

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-3308

Appeal PA12-423

University of Toronto

February 21, 2014

**Summary:** The university received a request for access to records relating to an engineering tender, including the technical descriptions contained in the winning submission. The university notified the third party company that provided the winning submission of the request and sought its views on disclosure. It then granted the requester complete access to the technical information sought. The third party company appealed the university's decision claiming that the mandatory exemption in section 17(1) (third party information) applied to the record. In this order, the decision of the university is upheld.

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

**Orders and Investigation Reports Considered:** PO-2618, PO-2755 and PO-2987.

### OVERVIEW:

[1] The University of Toronto (the university) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to pricing information contained in the winning and losing bids, along with the technical descriptions contained in the winning submission of a specified Request for Expression of Interest.

[2] The university located records responsive to the request. It identified a third party whose interests could be affected by disclosure of the information in one of the records, the technical merit section of the third party's winning submission.

[3] The university notified the third party under section 28 of the *Act* and gave it the opportunity to make representations on why the information in the technical merit section should not be disclosed. The university did not seek the representations of the third party on its position respecting the disclosure of any of the other information contained in the responsive records, nor did it seek submissions from the losing bidders for their views on the disclosure of information relating to them.

[4] The third party provided representations on why it believed the technical merit section qualified for exemption from disclosure under the mandatory exemption in section 17(1) (third party information).

[5] The university subsequently issued a decision granting the appellant complete access to the technical merit section of the third party's winning submission, and to the pricing information of the winning and losing bids.

[6] The third party, now the appellant, appealed the university's decision to disclose its technical merit information. In commencing its appeal, the appellant stated that the university had received a previous request for information related to the same expression of interest, and had decided to deny access to the records in their entirety. The appellant therefore questioned why the university changed its position on disclosure in response to this request.

[7] Mediation was attempted, but did not resolve the issues. The appeal was then moved to the adjudication stage of the appeal process, for an inquiry under the *Act*.

[8] I sought and received representations from the appellant and the university, and shared these in accordance with section 7 of this office's *Code of Procedure* and *Practice Direction Number 7*.

[9] On my review of the appellant's and the university's representations and the record before me, I decided it was unnecessary to seek representations from the original requester.

[10] In this order, I uphold the decision of the university.

**RECORD:**

[11] The record at issue in this appeal is the technical merit section of the appellant's winning submission consisting of four pages.

## **DISCUSSION:**

[12] The sole issue for me to determine in this appeal is whether the record at issue is exempt from disclosure under the mandatory exemption in section 17(1) of the *Act*.

[13] Section 17(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,

- (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;

[14] Section 17(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions.<sup>1</sup> 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.<sup>2</sup>

[15] For section 17(1) to apply, the institution 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 or financial information; and
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

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<sup>1</sup> *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.).

<sup>2</sup> Orders PO-1805, PO-2018, PO-2184 and MO-1706.

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**

[16] The appellant submits that the information contained in the record at issue is both technical and commercial in nature. These types of information have been defined in previous orders to mean:

*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.<sup>3</sup>

*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.<sup>4</sup> The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.<sup>5</sup>

[17] I adopt these definitions for the purpose of my analysis in this appeal.

[18] The appellant submits that the information at issue is technical information in that it describes specific engineering methods and processes used to optimize the design of the university's data centre. It further submits that the information is commercial in nature because it was compiled to develop the most competitive bid for the data centre in order for it to sell its services to the university. The university agrees with the appellant that the information at issue is technical and commercial in nature.

[19] I agree with the parties and find that the record at issue reveals technical and commercial information. Having found that the first part of the test for the application of section 17(1) has been met, I will now consider whether the information at issue was supplied in confidence in satisfaction of the second part of the test.

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<sup>3</sup> Order PO-2010

<sup>4</sup> *Ibid.*

<sup>5</sup> Order P-1621.

## Part 2: supplied in confidence

[20] The requirement that it be shown that the information was “supplied” to the university reflects the purpose in section 17(1) of protecting the informational assets of third parties.<sup>6</sup>

[21] Information may qualify as “supplied” if it was directly supplied to the university by the appellant, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by the appellant.<sup>7</sup>

[22] 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.<sup>8</sup>

[23] 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.<sup>9</sup>

[24] 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

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<sup>6</sup> Order MO-1706.

<sup>7</sup> Orders PO-2020 and PO-2043.

<sup>8</sup> 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.).

<sup>9</sup> Order PO-2020.

- prepared for a purpose that would not entail disclosure.<sup>10</sup>

[25] The appellant submits that the information it provided to the university was supplied, not negotiated. It relies on the following passage from Order PO-2987 to argue that the information at issue meets the requirement under section 17(1) that it be supplied:

In many previous orders, this office has found information submitted in response to an RFP to be “supplied” for the purpose of section 17(1). Information contained in proposal documents that remains in the form originally provided by a proponent is considered not to be the product of any negotiation between the institution and that party . . . the information withheld . . . constitutes the informational assets of the first affected party in that they represent the methodology and approach employed by this proponent in addressing several issues mandatory to the fulfilling of the RFP requirements. I am satisfied that this information appears in the form it was submitted by the first affected party, and I find that it meets the definition of “supplied” accordingly.

[26] The appellant continues that the four criteria above regarding the “in confidence” requirement are the same criteria that apply to construction bids generally. It asserts that it submitted its bid in a manner that satisfies all four criteria. It states that it prepared and delivered the proprietary design details of the technical merit section under the firm expectation that they would remain confidential and would not be disclosed to anyone beyond the committee that considered bids at the university. It adds that it has guarded the confidentiality of the information in its proposal, and this information is not publicly available. Finally, it states that its practice is to keep all of its design methods confidential and to this end, it includes a confidentiality clause in all its contracts.

[27] The university submits that it accepts the appellant’s view that the information at issue was supplied with a reasonable expectation of confidentiality.

[28] Previous orders of this office have held that expression of interest proposals or RFPs submitted to institutions are “supplied in confidence” for the purposes of section 17(1), and I adopt the same approach in this appeal.<sup>11</sup> I concur that the appellant supplied the technical merit information to the university as part of its proposal in response to the university’s request for expressions of interest. I find that the appellant’s submission was for the university’s confidential consideration and was not intended to be disclosed. There is no evidence before me that the information was publicly disclosed, or that it is currently publicly available. Accordingly, based on these reasons, I find that the appellant supplied the information at issue to the university with

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<sup>10</sup> Orders PO-2043, PO-2371 and PO-2497.

<sup>11</sup> See for example, Orders PO-2755 and PO-2618.

a reasonable expectation of confidentiality in satisfaction of the second part of the test under section 17(1).

[29] As I have found that the first two parts of the section 17(1) test have been satisfied, I will now consider whether the final part of the test has been met in this appeal.

### **Part 3: harms**

[30] To meet this part of the test, the institution and/or the third party must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm." Evidence amounting to speculation of possible harm is not sufficient.<sup>12</sup>

[31] 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.<sup>13</sup>

[32] 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).<sup>14</sup>

[33] 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*.<sup>15</sup>

### ***The appellant's representations***

[34] The appellant submits that disclosure of the information at issue would result in harm to it or to the university under all three of the harms enumerated in sections 17(1)(a), (b) and (c). The appellant's submissions on sections 17(1)(a), (b) and (c) are the following:

The Technical Merit section contains a detailed description of: the exact resiliency components to be used in the data centre's electrical system, as well as the mechanical components that would be used to regulate environmental conditions within the data centre (including specific directions for the use of a new air cooled chiller, equipment cabinets, sprinkler system, fire detection and suppression system, and diesel fuel

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<sup>12</sup> *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

<sup>13</sup> Order PO-2020.

<sup>14</sup> Order PO-2435.

<sup>15</sup> Order PO-2435.

system). As such the Technical Merit section contains confidential information central to our business and our ability to successfully bid on new work.

...

In line with the findings of the adjudicator in [Order PO-2987], the information contained in [the appellant]'s Technical Merit section goes "directly to the heart of the RFP proposal" made by [the appellant], as it describes in detail the precise methods and equipment, the exact design and construction, [the appellant] would use to achieve the facility the university sought. The contents of the bid "represent a 'how-to' manual for the design and successful implementation of this contract."<sup>16</sup>

In particular, the proposal reveals a design that configures equipment to optimize energy efficiency. [The appellant] uses a proprietary method to customize its designs for the particular needs of its client – in this case, the university. It measures equipment to the exact size required for the facility, and does not use standardized equipment that it buys in bulk and implements without regard for the nuances of a specific project.

[The appellant]'s unique and proprietary method sets it apart from other firms. This method has been developed through painstaking research involving countless hours of energy modeling. [The appellant] has invested significant resources to achieve its expertise. If its design process were disclosed, it would allow its competitors to become free riders.

Moreover, it is important to consider the negative impact such disclosure would have on the current business relationship between [the appellant] and the university. If the university is not able to keep information provided by [the appellant] confidential, the business relationship between these two parties will suffer; [the appellant] would have to limit the information it provides to the university to the bare essentials.

It can be reasonably expected that the release of [the appellant]'s winning submission would be a substantial disincentive to any company bidding on future work at the university; these companies would have no reason to believe that their bids would remain confidential. This could result in less competition for future projects with the effect of increasing the price the university would have to pay for future work. The reduction in competition and the increased price to the university would not be in the public interest.

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<sup>16</sup> Order PO-2987 at paragraph 98.



Mechanical, electrical and data engineering are rapidly evolving, highly competitive fields. If [the appellant]’s design methods for sizing and achieving optimal efficiency were disclosed, “a competitor could reasonably be expected to imitate the format, as well as the substance, of [its] proposal in preparing for future [public and private] consulting competitions.”<sup>17</sup> There is no doubt that [the appellant] would lose the competitive advantages it has worked so hard to achieve if this information were revealed; therefore, the release of the contents of the bid’s technical and commercial information could reasonably be expected to result in the “harms” contemplated by s. 17(1)(a).

Protecting a winning commercial tender from a firm that has provided innovative, cost-effective, custom designs in a technical field is exactly the type of information that s. 17(1) of [the *Act*] is intended to protect. Releasing any information on [the appellant]’s winning submission would unfairly prejudice both [the appellant] and the university.

[35] The appellant also criticizes the university’s decision to disclose the information at issue because the university previously decided to withhold the technical merit section of the appellant’s proposal pursuant to section 17(1) in response to an earlier request for the same information. The appellant recites the university’s reasons for previously deciding that the technical merit information was exempt from disclosure under section 17(1) as follows:

[T]heir disclosure would reveal commercial and technical information, supplied in confidence, the disclosure of which could reasonably [be] expected to result in harms described in 17(1)(a).

[36] The appellant states that despite the above reasons, the university responded to a subsequent identical request for the record by granting access to the record and by advising the appellant that after careful consideration, the university had no concerns with disclosure of the four pages. The appellant states that the university offered no reasons or explanation of any kind as to why it issued contradictory decisions with respect to identical information in a relatively short time span.

### ***The university’s representations***

[37] In its representations, the university states that it had received a previous request for the same record and had decided to deny access to the same record. It continues that when it received the request at issue in this appeal, it once more reviewed all the circumstances, as it does on a case-by-case basis with every request. In the course of this review, the university states that it became aware of a decision of

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<sup>17</sup> Order PO-2987 at paragraph 99.

the Supreme Court of British Columbia from June 14, 2012, *British Columbia (Minister of Citizens' Services) v. British Columbia (Information and Privacy Commissioner)*,<sup>18</sup> which contained reasoning it found useful. While acknowledging that the BC decision is not binding in Ontario, the university states:

The BC Supreme Court decision dealt with IT information and the third party exemption. In that matter, the arguments against disclosure were found to be speculative and not persuasive because evidence that had been provided was general and disclosure of the information could not reasonably lead to harm. The BC Court found that there must be more that ties a special risk to a particular context to meet the reasonable expectation test. The evidence in the BC matter failed to establish a clear and direct connection between the disclosure of the information and the alleged harm. Thus the test was not met and the information was ordered to be released.

[38] It continues that it reviewed the submissions the appellant made upon receiving notice of the request, and assessed whether the appellant had provided detailed and convincing evidence to establish a reasonable expectation of the section 17(1) harms. The university states that as part of its assessment, it considered the appellant's evidence and the connection between the evidence provided and the harms claimed. It states that it also revisited the question of harms with its information technology staff, explicitly re-canvassing the possibility that release of the technical merit section of the appellant's winning submission could result in any of the enumerated harms. The university then sets out the appellant's submissions on harm that it received in respect of the request at issue:

This final prong of the [section 17(1)] test requires that the party resisting disclosure provides "detailed and convincing" evidence to establish a "reasonable expectation of harm." I submit that if [the appellant]'s bid is disclosed, either [the appellant] or the university would suffer harm under all three criteria of s. 17.

First, if [the appellant]'s winning submission is disclosed, this will have a negative impact on the current business relationship between [the appellant] and the university. If the university is not able to keep the information provided by [the appellant] confidential, the business relationship between these two parties will suffer; [the appellant] would have to limit the information it provides to the university to the bare essentials.

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<sup>18</sup> 2012 BCSC 875.

Second, if information contained in [the appellant]'s bid is made public, it could reasonably be expected that this disclosure would significantly prejudice [the appellant]'s competitive position in future construction bids, as this information would be available to [the appellant]'s competitors.

Third, [the appellant]'s competitors would have access to information and expertise that [the appellant] has paid valuable consideration for. In essence, the disclosure of [the appellant]'s bid would allow all of its competitors to become free riders.

Fourth, it can be reasonably expected that the release of [the appellant]'s winning submission would be a substantial disincentive to any company bidding on future work at the university; these companies would have no reason to believe that their bids would remain confidential. This could result in less competition for future projects with the effect of increasing the price the university would have to pay for future work. The reduction in competition and the increased price to the university would not be in the public interest.

The above four reasons provide detailed and convincing evidence that establish a reasonable expectation of harm to [the appellant] and the university. Furthermore, many of the above four reasons were also presented in [Order PO-2987] and the adjudicator in that case found that they could reasonably be expected to result in the harm described in s.17.

[39] The university states that it considers these submissions from the appellant to be general assertions of section 17(1) harms that are not supported by evidence and that do not set out a reasonable explanation of how the harms would result. The university states that the submissions it received from the appellant did not have the specificity or cogency to support a finding of reasonable expectation of harm, and thus, it decided that there was no detailed and convincing evidence that could establish a reasonable expectation of section 17(1) harm, nor could harm be inferred from other known circumstances.

[40] The university adds that it did not believe disclosure could reasonably be expected to harm its interests. Accordingly, it decided to grant full access to the technical merit section of the appellant's submission.

[41] The university concludes by stating that it notes the appellant has submitted additional details and arguments in its representations during the inquiry of this appeal and it leaves the assessment of these additional representations to me. The university states that it continues to be of the view that disclosure would not result in any harm to its own interests.

### ***Analysis and findings***

[42] In order for me to find that the section 17(1) exemption applies, the appellant must establish by detailed and convincing evidence that there is a reasonable expectation of one of the harms in sections 17(1)(a), (b) or (c) occurring upon the disclosure of the record at issue.

[43] Based on my review of the record and the representations, I find that the harm in section 17(1)(b) has not been established. Although the appellant asserts that disclosure would be a disincentive to companies bidding on future work at the university, resulting in reduced contract competition and increased contract prices to the university, the university does not hold this view. The university believes that disclosure would not harm its interests. I accept the university's position and agree with it. The university is well positioned to determine whether disclosure of the record would result in fewer future RFP submissions for engineering and construction services. It is a large, sophisticated and established institution with considerable resources and extensive experience with engineering and construction undertakings and projects. If the university, after considering the circumstances, has no concerns that disclosure will result in it not receiving similar information in the future, I do not either. I find that there is no reasonable expectation of the harm alleged by the appellant under 17(1)(b).

[44] Regarding the remaining harms in sections 17(1)(a) and (c), the appellant has provided representations to me which the university has not directly addressed; the university prefers instead to defer to my determination of their sufficiency.

[45] In respect of the harm in section 17(1)(a), I must determine whether disclosure of the record could reasonably be expected to significantly prejudice the competitive position of the appellant, or interfere significantly with its contractual or other negotiations. For the harm in section 17(1)(c), I must decide whether disclosure of the record could reasonably be expected to result in undue loss or gain to any person or group.

[46] The appellant's submissions turn on the significance of the information contained in the record and how its unique proprietary design and customization method, which it claims is revealed in the record, is central to its business and its ability to successfully bid on new work. Based on my review of the record at issue, I believe the appellant has overstated some points in its representations. The appellant asserts that the record "describes in detail the precise methods and equipment, the exact design and construction" such that it "represent[s] a 'how-to' manual for the design and successful implementation of this contract." This statement is inaccurate. The record does not contain precise details of the methods, or the exact design and construction.

[47] Rather, I find that the record consists of the appellant's proposal on the equipment, materials and systems that should be used for the project, and it includes suggestions on what existing equipment, materials and/or systems should be maintained or re-used. While the record identifies the number of various pieces of equipment the appellant proposes to use, it does not describe how the various components, materials and systems are to be organized and integrated in the data centre. Beyond the lack of details on the configuration of equipment and systems within the data centre, there is no diagram that shows the layout of the data centre such that the exact design is revealed. Without information on the configuration of equipment and systems and the layout of the electrical and mechanical features of the data centre, it would be impossible to implement the appellant's design using the record alone. As such, I disagree that the record represents a "how-to manual" for the design and implementation of the project.

[48] I also note that in addition to revealing the appellant's proposal for the project, the record reveals the fact that the appellant considered the university's needs and existing facilities in generating its customized proposal. The technical information is thus specific to the university's particular needs which are based, in part, on what the university's current situation is with respect to its existing facilities, systems and equipment. The university's needs are also based on its own anticipated future needs. Knowing that the proposal is site and facility specific, even if the record contained the additional information needed to permit another party to implement the appellant's engineering proposal, it could only be implemented in the university's existing facility; and another party attempting to implement the proposal elsewhere would need to modify the proposal to remove the site and facility specific features it contains. In this regard, I disagree with the appellant's suggestion that disclosure of the record would give the appellant's competitors a "free ride." I further note that the appellant has not provided evidence of bids for similar projects that it has been part of or how the information at issue could be used by its competitors in those other specific bids to the appellant's detriment. Considering the uniquely university based features of the record, I find that the appellant has not established that the information at issue can simply be used by any of its competitors for future bids and projects to its detriment.

[49] I also disagree with the appellant's harms claims that are based on the notion that the information is proprietary and an informational asset that is central to the appellant's business. The record contains technical information in the form of a plan to meet the university's data centre needs. The technical solution consists of information on equipment, parts and materials that appear to already exist, to be known and used in the industry, and to be made by manufacturers who are known in the industry. I have no evidence from the appellant to establish that a proprietary technology or technological process is revealed in the record, nor do I see evidence of this from the record alone. On this basis, this appeal differs from the facts in Order PO-2987 which the appellant relies on exclusively in its representations.

[50] In Order PO-2987, Adjudicator Daphne Loukidelis considered technical information regarding the site specific development of combustion technology for a power generating facility near a community. Thus, the technical information in Order PO-2987 involved the delivery of a customized product or service – namely a technology that had to be modified in a site specific way so as to function in a manner compatible with an existing community – and this technology would be revealed by disclosure of the technical information at issue. The technical information contained “full descriptions of structure, systems, and procedures in enough detail that they could be duplicated” and thus, represented a “how-to” manual for the design and successful implementation of the contract at issue in that appeal.<sup>19</sup> Adjudicator Loukidelis also had evidence before her that the third party was engaged in a hi-tech business involving the delivery of newly invented products or the use of newly invented technology to deliver a service or otherwise meet a customer’s need, and that it is necessary for the vendors of such technologies to take all reasonable steps to extend their “shelf-life” by protecting the secrecy of the technology and the means of modifying it. None of these factors are present in the appeal before me.

[51] Finally, I note that the record is approximately three years old, as is the contract that the appellant and the university entered into. Considering this passage of time, I do not agree with the appellant’s concerns about the harms under sections 17(1)(a) and (c).

[52] For all of the foregoing reasons, I find that the appellant has failed to establish that disclosure of the technical solution as revealed in the record could give rise to a reasonable expectation of significant prejudice to the appellant’s competitive position or significant interference with the appellant’s contractual or other negotiations as contemplated by section 17(1)(a), or of undue loss or gain to any person or group as contemplated by section 17(1)(c).

[53] I find that the third part of the section 17(1) test has not been met, and accordingly, the record is not exempt from disclosure.

**ORDER:**

I uphold the university’s decision and order it to disclose the record to the original requester by **March 31, 2014**, but not before **March 18, 2014**.

Original Signed By: \_\_\_\_\_  
Stella Ball  
Adjudicator

February 21, 2014 \_\_\_\_\_

<sup>19</sup> Order PO-2987 at paragraph 98.