Information and Privacy Commissioner,
Ontario, Canada

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

# ORDER MO-2987

Appeal MA12-81

City of Toronto

December 18, 2013

**Summary:** The city received a request for database information relating to the Toronto Fire Service, including information about response times. The city disclosed various records, including the raw data contained in the database, but denied access to the data column headers on the basis of section 10(1) (third party information) of the *Act*. This order finds that the data column headers are exempt from disclosure under section 10(1)(a). It also determines that the public interest override in section 16 does not apply to the record.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 10(1)(a), 16.

**Orders and Investigation Reports Considered:** P-1281

## OVERVIEW:

[1] The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for various records relating to the Toronto Fire Service (TFS). Item two of the request was for:

> All TFS specific … collected data files with historic call processing and dispatch data submitted to [a named research foundation and institute] for [the Fire Protection Research Foundation (FPRF) Quantitative

> Evaluation of Fire & EMS Mobilization Times Research Report published May 2010].

[2] In response to the request, the city issued a decision indicating that partial access was granted to records responsive to a number of the items in the request. With respect to item 2, the city indicated that it was granting access to portions of the electronic records (ie. csv file), but was denying access to the data column headers in this record, on the basis that this information qualified for exemption under section 10 of the *Act* (third party information). The decision read:

> Section 10 has been relied upon to deny access to the column headers regarding the records found pertaining to Item 2 as they are proprietary to the vendor, [a named company], with which the City is bound by a non-disclosure agreement.
>
> Section 10 has been relied upon to deny access to a record that reveals a trade secret or technical information supplied in confidence implicitly or explicitly, as the disclosure could reasonably be expected to prejudice significantly the competitive position of an organization.

[3] The appellant appealed the city's decision.

[4] During mediation, certain issues were resolved; however, the city confirmed that the decision to sever the data column headers only applied to the record relating to item 2.

[5] Also during mediation, the named company (the third party) referred to in the city's decision letter, was notified of the appeal. The third party objected to disclosure of the data column headers on the basis that this information is exempt from disclosure under section 10 of the *Act*.

[6] In addition, the appellant took the position that there is a public interest in disclosure of the data column headers, and thereby raised the possible application of section 16 (public interest override) of the *Act*.

[7] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the appeal process. I sent a Notice of Inquiry to the city and the third party, initially, and received representations in response. I then sent the Notice of Inquiry, along with a copy of the non-confidential portions of the representations of the third party and the city, to the appellant, and received representations from him. I then sent a copy of the appellant's representations to the city and the third party, both of whom provided reply representations.

[8] In this order, I find that the requested data column headers qualify for exemption under section 10(1) of the *Act*. I also find that the public interest override in section 16 does not apply to this information.

## RECORDS:

[9] The information remaining at issue consists of the data column headers contained in the record responsive to item 2 of the request.

## ISSUES:

A. Does the mandatory exemption at section 10(1)(a) apply to the withheld information?

B. Does the public interest override at section 16 apply to the withheld information?

## DISCUSSION:

### Issue A: Does the mandatory exemption at section 10(1)(a) apply to the withheld information?

[10] As identified above, the city denied access to the data column headers on the basis of section 10(1). Both the city and the third party provided representations in support of the position that this information is exempt under section 10(1)(a) of the *Act*. That section reads:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,
>
> > prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

[11] Section 10(1) 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 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.[2]

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[1] *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.).
[2] Orders PO-1805, PO-2018, PO-2184 and MO-1706.

[12] For section 10(1) to apply, the city and/or the third 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) of section 10(1) will occur.

[13] I will now determine if the three-part test under section 10(1) has been established for the withheld information.

**Part one: type of information**

[14] The city and the third party take the position that disclosure of the withheld information would reveal a trade secret. The city also submits that the withheld information is technical information. These terms have been discussed in prior orders 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
>
> (i) 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,

[3] Order PO-2010.

> 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]

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

[16] The city begins by referring to Order P-1281, asserting that this decision found that design software and the search and query functions built into a database design, and the entire database management system, constituted technical information.[5] The city then states:

> The system software at issue in this appeal is a computer aided dispatch ("CAD") system that assists emergency call dispatchers in altering and communicating with emergency responders - which is utilized to provide the collection of data which is at issue in the current appeal (the "Database"). The [third party] is the owner and developer of the CAD system product.
>
> The [third party] has licensed the CAD system software, which includes the Database.
>
> The Database is organized and programmed using the [third party's] proprietary record layout and description of the fields in the record layout (i.e., the code sheet), which have been developed at the [third party's] expense over a number of years.
>
> The City's data entries using the CAD system are contained in the Database, with various fields and attributes organized according to the [third party's] proprietary schemes, descriptions and arrangements. Furthermore, these schemes and arrangements are not known outside of the [third party's] business except by the database administrators of the [third party's] active customers, i.e., those who have a license to use the CAD system.
>
> It is the City's position that the records at issue, the CAD software system, including the Database, layout and codes sheets (data column headers) are both the Affected Party's trade secrets and qualify as technical information.

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[4] *Ibid*.

[5] The finding was made on a review of that same term as found in section 18(1)(a) of the *Freedom of Information and Protection of Privacy Act*.

[17] The appellant does not address the issue of whether the information at issue is technical information.

[18] I have reviewed Order P-1281, in which former Assistant Commissioner Tom Mitchinson had to determine whether the ONBIS database, maintained by the Companies Branch of the Ministry of Consumer and Commercial Relations, constituted "technical information" for the purpose of the *Act*. He noted that the database consisted of the following three components:

- the data elements (the specific information provided by each Ontario business and entered into the database);
- the database management system (the commercially obtained software which the ministry selected to manage the data); and
- the software programs and reports (software developed by the ministry and required to organize and input the data elements in the appropriate tables, as well as search and retrieve data from ONBIS in a variety of formats).

[19] The former Assistant Commissioner also noted that, regarding the second component of the database listed above (the database management system, which is commercially obtained software used to manage the data), certain elements of the data storage, table organization and the programs that were created to manage the data would be unique to the database management system. He also noted that the database management system "is proprietary to its developer and, as with many such technologies, is licenced to the Ministry for its own use in operating the ONBIS system."

[20] Former Assistant Commissioner Mitchinson proceeded to find that although the data elements did not constitute "technical information," the design, search and query software contained in the ONBIS database, the database management system used to manage the database, and the ONBIS database as a whole contained technical information for the purpose of the *Act*. He stated:

> In my view, the design software developed by the Ministry in order to structure the ONBIS database, as well as any so-called "middleware" necessary to run the various search and query functions built into the database design, are properly characterized as technical information…. Similarly, I find that the database management system selected by the Ministry to manage the data is technical information for the purposes of this section.

[21] I adopt the analysis and approach taken in P-1281 and apply it to the information at issue in this appeal.

[22] As a result, I find that the record at issue, consisting of the data column headers (ie: the layout and codes sheets) of the database comprising the CAD software system, constitutes "technical information" for the purpose of section 10(1) of the *Act*. Accordingly, I am satisfied that the first part of the three part test has been met.

[23] I note that the third party only provided representations in support of its position that the information constituted a "trade secret." Similarly, the appellant's representations dispute the characterization of the information as a "trade secret" on the basis that the information has been disclosed to others. Having found that the information is technical information for the purpose of the first part of the test, it is not necessary for me to determine whether it also constitutes a "trade secret." I will, however, address the appellant's arguments that this information has been made public under the other parts of the test, below.

**Part 2: supplied in confidence**

[24] 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.[6]

[25] 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.[7]

[26] In order to satisfy the "in confidence" component of part two, the party resisting disclosure must establish that the supplier had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.[8]

[27] 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

[6] Order MO-1706.
[7] Orders PO-2020, PO-2043.
[8] Order PO-2020.

- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure.[9]

[28] The third party states that the record was supplied to the city in confidence. In support of its position, it refers to the End User License Agreement entered between it and the city and, in particular, the clause of that agreement which states that the third party's proprietary and confidential information with respect to the CAD software product is confidential. It provides a copy of the relevant clause of that agreement.

[29] The city also submits that the technical proprietary information contained within the CAD software itself was supplied to it by the third party in confidence. It states that the record layout, schemes, codes, etc. is information that belongs to the third party and that would not have been known to the city if it had not been supplied to it by the third party.

[30] With respect to whether the information was supplied to the city in confidence, the city states that it is bound by the confidentiality and nondisclosure provisions in the agreements it entered with the third party. It also states:

> [As noted], the layout, code sheet, schemes and arrangements are not known outside the [third party's] business except by the database administrators of the [third party's] active customers. The availability of this information to a customer is limited under applicable license documents, including the End User License Agreement (the 'Agreement") between the [third party] and the city. This Agreement includes Rights and Limitations, as well as non-disclosure obligations. Specifically the Agreement sets forth the contractual limitations regarding the city's use and disclosure of the Database and related software.
>
> The [third party] ensures that its proprietary information, specifically including the CAD system, is not misappropriated or distributed to the public. Furthermore, the [third party] also limits internal access to the CAD system software and the Database to its own employees. …
>
> Furthermore, the city has always treated this proprietary information as confidential, therefore, it is the city's position that part 2 of the test to support the application of section 10(1) has been met.

[31] In the appellant's representations, he does not address whether the information was supplied to the city; however, the appellant argues that the information was not supplied with a reasonable expectation of confidentiality because it has been disclosed

[9] Order PO-2043

to other parties, and that these parties have not signed agreements to keep the information secret. As a result, the appellant argues that because the information has already been disclosed to other third parties, it cannot be considered a "trade secret" nor could it have been supplied in confidence.

[32] The appellant refers to three specific instances where he states information was disclosed to other parties without an expectation of confidentiality. These three instances are: 1) that the information was disclosed to a named researcher; 2) that it was disclosed to a named media organization; and 3) that it was disclosed to the public as part of an identified report.

[33] The third party and the city address all three of these instances, and the parties respective positions are set out below.

*Information disclosed to a named researcher*

[34] The appellant states that the header information in the CAD file was revealed to a named researcher. In support of this position he refers to the city's response to a request which he made under the *Act* for "all email communications between Toronto Fire Service (TFS) and the [named researcher]" and states that no responsive confidentiality agreement was provided to the requester as a result of that request. He then states: "We infer that since there was no expectation of confidentiality on the part of [the named researcher], … TFS did not consider that the header information in this CAD data was [confidential]."

[35] Both the third party and the city state that the appellant is incorrect in the assumptions he makes. The third party states that this researcher did, in fact, sign a non-disclosure declaration, and it provides a copy of that document. The city also confirms that the researcher signed such an agreement, and states that this agreement was not identified as responsive to the appellant's earlier request for all "email communications" because it was not an email communication. The city also states that the inferences drawn by the appellant are incorrect.

*Information disclosed to an identified media outlet*

[36] The appellant refers to a particular request made to the TFS by a media outlet in support of his position that certain information was disclosed to the media outlet. He provides a copy of a newspaper article, and states that "the newspaper was successful in its request and the CAD data was supplied to [it]." He also states: "The conclusions reached in the article could not have been reached unless the reporter had access to the header information." He also refers to three specific types of information mentioned in the article, and states that these are three examples of header information, without which the reporter could not have concluded what information was included in which column of data.

[37] Both the third party and the city respond to the appellant's position.

[38] With respect to the information provided to the media outlet and the resulting newspaper article, the third party states that, to the best of its knowledge, responses to requests for information by the TFS "did not contain [the third party's] confidential or trade secret information.." It states that it was not aware of the identity of other requesters, but acknowledges that a newspaper article cited by the appellant coincided with an earlier request. However, it then states:

> … [The] appellant's assumption that "the reporter could not have concluded what information was included in which column of data" without the header information is incorrect. No [third party] proprietary header information should have been contained in the data released. [TFS] has advised [the third party] that the headers that were supplied by [TFS] (eg: English descriptors) in response to the request did not contain [third party] proprietary header information.

[39] The city also responds to the appellant's representations. It refers to the specific information contained in the newspaper article, and then states that the appellant has "erroneously reached the conclusion that [the media outlet] obtained access to the column header information."

[40] The city then states that the media outlet was given access to information that is currently published on the Toronto Fire Services web page. It provides a link to that page, and states:

> Toronto Fire Services publishes details about active incidents. The active incidents are dispatched from Toronto Fire Services Communication Centre. The contents are updated at five minute intervals from the CAD system. Among other things, the *type of incident reported*, the *area in which it occurred*, and the *vehicles dispatched* is reported on this web page, which is the same information requested and disclosed to [the media outlet]. [The media outlet] received an electronic copy of all information that passed through the real-time spreadsheet of all active incidents from 2003 – 2012.
>
> However, the header information used on this publicly available web page is not the proprietary column header names developed by the affected party. [TFS] assigns a generic header name for what is published on its web site.

[41] As a result, the city submits that there was no disclosure of the affected party's proprietary column header information to the media outlet.

*Information disclosed to the public as part of an identified report*

[42] The appellant also states that header information from the CAD systems was also revealed by the release of the TFS Quality Assurance Review of March 2010, which was the subject of another records request under the *Act*, made by a media outlet.[10] He provides a copy of a page of that report as an attachment to his representations, and states that the information on the diagram on this page lists certain specific headers, and describes the meaning of each of these headers. He also provides other information which he states confirms that these are indeed the actual headers for TFS's CAD.

[43] Again, both the third party and the city respond to the appellant's position.

[44] The third party states that, although the appellant contends that header information from the CAD systems was revealed in the Quality Assurance Review document which was the subject of another records request, "the provision of summary information does not necessitate that header information was revealed."

[45] The city reviews the specific information on the page of the report referred to by the appellant. It acknowledges that a small number of headers are listed and their meanings are described. It then states that the contract that the TFS had with the consultant that created the report contained a confidentiality clause with respect to the data provided, and provides a copy of that agreement. It states that the fact that a limited number of column headers ended up in the report was an oversight. It provides confidential information about the number of headers disclosed as compared with the total number of headers, and states that this inadvertent disclosure "cannot be used to justify the releasing of the … column headers that have … not been revealed."

## ***Analysis and findings***

[46] On my review of the information at issue in this appeal, and the representations of the parties, I am satisfied that the column header information at issue in this appeal was supplied to the city by the affected party.

[47] In order to satisfy the "in confidence" component of part two, the party resisting disclosure must establish that the supplier had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.[11]

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[10] I note that the appellant states that this information was disclosed as part of Order MO-2660. On my review of Order MO-2660, I note that although portions of the report referenced by the appellant were at issue in that appeal, the particular page referenced by the appellant was not at issue in that appeal.
[11] Order PO-2020.

[48] With respect to whether the record was supplied to the city "in confidence," I have reviewed the representations of the parties on this issue, in particular, the representations of the city and the affected party that there existed an explicit expectation of confidentiality, based on the confidentiality agreement signed by the city. In these circumstances, I am satisfied that the information was supplied to the city with an explicit expectation of confidentiality.

[49] I have also considered the representations of the parties regarding the appellant's arguments that confidentiality was not reasonably expected because of the three instances where information may have been disclosed. With respect to the disclosure of information to a named researcher, I am satisfied that this researcher also signed a confidentiality agreement regarding the information. With respect to the information disclosed to a named media outlet, I accept the city's position regarding the nature of this information, and that it was different from the information at issue in this appeal.

[50] Lastly, regarding the column header information that was apparently disclosed as part of a larger report, although it appears that a small number of column headers were referenced in a diagram which formed part of a lengthy report, I am not satisfied that this disclosure of small bits of information, which the city describes as "inadvertent," establishes that the information at issue in this appeal was not supplied to the city by the third party with a reasonable expectation of confidentiality.

[51] Based on my review of the representations of the parties, I am satisfied that the information was supplied to the city by the affected party with an explicit expectation of confidentiality that was reasonably held. Accordingly, the second part of the three-part test has been met.

**Part 3: harms**

***General principles***

[52] To meet this part of the test, the party resisting disclosure must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.[12]

[53] 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.[13]

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[12] *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).
[13] Order PO-2020.

***Section 10(1)(a)***

[54] Both the city and the third party take the position that the records are exempt under section 10(1)(a), as disclosure could reasonably be expected to prejudice significantly the third party's competitive position.

[55] The third party takes the position that disclosure of the requested information would cause it substantial competitive harm. It states the CAD system market is "highly competitive," and that the third party has gained its market share through providing "cutting edge technological solutions, substantial monetary investment, years of experience in the public safety industry, and the innovation of its engineering team." It then states:

> … the Database contents, organization, and underlying descriptions and logic are part and parcel of [the third party's] unique system for recalling data for use in the CAD system. The database layout and code sheet include [a large number of] table definitions, and [many] columns. This complicated architecture represents a core portion of [the third party's] intellectual property. In the event that the layout and descriptions of the Database fall into the public domain, competitors or other interested persons could reverse engineer key components of the CAD system, make derivations or add-ons to the Database, and also determine many aspects regarding the internal design and logic behind the CAD system's software. Therefore, the disclosure of the layout and description of the CAD System would result in substantial competitive harm to [the third party] by giving … competitors access to the internal design, format, and logic of the CAD System. Because [the third party] derives a significant part of its revenue from licensing the CAD System to customers who would not otherwise have access to such software, making this proprietary information available to [the third party's] competitors would substantially harm [its] revenue and competitive position in the market. Accordingly, [disclosure of] the record layout and code sheet of the CAD system … would cause substantial competitive harm to [the third party]. …
>
> Additionally, the nature of the … information contained in the column headers of Database, and the detailed blueprint it provides of [the third party's] software development process, means a competitor for this or similar projects would be able to utilize the information in the column headers in creating similar software without having incurred the costs to create the work plan. [The third party] would be deprived of the value of its know-how if a competitor could access this information at no cost to

> itself and exploit for its own commercial purposes in competing with [the third party].[14]

[56] The third party also provides an affidavit, sworn by its Vice President of Software Development, in support of the statements it makes regarding the harms that would result from disclosure.

[57] The city supports the position that disclosure of the records would result in the harms identified under section 10(1)(a). In addition to representations which are similar to those made by the third party, the city states:

> The third party derives a significant portion of its revenue from licensing the CAD system to customers who, in the absence of an agreement and payment of the required fees, would not otherwise have access to or use of, the [third party's] CAD system. It is the city's position that making this proprietary information available to the [third party's] competitors would substantially harm the [third party's] revenue and competitive position.

[58] The appellant does not specifically address this part of the test; however, his arguments regarding whether the information is publically available, addressed under part 2 of the test, above, would also apply to this part of the test. If information is already in the public domain, then it would be difficult to find that the harms in section 10(1)(a) would result from disclosure.

### *Analysis and findings*

[59] On my review of the representations of the parties and the records at issue, I am satisfied that the disclosure of the header information at issue in this appeal would result in significant prejudice to the competitive position of the third party. The third party has identified the nature of the information at issue, and stated that disclosure of the information relating to the layout and description of the CAD System would result in substantial competitive harm to it by "giving competitors access to the internal design, format, and logic of the CAD System." It has also stated that disclosure of the specific information in the column headers could provide competitors with a "detailed blueprint" of the third party's software development process, which a competitor could use to create similar software without having to incur the costs of doing so.

[60] Accordingly, based on the representations of the third party and the city, I am satisfied that disclosure of the data column headers could reasonably be expected to prejudice significantly the competitive position of the third party, or interfere significantly with the affected party's contractual or other negotiations. As a result, I

[14] The third party refers to previous orders of this office including MO-2276 and P-516 in support of its position.

am satisfied that the withheld data column headers qualify for exemption under section 10(1)(a).

[61] I have also considered the appellant's position that some column headers have been disclosed in the past. I addressed this issue under the second part of the test, above, and found that the possible disclosure of a small number of data column headers did not mean that these headers were not supplied to the city by the third party with a reasonable expectation of confidentiality. Similarly, I find that the disclosure of a small number of data headers in the past does not affect my finding that the disclosure of the data column headers at issue in this appeal would result in the harms contemplated by section 10(1)(a).

[62] Having found that all three parts of the three-part test in section 10(1)(a) have been met, I find that the withheld data column headers qualify for exemption under section 10(1)(a) of the *Act*.

## Issue B. Does the public interest override at section 16 apply to the withheld information?

[63] As noted above, the appellant raised the possible application of the public interest override at section 16 of the *Act* in this appeal, arguing that there exists a compelling public interest in disclosure of the records.

[64] Section 16 states:

> An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[65] In order for section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[66] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[15] Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[16]

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[15] Orders P-984, PO-2607.
[16] Orders P-984, PO-2556.

[67] The word "compelling" has been defined in previous orders as "rousing strong interest or attention."[17]

[68] In its initial representations the city states that there does not exist a compelling public interest in the disclosure of the information at issue in this appeal. It states that disclosure will not "further inform the public of the activities of the city or affect the public's ability to make informed political choices." It also states:

> The [appellant] has not provided any evidence that there is any public interest in the disclosure of the data column headers, nor any basis for why such an interest would be "compelling".
>
> It is the city's position that no public interest, compelling or otherwise, exists in the disclosure of the record. The importance of the purpose of the relevant exemption outweighs any interest in the disclosure of the data column headers, and any interest which exists is merely a private interest being advanced by the [appellant].

[69] The appellant provides lengthy representations in support of his position that the public interest override applies.

[70] To begin, the appellant states that he is not advancing a private interest. He states that the information in the database relates to the response times of the TFS, and that there is a public interest in information of this nature. He states:

> There is nothing more compelling than the ability of a public service to save a citizen's life or limit damage to their property. …
>
> The primary metric for determining the performance and effectiveness of the [TFS] is their response time to emergency incidents. Without access to the CAD data (and headers for interpretation of the CAD data) collected by TFS on behalf of the public, TFS cannot be held accountable to deliver the necessary response time performance improvements.
>
> Since coming to light in a series of newspaper articles by [a named media outlet], the issue of TFS poor response times has been highlighted to the citizens of the City of Toronto and has forced the [TFS] to respond to public concern.

[17] Order P-984.

[71] The appellant provides copies of two newspaper articles dealing with TFS response times. The appellant then states:

> Subsequent to the publication of [the articles], the [appellant's] additional research work on this issue has revealed that TFS made a commitment to radically improve turnout response times without additional resources and then did nothing, thereby endangering lives by not providing quicker response times. The requester has broadcast this information publicly …

[72] The appellant identifies the manner in which this information has been made public, including deputations to the City of Toronto Budget Committee of Council, website information, and a presentation to a meeting of the City of Toronto Community Development and Recreation Committee.

[73] The appellant goes on to state that these actions resulted in a request from the Budget Committee to the TFS for a briefing note on the issue of response times, which then resulted in a public presentation by the TFS about response times. He also states that additional relevant information about response times was confirmed as a result of the deputations made, and that this information disputed earlier information provided by the TFS. The appellant then states:

> In the recent discussions surrounding the City of Toronto 2013 budget, the issue of response times at TFS has been central to the Council deliberations on the efficiency and effectiveness of TFS.

[74] The appellant notes that a newspaper article also raised the issue of TFS response times, and reviewed the reasons why the TFS response times were what they were.

[75] The appellant argues that, without the detailed information on response times, particularly turnout time, the public "is left to rely solely on the interpretation of the TFS." He states that although some officials from the TFS predicted in 2011 that response times would increase by 3 seconds if certain resources were not provided to it, six months later response times had actually fallen by 30 seconds instead. He states: "Only with the CAD data which belongs to the citizens of Toronto can the public understand that informed decisions on how to best reduce response times can be made."

[76] Both the third party and the city address the public interest override issue.

[77] The third party reviews the harms that would result to it from disclosure of the information at issue, and argues that any compelling public interest which might exist does not outweigh the purpose of the section 10(1) exemption in these circumstances.

[78] The city reviews the statements made by the appellant about the importance of accountability by the TFS to the public regarding necessary response time performance issues, and the importance of access to the information, and states:

> [TFS] is committed to being fully open and transparent. [TFS] is not objecting to the disclosure of the "data," but to the actual name of the column headers. A Division Chief from [TFS] has indicated that TFS can provide data to [the appellant] which will be referenced generically rather than by column header name, as has been done with the publically available information indicated above. The Division Chief has also offered to meet with [the appellant] to facilitate the delivery of data in a useable format.
>
> There is no evidence that disclosure of the record, the column header names, will further inform the public of the activities of the City or affect the public's ability to make informed political choices. [The appellant] has not provided any evidence that there is any public interest in the disclosure of the data column headers, as opposed to the actual CAD data which is not at issue in this appear, nor any basis for why such an interest would be compelling. The City submits that any public interest would be with respect to [TFS] response times (the CAD data) and not the actual column header names.

[79] The city therefore takes the position that no public interest, compelling or otherwise, exists in the disclosure of the column headers.

### *Analysis and findings*

[80] As a preliminary observation, I note that, although the raw data contained in the CAD database has been disclosed to the appellant, this information is relatively meaningless without the data column headers, which identify what data is contained in what column.[18]

[81] I also note the unique nature of records contained in electronic format, as opposed to paper records. The request in this appeal is not for a report on the TFS response times, or a summary of the response times. Rather, the request is for the proprietary database information which is currently licensed to the TFS by the third party.

[18] The data column headers at issue in this appeal are coded, and do not contain English descriptors.

[82] Furthermore, based on the appellant's own representations, it is clear that information about response times, gleaned from the CAD data, has been made public on a number of occasions. The parties refer to the 2010 report, prepared by a third party, which reviewed a number of issues, including TFS response times, in great detail. The appellant also identifies newspaper articles written by media outlets based on data provided by the TFS. In addition, the appellant refers to other ways in which information about response times has been provided to the public, including information about whether and how much the response times have changed over set periods of time.

[83] Given this background, I have carefully considered the positions of the parties and the circumstances of this appeal in determining whether the public interest override in section 16 applies to the information at issue.

[84] To begin, I accept the appellant's general position that there is a public interest in information about TFS response times. This is borne out by the newspaper articles that have addressed this issue, the actions of the Budget Committee in requesting a briefing note on the issue of response times, as well as the public presentation by the TFS about response times. In my view, information about the time that it takes the TFS to respond to given situations is of interest to the public.

[85] However, my analysis of the issue in this appeal is not whether there is a public interest in TFS response times, but whether there is a compelling public interest in disclosure of the information at issue, and whether this interest clearly outweighs the purpose of the exemption. In the circumstances of this appeal, I am not satisfied that there exists a sufficiently compelling public interest in the records at issue that clearly outweighs the purpose of the exemption in this appeal. I make this finding based on the nature of the information at issue in this appeal, and the fact that information about response times has been made publicly available through a number of avenues in the past.

[86] The appellant states that the primary metric for determining the performance and effectiveness of the [TFS] is their response time to emergency incidents, and says:

> *Without access to the CAD data* (and headers for interpretation of the CAD data) collected by TFS on behalf of the public, *TFS cannot be held accountable to deliver the necessary response time performance improvements*. …
>
> *Only with the CAD data* which belongs to the citizens of Toronto can the public understand that informed decisions on how to best reduce response times can be made. [emphasis added]

[87] I do not agree with the appellant that providing the public with the proprietary data column headers and the raw data is the only way TFS can be held accountable for response times. As noted above, the issue of response times has been raised and discussed publicly on a number of occasions and through various forums (a report, newspaper articles, briefing notes, etc.). I find that information about response times is being made available through other channels, and does not require the disclosure of the proprietary information at issue in this appeal.[19]

[88] I also do not agree with the appellant that only with the disclosure of the CAD information is it possible for the public to make "informed decisions on how to best reduce response times." The CAD data itself consists of historic data about response times and, in my view, disclosure of this data on its own would not provide specific information on how to reduce response times.

[89] Furthermore, I am not persuaded that simply disclosing the data and the proprietary third party column header information to the appellant and, consequently, to the public will necessarily allow the public to "hold the TFS accountable" and to "understand how to best reduce response times." I note the distinction made by the TFS between the provision of coded column header information on the one hand, and the provision of the information in a "useable format" on the other hand. I also note that the authors of the 2010 report (who were provided with the proprietary information after signing confidentiality agreements) referred on a number of occasions in the public report to the significant amount of data contained in the CAD, and to the importance of the assistance of the TFS in allowing the authors of the report to interpret and analyse the data.

[90] As a result, I am not satisfied that there exists a sufficiently compelling public interest in the disclosure of the data column headers at issue in this appeal to clearly outweigh the purpose of the section 10 exemption. Accordingly, I find that the public interest override in section 16 of the *Act* does not apply to this information.

[91] As an additional matter, I note that in its reply representations the TFS confirms its willingness to provide the appellant with generically referenced information about response times, and has also offered to facilitate the delivery of this data in a useable format. It indicates that this is how information about response times has been provided to others (including the media) in the past.

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[19] See Orders P-532 and P-568, which establish that the public interest override does not apply where a significant amount of public information has already been disclosed that is adequate to address public interest considerations.

## ORDER:

I find that the information at issue in this appeal qualifies for exemption under section 10(1) of the *Act*, and dismiss this appeal.

Original signed by: December 18, 2013
Frank DeVries
Adjudicator