assistant Commissioner Beamish in Order PO-2435, in my view, in choosing to accept the affected party's quotation bid, the information, including pricing information and the

[20] Order PO-2435, page 7.

> identification of the "back-up" aircraft, contained in that bid became "negotiated" information since by accepting the bid and including it in a contract for services, the Ministry has agreed to it. Accordingly, the terms of the bid quotation submitted by the affected party became the essential terms of a negotiated contract.
>
> Additionally, having reviewed the information at issue, I do not find, nor have I been provided with any evidence to show, that any of the information at issue is "immutable" or that disclosure of the information, including the pricing information, would permit accurate inferences to be made with respect to underlying non-negotiated confidential information supplied to the Ministry by the affected party. I have also not been provided with any evidence to show that the pricing information reflects the affected party's underlying costs. In fact, in my view, the information contained in the record itself appears to point to the opposite conclusion that the amounts charged by the affected party are for the provision of particular services.[21]

[56] This excerpt from Order MO-2465 emphasizes that the exemption in section 10(1) is intended to protect information belonging to an affected party that *cannot* change through negotiation, not that which could, but was not, changed.[22]

[57] Applying this reasoning to the case at hand, I find that the information in Schedule A and the Price Detail Form are not exempt under section 10(1). Following my reasoning in Order PO-2435, I find that the "Item Unit Costs" and "Estimated Unit Costs" in Schedule A and the "Unit Costs" and "Total Costs" from the Price Detail Form cannot be considered to have been "supplied" to the city. Even though the affected party claims that there was no negotiation over the price, the fact that the city had the option to accept or reject the affected party's bid in response to the RFP leads me to conclude that the costs were subject to negotiation.

[58] Furthermore, I am not convinced that the disclosure of the information withheld from Schedule A and the Price Detail Form would somehow permit an individual to accurately infer the non-negotiated confidential information that the affected party supplied to the city. According, based on my review of Schedule A and the Price Detail Form, I find that the information withheld reflects the negotiated agreement between the city and the affected party for the provision of services to operate the red light cameras. As the information at issue in Schedule A and the Price Detail Form was not supplied, the affected party has not met part two of the test for the application of section 10(1).

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[21] Order PO-2453, page 7.
[22] See *Canadian Pacific Railway v. British Columbia (Information and Privacy Commissioner)*, [2002] B.C.J. No. 848 (S.C.); Orders PO-2371, PO-2433 and PO-2435.

[59] With regard to the invoices, the affected party argues that the invoices were submitted pursuant to the Contract and reflects the prices that were submitted in accordance with the RFP and would permit a reader to make an accurate inference of the pricing information supplied by the affected party to the city. Further, the affected party claims that the pricing information and the invoices that reflect that information has been kept confidential by the city and is not available from sources to which the public has access.

[60] In Order MO-2115, Adjudicator Diane Smith considered whether invoices submitted by an affected party to the City of Windsor in relation to the disposal and treatment of the City of Windsor's sewage sludge. During her review of the invoices, Adjudicator Smith stated:

> Record 2 is comprised of invoices from the affected party to the City with the rate charged per metric tonne of sludge cake and the amount charged severed. The number of metric tonnes of sludge cake has been disclosed. Therefore, by revealing the rate, the amount charged can be calculated and vice versa. Schedule "E" provides the formula for the calculation of the rate as it lists unit pricing, including adjustment details. I found above that the information in Schedule "E" has not been supplied for the purposes of section 10(1). For the same reasons, I conclude that the severed items in Record 2, the invoice amounts and rate charged per metric tonne, as calculated by the formula set out in Schedule "E", has not been supplied, as well.[23]

[61] I adopt the reasoning in Order MO-2011 in my analysis of the invoices in this appeal.

[62] I have carefully reviewed the invoices at issue and find that the information does reflect the pricing information in Schedule A and the Price Detail Form, as the affected party claimed. As the invoices simply reflect the information I have already determined to not meet part two of the section 10(1) test, I also find that the invoices were not supplied to the city within the meaning of section 10(1).

[63] Furthermore, I find that the invoices fail to meet part two of the section 10(1) test as the affected party has not provided sufficient evidence that would reasonably lead it to consider that the invoices was provided in confidence, either implicitly or explicitly. There is no notation on the invoices that indicate that they are to be kept confidential. While the lack of such a notation is not necessarily fatal to a claim of confidentiality, in the circumstances of this appeal, despite the assertions of the affected party, it leads me to the conclusion that the invoices were not submitted to the city on the basis that they were confidential and to be kept confidential. Even without a

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[23] Order MO-2011, page 14.

confidentiality notation, the affected party has not established that the invoices were supplied in confidence, either explicitly or implicitly.[24]

[64] Therefore, I find that the city and the affected party have failed to meet part two of the test for the application of section 10(1) to the withheld information in Schedule A, the Price Detail Form and the invoices from the affected party to the city. As all parts of the test for the exemption under section 10(1) must be met, Schedule A, the Price Detail Form and the invoices are not exempt and must be disclosed in full to the appellant.

ORDER:

1. I uphold the city's decision to withhold the Program Settings from the appellant that I have found are exempt under sections 8(1)(c) and (l) of the *Act*.

2. I order the city to disclose page 4 of Schedule "A" of the Contract, the Price Detail Form from Schedule F of the Contract, and the invoices from the affected party to the city by providing him with a copy of these records by **May 16, 2012** but not later than **May 11, 2012**.

3. To verify compliance with this order, I reserve the right to require the city to send me a copy of the records disclosed pursuant to order provision 2.

Original signed by: April 11, 2012
Brian Beamish
Assistant Commissioner

[24] Order PO-2384, pages 9-10.