

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3246

Appeal PA12-313

Ministry of Tourism, Culture and Sport

August 28, 2013

Summary: The appellant sought access to records regarding the successful bid submitted in response to a request for quotation issued by the ministry. The ministry granted partial access to the responsive records and relied on the mandatory exemption in section 17(1) (third party information) to withhold some information and records. The appellant appealed the ministry's decision and raised the application of the public interest override in section 23 as an issue in the appeal. This order does not uphold the ministry's decision and orders the records disclosed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 17(1).

Orders and Investigation Reports Considered: PO-2435, PO-2453, PO-3230 and PO-3183.

OVERVIEW:

[1] The Ministry of Tourism, Culture and Sport (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to a specific request for quotation (RFQ). The requester specified that he sought access to:

[A]ll the records and documentation provided to and received by the successful vendor for the supply of the [specified product]. I would also request documentation showing the delivery date of the product by the successful vendor. [*sic*]

[2] The ministry located records responsive to the request. It then notified a third party whose interests could be affected by disclosure of the records (the affected party), pursuant to section 28 of the *Act*. The affected party provided representations to the ministry, which, in turn, issued a decision granting the requester partial access to the responsive records. The ministry relied on the mandatory exemption in section 17(1) (third party information) to withhold some responsive records and portions of others.

[3] The requester subsequently challenged the ministry's decision and noted that no responsive records were provided for the second part of his request. In response, the ministry advised the requester of the delivery date he sought. The ministry also issued a revised decision in which it granted the requester access to additional records and portions thereof.

[4] The requester, now the appellant, appealed the decision.

[5] During mediation, the appellant stated that he was pursuing access to the pricing information in the records, as well as the product drawings. He also asserted that there was a public interest in disclosure of these records, bringing into play the possible application of section 23 of the *Act*.

[6] Also during mediation, the affected party confirmed that it did not consent to the disclosure of its pricing information or drawings contained in the records.

[7] As a mediated resolution of the issues was not possible, the appeal was moved to the adjudication stage of the appeal process, in which an adjudicator conducts an inquiry under the *Act*.

[8] I sought representations from the ministry, the affected party and the appellant. In its representations, the affected party identified another third party whose interests could be affected by disclosure of the records (the second affected party). Accordingly, I notified the second affected party and sought its representations as well.

[9] The ministry, the affected party, the second affected party and the appellant, all provided representations which I shared in accordance with section 7 of this office's *Code of Procedure and Practice Direction Number 7*.

[10] During my inquiry into this appeal, the appellant, the affected party and the second affected party, all agreed to be identified to one another. As such, these three parties are now aware of the others' identities.

[11] In this order, I do not uphold the ministry's decision, and I order it to disclose the records.

RECORDS:

[12] The records remaining at issue are the following:

Record 2 The Submission Form, specifically, the withheld portion of the price quote at page 2, and all of pages 4, 5, 6 and 7, which contain product drawings and specifications.

Record 4 The withheld portions of the Price Quotation Summary.

Record 5 The withheld portions of the Purchase Order.

DISCUSSION:

Does the mandatory exemption at section 17(1) apply to the records?

[13] In its representations, the ministry takes the position that the information at issue is exempt from disclosure under section 17 of the *Act* based on the views expressed by the affected party and the records themselves. The affected party states that sections 17(1)(a), (b) and (c) apply to exempt the information from disclosure, while the second affected party claims that only sections 17(1)(a) and (c) apply.

[14] Section 17(1) of the *Act* is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.¹ Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.²

[15] Section 17(1) reads, in part:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information,

¹ *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.).

² Orders PO-1805, PO-2018, PO-2184 and MO-1706.

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; . . .

[16] To establish that the section 17(1) exemption applies, the parties relying on the exemption 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), and/or (c) of section 17(1) will occur.

Part 1: type of information

[17] Previous orders of this office have defined trade secret, technical, commercial and financial information as follows:

Trade secret means information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which

- (ii) is, or may be used in a trade or business,
- (ii) is not generally known in that trade or business,

- (iii) has economic value from not being generally known, and
- (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.³

Technical information is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. While it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing.⁴

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.⁵ The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.⁶

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.⁷

[18] I adopt these definitions in this appeal.

Representations

[19] The ministry states that it defers to the views of the affected party to meet the requirements of the section 17 test.

[20] The affected party states that the withheld information, consisting of its unit price, delivery cost, total quote information, product design and specification information and drawings are "trade secret, technical information, commercial information and financial information" belonging to it and to the second affected party.

³ Order PO-2010.

⁴ Order PO-2010.

⁵ Order PO-2010.

⁶ Order P-1621.

⁷ Order PO-2010.

[21] The second affected party states that the records at issue contain technical, commercial and financial information. It states that record 2 contains engineering drawings containing technical information relating to the construction and design of the equipment. It relies on Order PO-2010 to assert that information belonging to an organized field of knowledge, including engineering, and usually involving information prepared by an individual for the purposes of, among other things, construction, operation or maintenance of a structure or equipment, has long been accepted as "technical information." It further submits that the price quotations and pricing information contained in records 2, 4 and 5, qualify as both "commercial information" because they relate to the buying, selling or exchange of merchandise or services relating to the administration of an enterprise, and "financial information" because they include information about pricing practices.

[22] The appellant does not directly address this issue in his representations.

Analysis and findings

[23] The records at issue relate to an RFQ issued by the ministry for bids from vendors for the supply of specified electrical equipment used in marinas.

[24] Record 2, the affected party's submission form in response to the RFQ, contains the affected party's price quote for the specified product at page 2. I find that the pricing information on page 2 of record 2 qualifies as commercial information as it relates to the buying, selling or exchange of merchandise. I also find that the price quotation summary in record 4 and the purchase order in record 5 similarly contain commercial information relating to the affected party's sale of the product to the ministry. These records also contain the financial information of the affected party as they reveal its pricing practices for the equipment.

[25] Pages 4, 5, 6 and 7 of record 2, contain product drawings and specifications submitted by the affected party in its submission form. These pages contain information that describes the construction and specifications of the electrical equipment. I am satisfied that the drawings in these pages of record 2 contain technical information for the purposes of section 17(1). I do not accept the affected party's submission that these pages contain trade secret information as the affected party has not addressed the various elements required to establish the product drawings as this type of information.

[26] In sum, I find that all of the records at issue contain the type of information that is contemplated by section 17(1), and I further find that part one of the test has been satisfied for all of the information at issue.

Part 2: supplied in confidence

Supplied

[27] The requirement that it be shown that the information was “supplied” to the institution reflects the purpose in section 17(1) of protecting the informational assets of third parties.⁸

[28] 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.⁹

[29] 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 17(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)*, cited above.¹⁰

[30] 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.¹¹

Representations

[31] The affected party states that it supplied its pricing information in the required format set out in the submission form in response to the ministry’s RFQ. It states that the prices it submitted were not the result of negotiations, but rather a statement of the price supplied by it. The affected party states that these prices on their own and in conjunction with the other information in the records reflect, in part, its underlying costs and pricing practices. The affected party asserts that the intention of the section 17(1) exemption is to protect information belonging to a third party that cannot change

⁸ Order MO-1706.

⁹ Orders PO-2020 and PO-2043.

¹⁰ 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.).

¹¹ Orders MO-1706, PO-2384, PO-2435, PO-2497 upheld in *Canadian Medical Protective Association v. John Doe* (cited above).

through negotiation, and therefore, the pricing information qualifies for exemption. The affected party further submits that disclosure of the information would permit the appellant to draw accurate inferences and know exact details about confidential and proprietary information about it that is not publicly available.

[32] The affected party further submits that the product drawings and specifications contained in pages 4, 5, 6 and 7 of record 2 that it submitted to the ministry in confidence, were prepared by the second affected party. It asserts that it received these documents from the second affected party in confidence to be used for "limited purposes only." It states that these drawings "are not otherwise available from sources to which the public has access" and their disclosure would hinder its ability and the ability of the second affected party to remain competitive in their industry by giving an unfair advantage to their competitors. The affected party also submits that disclosure of the drawings "would have the practical result of ordering [it] to breach its contractual obligations of confidentiality and use to its manufacturer, exposing it to potential contractual and civil damages."

[33] The second affected party states that the information at issue was "supplied" by it to the affected party which then passed it on to the ministry in response to the ministry's RFQ. It further states that the ministry's RFQ required the affected parties to supply drawings, specifications and pricing, and the information that was supplied was not the result of a negotiated contract.

[34] The appellant's representations do not address this issue.

Analysis and findings

[35] Previous orders of this office have held that information in a proposal submitted by a third party in response to an institution's solicitation of bids that remains in its original form and is not the product of negotiations, qualifies as having been "supplied" for the purposes of section 17(1).¹² I adopt this approach in this appeal and find that the drawings in pages 4, 5, 6 and 7 of record 2, were supplied by the affected party to the ministry, as these are detailed renderings of the second affected party's product that are not the result of negotiations. The drawings remain in their original form, and were not included in the purchase order which represents the negotiated agreement between the affected party and the ministry. I also find that the pricing information contained in the affected party's RFQ submission in record 2, was supplied to the ministry.

[36] Record 5, the purchase order prepared by the ministry, contains the agreed upon price of the equipment and constitutes the contract of purchase and sale between the ministry and the affected party.

¹² Orders MO-1368, MO-1504 and PO-2637.

[37] Numerous previous orders of this office have held that an accepted bid price as reflected in a final agreement is not "supplied" for the purposes of section 17(1). This well established principle was reiterated recently by Assistant Commissioner Brian Beamish in Order PO-3230 where he stated:

Consistent with [Orders PO-2435 and PO-2453], I find that the information provided by the appellant to the hospital which ultimately led the parties to enter into an agreement for the provision of goods, was not "supplied" by the appellant to the hospital within the meaning of section 17(1). Instead, the information at issue reflects the negotiated agreement between the appellant and the hospital.

[38] In Order PO-2453, which considered the exemption of bid information provided by a third party to a ministry and incorporated into a quotation bid analysis document, Adjudicator Catherine Corban, held that the successful bidder's pricing and total price were not exempt as they were not supplied. In her analysis, Adjudicator Corban stated:

[I]n choosing to accept the affected party's quotation bid, the information, including pricing information and the 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.

[39] I agree with the approach in Orders PO-2435, PO-2453 and PO-3230, and adopt it in this appeal. I find that the pricing information in the purchase order, the agreement between the affected party and the ministry, was negotiated and not "supplied." The ministry's acceptance of the affected party's price as reflected in the purchase order constitutes negotiation as the ministry had the option to reject it, but chose to accept it. I further find that the pricing information in the purchase order does not qualify for the "inferred disclosure" or "immutability" exceptions to the general rule that the contents of an agreement are negotiated and not supplied, as there is no underlying non-negotiated confidential information that was supplied by the affected party that can be inferred by disclosure of the pricing information, nor is the pricing information immutable.

[40] I also find that the pricing information contained in the price quotation summary prepared by the ministry, was not "supplied" by the affected party because it was accepted by the ministry, thereby becoming the essential term of the negotiated agreement between the affected party and the ministry, and included in the purchase order, which I have found above was negotiated and not "supplied."

[41] As records 4 and 5 do not satisfy the second part of the three-part test under section 17(1), I will order them disclosed.

In confidence

[42] The only information that remains for me to consider is the pricing information and the drawings in record 2.

[43] 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.¹³

[44] 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 ministry 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 party prior to being communicated to the ministry
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure.¹⁴

Representations

[45] The affected party states that in responding to the ministry's RFQ, it had a reasonable expectation that its economic and commercial interests, and its competitive position, would not be prejudiced. The affected party submits that it explicitly and implicitly supplied the information to the ministry in confidence, and this information is confidential and private and not publicly available. The affected party stresses that the RFQ is a closed-bid tender and the nature of this process makes the records confidential.

[46] The second affected party submits that both it and the affected party had a reasonable expectation that the information would be treated confidentiality, as they supplied the information "in confidence." It asserts that in response to the ministry's RFQ, it provided information to the affected party to which it "impressed an explicit duty of confidentiality" on the affected party that it has not waived.

¹³ Order PO-2020.

¹⁴ Orders PO-2043, PO-2371 and PO-2497.

[47] The second affected party asserts that the combination of the drawings and pricing involves confidential information from it, delivered by the affected party to the ministry, in circumstances in which the ministry knew or ought to have known that the information was confidential. It adds that the drawings and the components of the aggregate price in this appeal are the result of the application of creative methodologies to respond to the specific RFQ and are confidential. The second affected party further asserts that "equity imposes upon [the ministry] the duties of a constructive trustee of that information" in accordance with intellectual property law principles regarding confidential information, such that, "[t]he information can be used solely for the purpose for which it is supplied, and must be maintained in confidence unless there is an overriding legal basis for disclosure." For these reasons, the second affected party asserts that the records at issue were expressly or implicitly supplied in confidence to the ministry, which is required to hold them in confidence.

[48] The appellant submits that that while the affected parties both assert that their technical information is confidential, information about the technical specifications of their product is easily obtained on the second affected party's web site, and he refers me to the web site address of the second affected party where this information is purportedly published. The appellant provides additional representations on this issue, but due to my finding with respect to the other records, it is not necessary to include them in this order.

Analysis and findings

[49] The representations of the affected parties assert that the affected party's submission, record 2, was explicitly and implicitly provided in response to the RFQ "in confidence." From my review of the records, I note that the equipment drawings in record 2 contain a notation that the information therein was created by the second affected party and is being disclosed in confidence only to be used for the purpose for which it is supplied. While this notation reflects the affected parties' expectation that the information in these pages be treated confidentially by the ministry, I do not accept this expectation as reasonable in the circumstances of this appeal because the evidence of the appellant establishes that the second affected party's technical information, which is included in the drawings, is publicly available on the second affected party's web site.

[50] Based on the appellant's submissions, I consulted the second affected party's web site and confirmed that detailed technical information about the second affected party's equipment is published therein. The technical information is variously published in a product guide, a product handbook, a product focus document, and on the web site itself. While the drawings in pages 4 through 7 of record 2 are not identically reproduced on the second affected party's web site, all of the technical information contained in them is publicly available on the web site, including pictures of the equipment, features of the equipment, available equipment options, and a number of

product specifications, including the exact dimensions of the equipment. Accordingly, I concur with the appellant's position that the affected parties cannot claim they had a reasonable expectation that their technical information would be kept confidential, when this information is published on the second affected party's web site.

[51] I find that the technical information in pages 4 through 7 of record 2 was not supplied "in confidence" and does not satisfy part two of the three-part test in section 17(1). This finding addresses the second affected party's assertion that the ministry is legally obligated to keep the information at issue confidential and use it only for the RFQ unless there is an overriding legal basis for disclosure. In making this submission, the second affected party refers me to "pp.531ff and the cases cited therein" of *"Intellectual Property Law of Canada."* This reference is not persuasive as there are numerous cases cited therein. Moreover, the section of the textbook to which the second affected party refers me, deals with remedies against third parties in situations where confidential information has been misappropriated and an action is commenced against the third party that has benefited from the breach of confidence; this is not the case in this appeal. Therefore, I reject this submission and in response to it, I refer the second affected party to pages 512 and 513 of the textbook it relies on. These pages confirm that confidential information loses its protection as confidential when it is publicly disclosed, and by virtue of access to information legislation which permits the public to gain access to information held by the government in certain situations.

[52] As no other exemptions have been claimed for the drawings and no mandatory exemptions apply, I will order the drawings in record 2 disclosed.

[53] The final remaining record, page 2 of the affected party's submission, contains pricing information for the equipment. I am satisfied that this information was supplied "in confidence" by the affected party as required by part two of the test. I accept the affected party's representations that it communicated its pricing information in its submission to the ministry with an expectation that the information was to be treated in a confidential manner in the RFQ process. Accordingly, I find that the withheld information in page 2 of record 2 was supplied in confidence, and has met the second requirement of the section 17(1) test.

Part 3: harms

[54] To meet this part of the test, the ministry and/or the affected parties must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.¹⁵

¹⁵ *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

[55] 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.¹⁶

[56] The need for public accountability in the expenditure of public funds is an important reason behind the need for “detailed and convincing” evidence to support the harms outlined in section 17(1).¹⁷ Parties should not assume that harms under section 17(1) are self-evident or can be substantiated by submissions that repeat the words of the *Act*.¹⁸

Representations

[57] The affected party takes the position that disclosure of the information has the “very real potential of causing [it] undue commercial and financial harm.” It submits that disclosure of the records would greatly reduce its ability to fully respond to tenders and future commercial opportunities, and would result in prejudice to and interference with its contractual negotiations. It also suggests that disclosure would prejudice the bidding processes of government institutions because responding parties would be less inclined to supply confidential and proprietary information to ministries and institutions, lest the information be published.

[58] The second affected party adopts the representations of the affected party regarding the reasonable expectation of harm issue. It adds that the combination of the specific information relating to the drawings and the pricing details gives competitors a springboard to compete with the affected parties in future projects with similar characteristics by providing a basis to predict the parameters of the technical solution and pricing that would be offered by the affected parties. The second affected party relies on Order PO-2618 to argue that the ability to predict the combined technical and pricing parameters of a competitor’s response to a request for proposal affords the appellant a significant competitive advantage. It concludes by stating that the affected parties will operate on unequal footing with a competitor, being blind to the competitor’s proposed technical solutions and pricing, and “this unfair competitive advantage may reasonably be expected to cause significant prejudice . . . [and] undue loss” to the affected parties.

[59] The appellant states that he is the president and chief executive officer of a small growing business which has supplied the specified equipment to the ministry for 11 years. He states that he engineered and developed the specified product in 2000, and

¹⁶ Order PO-2020.

¹⁷ Order PO-2435.

¹⁸ Order PO-2435.

first conducted business with the ministry in 2001. He adds that the RFQ related to the expansion of a marina for which he had previously provided his equipment. The appellant states that having been in business for 12 years, he is quite familiar with the pricing positions of his competitors; this is particularly true with respect to the product of the second affected party, as he has competed with the affected party on past projects. He concludes by stating that he does not feel he is a threat to the affected parties; he simply wants the opportunity to compete on a level playing field.

Analysis and findings

[60] Based on my review of the affected parties' representations, I find that I have not been provided with adequate evidence to link the disclosure of the pricing information in record 2 to the harms alleged by the affected parties under section 17(1)(a), (b) or (c). I find that the affected parties have not provided the kind of "detailed and convincing" evidence required to satisfy part three of the section 17(1) test. The various assertions of harm in the affected parties' representations have not persuaded me that a "reasonable expectation of harm" exists if the pricing information in record 2 is disclosed.

[61] The affected parties' main argument is that disclosure of the pricing information would compromise their competitiveness in future RFQs. This argument has been rejected in previous orders of this office. In Order PO-2435, Assistant Commissioner Beamish commented as follows on the argument that the ability of competitors to prepare more competitive proposals constitutes "harm" under section 17(1):

I also accept that the disclosure of this information could provide the competitors of the contractors with details of the contractors' financial arrangements with the government and might lead to the competitors putting in lower bids in response to future RFPs . . . 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.

[62] In Order PO-3183, Adjudicator Donald Hale, relying on Order PO-2435, came to a similar conclusion in respect of a proposal submitted in response to a request for proposal for the provision of legal services to a hospital. In ordering the proposal disclosed, Adjudicator Hale found that "the fact that disclosure of the proposal may result in a more competitive bidding process in the future does not result in significant prejudice to the affected party's competitive position or result in an undue loss to it."

[63] I agree with and adopt the reasoning of Assistant Commissioner Beamish and Adjudicator Hale. The affected parties are both established and sophisticated companies that sell a variety of products and possess ample resources; they are both much larger

than the company of the requester, who was their only competitor in the RFQ. Considering their corporate stature and size and the amount of the contract in this appeal, I am not satisfied that disclosure of the pricing information in this appeal could give rise to the harms contemplated by section 17(1)(a), (b) or (c). I also note that the pricing information in record 2 has been included in the final agreement between the ministry and the affected party, the purchase order, which I have already decided to disclose. I come to this conclusion bearing in mind that it is difficult to predict financial harm. I find that the affected parties have not satisfied part three of the section 17(1) test, and accordingly, the pricing information on page 2 of record 2, is not exempt. I will order it disclosed as well.

[64] As a result of my findings above and my decision to order all of the withheld information and records disclosed, I need not consider the application of the public interest override in section 23 of the *Act*.

ORDER:

1. I order the ministry to disclose all the records at issue in this appeal to the appellant by **October 3, 2013**, but not before **September 27, 2013**.
2. In order to verify the ministry's compliance with order provision 1, I reserve the right to require the ministry to provide me with a copy of the records it discloses to the appellant.

Original Signed by: _____
Stella Ball
Adjudicator

_____ August 28, 2013