Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3046

Appeal MA13-359

City of Waterloo

May 7, 2014

Summary: A newspaper reporter made a request to the City of Waterloo for a complete list of materials transported by rail along a particular line through the city, which had been provided by a railway company to a city official at the city's request. After notifying the railway company (the affected party) of the request, the city issued a decision denying access to the record in full on the basis of the mandatory exemption for third-party information at section 10(1)(b) of the *Municipal Freedom of Information and Protection of Privacy Act*. On his appeal of the city's decision, the requester (now the appellant) raised the possible application of the public interest override at section 16. In this order, the adjudicator upholds the application of the section 10(1)(b) exemption to the record, and finds that the public interest override does not apply. As a result, the adjudicator upholds the city's decision to withhold the record in its entirety, and dismisses this appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 10(1)(b) and 16; Protective Direction No. 32, issued pursuant to section 32 of the *Transportation of Dangerous Goods Act, 1992*, S.C. 1992, c. 34.

Orders Considered: Orders PO-1666, PO-2170 and PO-2629.

OVERVIEW:

[1] A newspaper reporter made an access request to the City of Waterloo (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for

the following information:

> A complete list of materials being transported along the Waterloo spur line through uptown Waterloo and bound for Elmira. The list was provided by the [named third party] earlier [in 2013], to fire chief [named individual].

[2] The city identified the third party railway company as a party whose interests may be affected by disclosure of the requested information (the affected party), and provided notice to it pursuant to section 21(1)(a) of the *Act*. After receiving representations from the affected party, the city issued a decision denying access to the requested record, in full, on the basis of section 10(1)(b) of the *Act* (third party information).

[3] The requester, now the appellant, appealed the city's denial of access to this office.

[4] During the mediation stage of the appeal process, both the city and the affected party confirmed their reliance on section 10(1)(b) to withhold the record in full. The appellant took the position that there is a public interest in disclosure of the information sought, and the application of section 16 (compelling public interest) to the record was accordingly added to this appeal.

[5] As the parties were unable to resolve the appeal through mediation, it was transferred to the adjudication stage for a written inquiry under the *Act*. As part of my inquiry, I initially sought representations from the city and the affected party. I received representations from the city only. I provided the appellant with a complete copy of the city's representations in accordance with this office's *Practice Direction Number 7* and section 7.07 of its *Code of Procedure*. I then sought, and received, the appellant's representations on the issues.

[6] In the discussion that follows, I find the mandatory exemption at section 10(1)(b) of the *Act* applies to the record at issue. I also find that the public interest override at section 16 does not apply. As a result, I uphold the city's decision to withhold the record in full.

RECORD:

[7] The record at issue is a list contained in a one-page email sent by the affected party to the city's fire chief in March 2013.

ISSUES:

A. Does the mandatory exemption at section 10(1)(b) apply to the record?

B. Is there a compelling public interest in disclosure of the record that clearly outweighs the purpose of the section 10 exemption?

DISCUSSION:

Issue A: Does the mandatory exemption at section 10(1)(b) apply to the record?

[8] The city relies on section 10(1)(b) of the *Act* to deny access to the record in full. This 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, if the disclosure could reasonably be expected to,
>
> > 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.

[9] 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]

[10] For section 10(1)(b) 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, 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 the harm specified in paragraph (b) will occur.

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[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.

Part 1: type of information

[11] The city relies on the affected party's description of the information at issue in this appeal as being technical and commercial information.

[12] These types of information have been discussed in prior orders:

> *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.[3]
>
> *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.[4] The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.[5]

[13] The appellant makes no submissions on this part of the section 10(1)(b) test.

[14] The record is a list of materials transported by the affected party through the city along a particular railway line. Having reviewed the record, I do not find that the bare listing of materials qualifies as technical information as that term has been defined by this office. I agree, however, that the information in the record qualifies as commercial information of the affected party, as it relates to the affected party's operations as a freight railway services provider.

[15] Therefore, the information meets the first part of the section 10(1)(b) test.

Part 2: supplied in confidence

[16] 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]

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[3] Order PO-2010.
[4] Order PO-2010.
[5] Order P-1621.
[6] Order MO-1706.

[17] 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]

[18] In order to satisfy the "in confidence" component of part two of the test, 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.[8]

[19] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential
- treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure.[9]

Representations

[20] The city submits that the general manager for the affected party supplied the record at issue to the city's fire chief at the city's request. The city explains that at the time the information was provided, there was no legislative requirement or agreement requiring the affected party to provide such information to the city.

[21] Moreover, the city indicates that the affected party provided the requested information to it in confidence, with the intention, affirmed verbally between the parties, that the information would be used and made available only to employees involved in emergency planning or emergency response within the city's fire divisions. The city explains that on other occasions when it has requested this type of information from rail operators, it has obtained explicit written confirmation that the information is being provided under strict confidentiality for emergency planning and preparedness purposes only. The city submits that it is not aware of any other source for this type of specific product information: although rail cars carrying dangerous materials are

[7] Orders PO-2020 and PO-2043.
[8] Order PO-2020.
[9] Orders PO-2043, PO-2371 and PO-2497.

required to have placards containing Product Identification Numbers (PINs) corresponding to generic product names for certain dangerous materials, the record at issue in this appeal contains specific product information about all materials being transported through the city, and not merely generic product information about some dangerous cargo.

[22] The appellant makes no representations on this part of the section 10(1)(b) test.

Analysis and findings

[23] The record is an email sent on March 3, 2013, with the email sender and its recipient clearly identified. I am satisfied that the information in the record was directly supplied by a representative of the affected party to a city official by way of email.

[24] I am also satisfied that the information in the record was supplied in confidence by the affected party to the city, and that this expectation of confidentiality was reasonable. Although there is no explicit statement in the record of the confidentiality of the email's contents, or that the information will only be used by the city for specified purposes, I accept the city's submission that this understanding was affirmed verbally between the parties at the time the city made its request for the information from the affected party. The appellant does not dispute the city's representations on this point.

[25] I also accept the city's submission that such agreements have been made, and affirmed in writing, when the city has requested similar information from other railway companies. I find it credible and accept the city's evidence that it has a practice, when requesting this type of information from railway operators, of assuring the confidentiality of information and the exclusive uses to which it will be put. This is particularly so in light of its submission that, at the time these requests were made, there was no legislative or other requirement that railway operators provide such information to the city. Although the affected party did not make representations to this office during the inquiry process, I note that in its section 21 submission to the city, the affected party refers to its own practice of maintaining the confidentiality of rail cargo information, and its policy of not disclosing such information except to those directly affiliated with a level of government engaged in emergency response planning.

[26] Given all the above, I am satisfied that at the time it provided the record to the city, the affected party had an expectation that the information in it would be protected from disclosure, and that this expectation was an objectively reasonable one.

[27] Therefore, I find that the second part of the section 10(1)(b) test has been met.

Part 3: harms

[28] To meet this part of the test, the institution and/or the affected party must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm." Evidence amounting to speculation of possible harm is not sufficient.[10]

[29] 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.[11]

[30] Parties should not assume that harms under section 10(1) are self-evident or can be substantiated by submissions that repeat the words of the *Act*.[12]

Representations

[31] The city refers to the affected party's response to the section 21 notification following its receipt of the request giving rise to this appeal, in support of its position that disclosure of the record could reasonably be expected to give rise to the harm set out in section 10(1)(b). In particular, the city cites the following passage from the affected party's submission on disclosure: "If the integrity of this information cannot be ensured, [the affected party] may, in the interests of security, be forced to refuse such disclosure in the future." Based on this response, the city submits it has "every reason to believe" that disclosure of the record will result in similar information not being supplied to it in future.

[32] The city also refers to a recently-issued direction from the federal Minister of Transport as evidence both of the reasonableness of its expectation of this harm, and of the public interest in the continued supply of similar information to it. Protective Direction No. 32[13] concerns the sharing of dangerous goods information between rail companies and municipalities. The new direction requires railway companies to provide certain information about dangerous goods transported by rail to the designated emergency planning officials of the municipalities through which they travel, if certain conditions are met. Of particular relevance to this appeal is the direction's proviso that

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[10] *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).
[11] Order PO-2020.
[12] Order PO-2435.
[13] Issued on November 20, 2013 under section 32 of the *Transportation of Dangerous Goods Act, 1992*, S.C. 1992, c. 34. Protective Direction No. 32 took immediate effect upon signing and remains in effect for three years from the date of signing or until cancelled by the Director General of the Transport Dangerous Goods Directorate (as person designated by the Minister of Transport).

railway companies "are not required" to provide this information to municipalities if:

> the Emergency Planning Official has not undertaken or agreed to:
>
> > (i) use the information only for emergency planning or response;
> >
> > (ii) disclose the information only to those persons who need to know for the purposes referred to in (i); and
> >
> > (iii) keep the information confidential and ensure any person to whom the Emergency Planning Official(s) has disclosed the information keeps it confidential, to the maximum extent permitted by law.[14]

[33] Although Protective Direction No. 32, issued in November 2013, was not in effect at the time the record was supplied to the city (and thus was not the basis for its provision to the city), the city submits that disclosure of the record will hinder its ability to gain future access to dangerous goods information under the direction, as it will have proven its inability to keep such information confidential.

[34] On the public interest component of the test, the city submits that continuing access to this type of information is in the public interest because it could potentially reduce the negative impact of leak or derailment incidents occurring in the city. The city explains that this information assists emergency services personnel in planning site-specific emergency responses, including the nature of the ground response and the type of equipment available on the scene. If similar information were no longer supplied, emergency services personnel could be delayed or otherwise hampered in their response to an incident. The city notes that the federal government has recognized, through the issuance of Protective Direction No. 32, that making such information available to local governments and first responders is a matter of public safety.

[35] The appellant's representations are mainly devoted to the issue of whether there is a compelling public interest in disclosure of the record, which I will address under the next heading in this order. On the issue of the reasonableness of the city's expectation of harm, the appellant appears to concede the certainty of the claimed harm from disclosure, as he acknowledges "the city's apprehension in revealing the information contained in the list … given the result of losing future access to the information." His representations focus instead on the reasons why, in spite of this "result," disclosure of the record is in the public interest.

[14] Protective Direction No. 32, section 3(c).

Analysis and findings

[36] On my review of the parties' representations and the record at issue in this appeal, I am satisfied the city has provided detailed and convincing evidence to establish a reasonable expectation that disclosure would result in the claimed harm.

[37] To begin, I find it reasonable for the city to treat the affected party's explicit statement that disclosure of the record may result in its refusal to make future disclosures as persuasive evidence of a reasonably-held expectation of the harm of similar information no longer being supplied to the city by the affected party. I also accept the city's submission, made earlier in its representations, that it is unaware of any other source for this type of specific product information. I thus find it reasonable for the city to expect that disclosure of the record could result in this type of information no longer being available to it.

[38] I also find that there is a public interest in avoiding this result. I agree with the city that the enactment of Protective Direction No. 32 is evidence of the federal government's recognition of the public interest in ensuring that dangerous goods information is made available to municipalities. I also accept the city's evidence about the potential for negative impacts to public safety, including a delayed or less effective emergency response, if this type of information were no longer supplied to it. I therefore find there is a public interest in ensuring that information similar to that contained in the record continues to be supplied to the city.

[39] In arriving at my conclusion that the harms portion of the section 10(1)(b) test has been met, I find particularly relevant the city's evidence that at the time it requested the information from the affected party, there was no statutory, contractual or other requirement that the affected party provide this information to the city. I accept that the affected party voluntarily provided the record to the city on the understanding, affirmed verbally, that the record was being provided in confidence, and only for specified and limited non-public uses. Similarly, although the federal government has, in the time since the voluntary provision of the record in this appeal, issued a protective direction requiring railway companies to supply this type of information to municipalities, it is clear from the extract reproduced above that a railway company need only comply with the direction in certain circumstances – namely, only where a municipality has agreed to certain conditions around the use, disclosure and confidentiality of the supplied information.

[40] These conditions distinguish the direction from the kinds of statutory authorities considered in a number of previous orders where this office has rejected the application of section 10(1)(b) (or its provincial equivalent) to withhold information. In those orders, this office has held that where there is a statutory obligation to provide information to an institution, disclosure cannot reasonably be expected to result in

similar information no longer being supplied to an institution.[15] The harm of losing future access to information will not be made out where there exists a statutory authority to compel production, in spite of any reluctance to comply on the part of the supplier of information.

[41] By contrast, the obligation set out in Protective Direction No. 32 is contingent on the institution undertaking to protect the confidentiality of information provided to it, including by not disclosing the information, except for specified purposes. Given its wording, I find that the enactment of the protective direction has not eliminated the risk of harm contemplated by section 10(1)(b); I find, in fact, that the direction as drafted provides an explicit basis for an expectation that this particular harm could arise from disclosure.

[42] Given all the above, I find that the third part of the section 10(1)(b) test has been met.

[43] As all three parts of the test have been met, I find the record is exempt under section 10(1)(b).

[44] I will next consider whether, in spite of the application of the exemption, there is a public interest in requiring disclosure of the record.

Issue B: Is there a compelling public interest in disclosure of the record that clearly outweighs the purpose of the section 10 exemption?

[45] 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.

[46] 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.

[47] The *Act* is silent as to who bears the burden of proof in respect of section 16. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 16 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.[16]

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[15] See, for example, Orders PO-1666, PO-2170, PO-2629.
[16] Order P-244.

[48] 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.[17] 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.[18]

[49] A public interest does not exist where the interests being advanced are essentially private in nature.[19] Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.[20]

[50] A public interest is not automatically established where the requester is a member of the media.[21]

[51] The word "compelling" has been defined in previous orders as "rousing strong interest or attention."[22]

[52] Any public interest in *non*-disclosure that may exist also must be considered.[23] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling."[24]

[53] A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation[25]
- the integrity of the criminal justice system has been called into question[26]
- public safety issues relating to the operation of nuclear facilities have been raised[27]

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[17] Orders P-984 and PO-2607.
[18] Orders P-984 and PO-2556.
[19] Orders P-12, P-347 and P-1439.
[20] Order MO-1564.
[21] Orders M-773 and M-1074.
[22] Order P-984.
[23] *Ontario Hydro v. Mitchinson,* [1996] O.J. No. 4636 (Div. Ct.).
[24] Orders PO-2072-F, PO-2098-R and PO-3197.
[25] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).
[26] Order PO-1779.
[27] Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805.

- disclosure would shed light on the safe operation of petrochemical facilities[28] or the province's ability to prepare for a nuclear emergency[29]

- the records contain information about contributions to municipal election campaigns.[30]

[54] A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations[31]

- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations[32]

- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding[33]

- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter[34]

- the records do not respond to the applicable public interest raised by appellant.[35]

[55] The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

[56] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.[36]

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[28] Order P-1175.
[29] Order P-901.
[30] *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.
[31] Orders P-123/124, P-391 and M-539.
[32] Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.
[33] Orders M-249 and M-317.
[34] Order P-613.
[35] Orders MO-1994 and PO-2607.
[36] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.).

Representations

[57] The city denies there is a public interest in the disclosure of the record, which it describes as containing only third-party information supplied to the city regarding the affected party's commercial activities. As such, the city submits the record does not contain any information that would shed light on or otherwise inform the citizenry about the activities of the city. Moreover, it submits, there is a clear public interest in non-disclosure of the record, as its disclosure will hinder the future supply of similar information to the city, and the city has already made submissions on the public interest in the continued supply of such information to it.

[58] The city also denies that any public interest in disclosure, if it exists, would outweigh the purpose of the section 10(1)(b) exemption. The city notes that it was only able to obtain the record on a confidential basis, at a time when such information was not typically made available to municipalities, and that there is a public interest in the continued availability of such information which is put at risk by the prospect of disclosure. The city thus maintains that the purpose of the exemption is served by its decision to deny access to the record, and there is no compelling public interest in disclosure that outweighs this important purpose.

[59] The appellant takes the position that in spite of the acknowledged harm of disclosure, there is nonetheless a compelling public interest in disclosure because it is in the public's best interests to know what is being moved by rail through the city core.

[60] The appellant's first argument appears to be based on the effect to the city of losing future access to information about materials transported through the city by rail. The appellant asserts that "[i]n reality, this result would not place the city in an unfamiliar position," or "put the city in any greater danger than it was in prior to March 2013." This is because prior to that date (the date the affected party provided the city with the record at issue in the present appeal), the city did not have the information in the record, or any other means of obtaining it. Similarly, according to the appellant, no municipality had access to this type of information prior to the enactment of Protective Direction No. 23 in November 2013. The appellant thus questions the actual impact to the city of the established harm: given the city did not "have any great concerns," prior to March 2013, about not having access to specific rail cargo information, he questions why the city should now be so concerned about losing future access.

[61] In any event, the appellant argues that the harm of losing future access "is a fair trade-off" for the "added advantage" to the public of knowing what is being moved by rail near their homes and businesses. To illustrate the public interest in disclosure, he reports that city residents and a ward councillor expressed interest in having access to this type of information after an October 2012 train derailment in the city.

[62] Finally, the appellant makes broader arguments about "the failure of railways to remain as transparent as possible even following the destruction of [the unrelated July 2013 train derailment in] Lac-Mégantic [Quebec]." As an example of this lack of transparency, the appellant cites a denial decision issued in a separate access request made by his newspaper to a different railway operator. The appellant also speculates that it is the competitive disadvantage of disclosing materials lists, rather than the stated reason of protecting public safety, that is the actual basis for railways' refusals to disclose rail cargo information to the public; he argues that withholding information on this basis is "unreasonable and unfair."

Analysis and findings

[63] In order for the public interest override to apply, I must find both a compelling public interest in disclosure of the record, and that the interest clearly outweighs the purpose of the exemption. In the circumstances of this appeal, while I accept there is a public interest in the disclosure of the record, and assuming that this interest rises to the level of a compelling public interest, I find that this interest does not clearly outweigh the important purposes served by the section 10(1)(b) exemption.

[64] First, I accept the appellant's submission that city residents have an interest in knowing what is being transported through their city, and that this interest has been heightened in the wake of recent train derailment incidents involving the transport of dangerous goods. The city submits that disclosure would not serve the purpose of informing the citizenry about city activities because the record only contains details of the commercial activities of the affected party. However, I am satisfied that the city and its residents have an interest in these activities when they have the potential to affect the city – as, for example, when these commercial activities create a risk of harm to the health and safety of city residents because of the potential for a train derailment or a leak when hazardous goods are transported through the city. The wording of section 16 also makes clear that the public interest override may apply to third-party information and not only to information about an institution's activities.

[65] I also accept that the information in the record is directly related to satisfying this public interest, and that the interest is not merely a private interest of the appellant. The city's submission that there appears to be no other source for this type of information is also relevant to my consideration of whether disclosure of this record is necessary to satisfy the *Act*'s purposes of transparency and accountability.

[66] In this order I must consider whether the public interest in disclosure rises to the level of a compelling public interest, and if so, whether such interest clearly outweighs the purpose of the claimed exemption. Here I find relevant the city's evidence of the existence of a public interest in the non-disclosure of the record, and of the purposes served by upholding the exemption in the circumstances of this appeal.

[67] The city submits there is a clear public interest in maintaining the confidentiality of the type of rail cargo information contained in the record. In line with my findings on the harms portion of the section 10(1)(b) test, above, I accept the city's evidence of a public interest in non-disclosure of the record, given the reasonable expectation of harm from disclosure, and the public interest in ensuring that the loss of future access to similar information does not materialize. Whether or not this public interest in non-disclosure brings the public interest in disclosure below the necessary threshold of a compelling interest, I am satisfied that the city's decision to deny access to the record was made in accordance with the exemption's purpose of ensuring the continued flow of information. Therefore, assuming without deciding that the public interest in disclosure of the record rises to the level of a compelling public interest, in the circumstances of this appeal I find the interest does not clearly outweigh the purposes served by the section 10(1)(b) exemption, including the important public safety purposes served by maintaining the confidentiality of this information.

[68] I note that in making my findings, I have not found it necessary to consider the appellant's submissions about the outcome of a separate access request made to a different institution, and speculating about the true motives of railway companies in objecting to wider disclosure of this information. These arguments are not germane to the issues in this appeal, which are whether disclosure of the record could reasonably be expected to result in similar information no longer being supplied to the city, despite a public interest in its continued supply, and whether, in spite of this harm, there is a compelling public interest requiring disclosure of the record. Furthermore, in finding there are important public interests served by the continued supply of this type of information, I have rejected the appellant's argument questioning the sincerity of the city's concern about this harm from disclosure.

[69] In light of all the above, I find the public interest override does not apply in the circumstances of this appeal. Therefore, I uphold the application of section 10(1)(b) to withhold the record, in full.

[70] In arriving at this result, I recognize that there is a real public interest in knowing what materials are being transported by rail through our municipalities and near our homes and businesses, especially in light of recent incidents that have illustrated the potential dangers of transporting hazardous goods in this manner. However, in the absence of any statutory or other authority that would permit the public dissemination of this information without threatening its future availability, I find the public interest in disclosure must yield to the important public safety purposes of ensuring the continued supply of this information to municipalities.

ORDER:

I uphold the city's decision to deny access to the record, and I dismiss this appeal.

Original Signed By: May 7, 2014
Brian Beamish
Assistant Commissioner