

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER MO-3080-I

Appeal MA12-241

Toronto Police Services Board

July 31, 2014

Summary: The appellant sought access to the winning submission and to various scoring and evaluation materials from a specified request for proposal. The police located records responsive to the request and issued a decision denying access to them on the basis of the mandatory third party information exemption in section 10(1) of the *Act*. The appellant appealed the decision and raised the public interest override in section 16 of the *Act* as an issue in the appeal. The police's decision to withhold the winning submission and various scoring and evaluation materials under section 10(1) is partially upheld. A decision on the possible application of the mandatory personal privacy exemption to the resumes contained in the winning proposal is deferred in order to provide the parties with an opportunity to address this issue.

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

Orders and Investigation Reports Considered: MO-3058-F.

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records related to a specified request for proposal (RFP) for a construction management services project. The requester specified she sought access to a copy of the winning

submission, all score cards, meeting minutes, evaluation notes and interview notes pertaining to the award of the project.

[2] The police identified two records responsive to the request, the winning RFP submission submitted by a construction company and a one page scoring chart. The police issued a decision denying access to these records, relying on the mandatory third party information exemption in sections 10(1)(a) and (b) of the *Act*.

[3] The requester, now the appellant, appealed the decision of the police to this office.

[4] During mediation, this office notified the successful construction company (the winning proponent) of the appeal, and sought its views on disclosure of the records. The winning proponent consented to disclosure of the table of contents of its RFP submission. This office conveyed the winning proponent's consent to the police, and the police disclosed the table of contents from the winning submission to the appellant. After receiving the table of contents, the appellant confirmed that she was not seeking access to sections 3.2, 3.3, 3.4, 4.3(g), 4.3(i), and 4.4(a), (b) and (e) of the winning submission. She also confirmed that she was not interested in the proposal submission form, or the names of the team members in section 4.3(e) of the winning submission. Accordingly, these portions of the records are no longer at issue in this appeal.

[5] Also during mediation, the appellant challenged the adequacy of the police's search for records, as she believed that additional records exist regarding the scoring and/or evaluation of the RFP submissions. In response, the police conducted a further search and located additional scoring and evaluation records relating to the winning proponent and a number of other construction companies who bid on the project. The police then issued a supplementary decision denying access to these additional records on the basis of the mandatory exemption in section 10(1)(a) and (b) of the *Act*.

[6] After receipt of the police's supplementary decision, this office notified seven additional construction companies (the other proponents) whose interests could be affected by disclosure of the additional records in the appeal and invited them to provide their views on disclosure. One of the other proponents consented to disclosure of its information, and this consent was conveyed to the police. I will order the police to disclose the consenting proponent's information below. The remaining proponents did not consent to disclosure of their information.

[7] At the end of mediation, the appellant confirmed she was no longer questioning the reasonableness of the search, and that she was pursuing access to the remaining portions of the records. As well, the appellant asserted that there is a public interest in disclosure of the records, thereby raising the public interest override in section 16 of the *Act* as an issue in this appeal.

[8] As a mediated resolution of the appeal was not possible, it was transferred to the adjudication stage for an inquiry under the *Act*.

[9] I sought the parties' representations on the application of the mandatory exemption in section 10(1) to the records, and the possible application of the public interest override in section 16 of the *Act* to this appeal. I received representations from the police, the winning proponent and three of the other proponents. Although I invited the appellant to submit representations in response to those of the police, she did not do so. Similarly, three of the other proponents did not provide representations.

[10] In this interim order, I uphold the police's decision to withhold most of the records under section 10(1), except for the information relating to the proponent who consented to disclosure and certain pages and portions of the records which do not qualify for exemption. I also defer my decision with respect to the resumes contained in the winning submission in order to provide the appellant, and potentially other parties, an opportunity to address the possible application of the mandatory personal privacy exemption in section 14(1) of the *Act* to these records.

RECORDS:

[11] The records at issue consist of:

- the remaining pages of the winning RFP submission (pages 3, 5 to 14, 24 to 60, 62, 66 to 68 and 70 to 84)
- the scoring and evaluation materials: a scoring chart (page 1); an RFP bid overview (page 88); and RFP scoring / evaluation forms (pages 89 to 120).

ISSUES:

- A. Does the mandatory exemption at section 10(1) apply to the records?
- B. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 10(1) exemption?

DISCUSSION:

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

[12] At the outset, I find that the consenting proponent's information in the records does not qualify for exemption under section 10(1) by virtue of the consent provided during the inquiry by the consenting proponent. This information is contained in pages 90, 98, 106 and 114, and in one part of page 88 and I will order the police to disclose it to the appellant.

[13] As for the remaining information at issue, the winning proponent and the three other proponents who provided representations argue that it is exempt under section 10(1) of the *Act*, which states, in part:

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,

- (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 10(1) is a mandatory exemption 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

[15] For section 10(1) to apply, the police and/or the proponents 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

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.

3. the prospect of disclosure of the record must give rise to a reasonable expectation that the harms specified in paragraph (a), (b) and/or (c) of section 10(1) will occur.

Part 1: type of information

[16] The types of information listed in section 10(1) have been discussed in prior orders:

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

Financial information refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.⁵

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

[18] The police, the winning proponent and the three other proponents who provided representations submit that the records contain commercial information. I agree. The winning submission contains a detailed proposal for the provision of construction management services to the police, and the scoring and evaluation materials document the police's assessment of the various proposals received in response to the RFP. All of the records were created for the purpose of entering into a commercial arrangement, and on this basis, I find that they all contain commercial information. I also find that some of the records contain information that qualifies as financial information as well. The first part of the section 10(1) test is therefore satisfied.

Part 2: supplied in confidence

[19] 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 Information may qualify as "supplied" if it was directly supplied to an

³ Order PO-2010.

⁴ Order P-1621.

⁵ Order PO-2010.

⁶ Order MO-1706.

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

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

[21] In their representations, the police state that the commercial information in the winning submission and the commercial information provided by the other proponents was supplied in confidence to them, either implicitly or explicitly. The police assert that all proposals they receive are subject to the *Act*, and that there continues to be a reasonable expectation of confidentiality in the commercial information supplied by the winning proponent and the other proponents. The police also assert that the scoring and evaluation materials are confidential because they are derived from confidential commercial information submitted to them by the winning proponent and the other proponents. They also add that the confidentiality of the scoring and evaluation records is reflected in section 6.1 of their RFP, which states:

Evaluation results will be the property of the [police] and the [police do] not intend to disclose evaluation results any time under any circumstance and by submitting an RFP the Respondent agrees to accept the recommendation of the Evaluation Committee as final and binding.

⁷ Orders PO-2020 and PO-2043.

⁸ Order PO-2020.

⁹ Orders PO-2043, PO-2371 and PO-2497.

[22] In its representations, the winning proponent states that it provided its RFP submission to the police with the explicit expectation that it would be protected from disclosure. The winning proponent also states that the RFP documents issued by the police explicitly state that tenders, quotations and proposals “will be received in confidence.”

[23] The other proponents similarly assert that their commercial information contained in the records was supplied in confidence to the police. With respect to the RFP bid overview, the other proponents state that the breakdown of each bidder’s pricing, including the construction estimate and the construction management fees for each bid, forms part of the commercial information supplied with the expectation that it would remain confidential. The other proponents also assert that the scoring and evaluation materials, although prepared by the police, contain pricing information that is not disclosed or available publicly, and that was supplied in confidence in their RFP submissions to the police. One of the other proponents takes a different position with the scoring chart and the evaluation sheets; it states that it could consent to the disclosure of the scoring chart if the chart does not include any of its pricing information or other detailed information on its construction plan, approach and personnel, which it provided in its RFP submission to the police. However, this proponent adds that section 6.1 of the police’s RFP states that the police do not intend to disclose evaluation results at any time during the process, and therefore, it defers to the police’s position on the disclosure of the evaluation records.

[24] As I noted above, I do not have representations from the appellant.

Analysis and findings

[25] The winning proponent delivered all of the information in its winning submission to the police in response to the police’s solicitation of proposals from construction companies for construction services. As the information in the winning submission originated with the winning proponent and was submitted to the police with the expectation that it would remain confidential, I find that the winning submission, with the exception of 12 pages which I will discuss below, was supplied in confidence to the police within the meaning of section 10(1). My conclusion is consistent with numerous previous orders of this office that have considered the application of section 10(1) to RFP submissions, including the recent Order MO-3058-F issued by Senior Adjudicator Sherry Liang.

[26] The request and records before Senior Adjudicator Liang in Order MO-3058-F were very similar to those before me in this appeal; a winning RFP submission and evaluation materials relating to the RFP. In deciding whether the evaluation materials before her were supplied in confidence, Senior Adjudicator Liang wrote:

Although the evaluation materials were created by the town's employees or evaluation committee, they incorporate some information taken directly from the affected parties' proposals, or provided by the proponents during their interviews. This information is contained in the chart at page 1 of the evaluation materials, in the interview notes of the evaluation committee, and in the spreadsheet. It includes descriptions of the proponents' methodology and approach to the project, examples of prior or current work, descriptions of their workforce, and the financial details of their proposals. It is typical of the type of information submitted by proponents in support of efforts to obtain a contract and constitutes the "informational assets" of the proponents. I find that this information was "supplied" to the town within the meaning of section 10(1).¹⁰

[27] Senior Adjudicator Liang's approach is applicable in this appeal where similarly, the scoring and evaluation materials were created by the police or its evaluation committee and they incorporate commercial and other information taken directly from the affected parties' RFP submissions. The RFP bid overview at page 88, and the evaluation and scoring records at pages 89, 91 to 93, 95 to 97, 99 to 104, 109 and 118 to 120, contain the financial details of the proposals taken from the RFP submissions provided to the police by the proponents and/or descriptions of the proponents' methodology and approach to the project, and information on their prior or current projects and personnel. This information also derives from the proponents' RFP submissions. Following the approach of Senior Adjudicator Liang, I find that this commercial and other information in pages 88, 89, 91 to 93, 95 to 97, 99 to 104, 109 and 118 to 120 of the records constitutes the "informational assets" of the proponents and it was supplied to the police within the meaning of section 10(1). I further find that this information that is derived from the proponents' proposals was supplied to the police with a reasonably held expectation of confidentiality in satisfaction of the second part of the section 10(1) test.

[28] Conversely, I find that the remaining scoring and evaluation records, specifically, the scoring chart at page 1, the evaluation column in the RFP bid overview at page 88, and pages 94, 105 to 108, 110, 111 to 113, and 115 to 117, do not contain any commercial or other confidential information originating from the proponents. While the scores reflected in these pages of the records are based on the evaluator's assessment of the proponents' proposals, this does not satisfy the requirement that the information be "supplied." On this basis, I find that pages 1, 94, 105 to 108, 110, 111 to 113, 115 to 117 and the evaluation column in page 88 cannot qualify for exemption under section 10(1). As no other exemptions have been claimed in respect of these pages of the records, I will order them disclosed.

¹⁰ Order MO-3058-F at paragraph 23.

[29] I also find that twelve pages of the winning submission do not qualify as having been supplied in confidence. These are pages 5 to 14, 44 and part of 45 which contain information on previous and current construction projects of the winning proponent. I base my finding on the fact that the information contained in these pages is promotional in nature and most of it is publicly available on the winning proponent's web site. The information contained in these pages that is not published on the winning proponent's web site consists of the construction start and completion dates for each project, and the names of the consulting firm, project manager and superintendent for each project. As the winning proponent itself publishes most of this information, it cannot reasonably expect this published information to be kept confidential. This applies to the information that is not published as well, since it relates to significant construction management projects completed by the winning proponent for a number of public and private institutions that would have likely published much of this information themselves on their own web sites or on the respective construction sites at the time the projects were underway. For these reasons, I am not satisfied that the winning proponent could have had a reasonable expectation that these records would be treated confidentially by the police or under the *Act*, and I will order these pages disclosed.

Part 3: harms

[30] As I have found above that only pages 3, 24 to 43, part of 45, 48 to 60, 62, 66, 67, 68, 70 to 84, 89, 91 to 93, 95 to 97, 99 to 104, 109 and 118 to 120 satisfy the first two parts of the test, I will consider whether they also meet the third part. This part of the test for exemption under section 10(1) is based on a conclusion that disclosure "could reasonably be expected" to lead to one of the harms described in that section. This office has stated that the institution and/or the third parties 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.¹¹ The 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 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 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 10(1).¹⁴

¹¹ *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

¹² Order PO-2435.

¹³ Order PO-2020.

¹⁴ Order PO-2435.

[31] In their representations, the police suggest that the proponents who declined to consent to disclosure of their commercial information may have done so in order not to jeopardize their competitive positions in any future RFP processes. The police assert that harm to the proponents from disclosure of the information contained in the RFP submissions can be expected and inferred. To support their assertion, the police rely on the following passage from Order MO-2786 of Senior Adjudicator Liang:

I accept the appellant's assertion that it markets its products exclusively to municipalities and that, within this market, there is a limited number of competitors. The appellant has identified the bases on which these competitors distinguish themselves in the RFP processes, including the detailed pricing structure and detailed explanations of how the functional requirements will be met.

[32] The police argue that Senior Adjudicator Liang's finding in Order MO-2786 that some information contained in an RFP response could potentially cause harm to a proponent, applies to this appeal. Specifically, they submit that disclosure of the detailed construction estimates and plans could provide competitors with valuable assistance in proposing highly competitive costing in future RFPs, thereby giving the proponents' competitors an advantage.

[33] The winning proponent asserts that disclosure of any information contained in its RFP submission would significantly prejudice its competitive position, and as a result, its RFP submission is exempt under section 10(1)(a) of the *Act*. Rather than specify the way in which disclosure would bring about the harm in section 10(1)(a), the winning proponent states that all of the information in its RFP submission was directly evaluated to determine if its submission would be successful; therefore all the information, if disclosed, would harm its competitive position with respect to future RFP submissions.

[34] The other proponents assert that disclosure of the records could reasonably be expected to cause the harms set out in sections 10(1)(a) and (c). Their submissions can be summarized as follows:

- Disclosure of the detailed pricing breakdown of each bid that is contained in the RFP bid overview on page 88 would reveal individual estimates for specific construction components or management elements. This level of detail is adequate to allow competitors to exploit the proponents' bidding practices in that competitors would be able to compare the elements of the total price and understand where their own pricing was higher or lower than the proponents'. Competitors could then use this understanding on the pricing to their advantage by acting on this information in future RFPs.

- Disclosure of any detailed descriptions of any of the proponents' submitted plans would reveal protected information that would significantly prejudice their competitive position. By gaining access to these plans, competitors would know the means and methods of the proponents' businesses. The plans are central to the proponents' businesses and are key to what they do as companies. As vital components of the proponents' businesses, the plans in the hands of competitors would prejudice the proponents in future RFP opportunities.
- Disclosure of the proponents' commercial information would reveal their profit margin and pricing for the construction services project, as well as, overhead costs, supplier relationships and supplier pricing. This is commercially sensitive information which is not generally available to the public or to competitors, and therefore, disclosure would significantly prejudice the proponents' competitive position in the market.

Analysis and findings

[35] In concluding that some parts of the winning submission and the remaining scoring and evaluation materials meet the "harms" part of the test for exemption under section 10(1), I have relied on the representations of all the proponents. I find that disclosure of the detailed fee proposal for the project set out in pages 24 to 41, the profitability information in one paragraph on page 42, and the policies, plans, schedules and methodology for the project set out in pages 66, 67, and 70 to 84, could reasonably be expected to significantly prejudice the competitive position of the winning proponent, or result in undue loss or gain. The information contained in these pages reveals the details of the winning proponent's proposed approach to the project. It contains pricing and budget information developed by the winning proponent for the project that is unique to the winning proponent based on its experience and expertise and is not publicly known. It also contains detailed work plans, schedules, and construction management methodology that describe the services and timeframe for the project. I adopt Senior Adjudicator Liang's approach to such records in Order MO-3058-F in being satisfied that this information, if disclosed, could be used to the advantage of competitors and to the disadvantage of the winning proponent. I also adopt Senior Adjudicator Liang's reasoning that disclosure of this information could reasonably be expected to result in significant prejudice to the winning proponent's competitive position and result in undue loss to it, with corresponding undue gain to its competitors.

[36] Pricing details and information on the proponents' methodologies and approaches is also incorporated into all of the remaining scoring and evaluation materials at issue, on pages 89, 91, 92, 93, 95, 96, 97, 99 to 104, 109 and 118 to 120. Following the approach of Senior Adjudicator Liang in MO-3058-F I am satisfied that

disclosure of this information taken from the proponents' proposals could result in the harms in sections 10(1)(a) or (c).

[37] Relying on the same reasoning as above, I am satisfied that most of the information in the RFP bid overview at page 88, specifically, the detailed breakdown of the fees of each proponent, similarly meet the "harms" test. I am not satisfied that disclosure of the bid amount set out in page 88 under the "Bid Amount" column could reasonably be expected to result in the harms contemplated by section 10(1)(a) or (c). This information sets out a total value only and does not provide insight into the commercial or financial information of the proponents that could significantly prejudice their competitive position or provide an undue gain to competitors. Accordingly, I will order the bid amount information on page 88 disclosed.

[38] Although neither the police nor the proponents provided representations that directly address the exemption in section 10(1)(b), it is relevant to pages 59 and 60 of the records. These two pages set out previous projects of the winning proponent and detail various costs. They include information about cost overruns for example. Following the approach taken in MO-3058-F, I find that disclosure of this information could reasonably be expected to result in similar information no longer being supplied within the meaning of section 10(1)(b).

[39] I find that pages 24 to 41, 66, 67, and 70 to 84, 59, 60, and parts of 42, 88, 89, 91, 92, 93, 95 to 97, 99 to 104, 109 and 118 to 120 satisfy the third part of the section 10(1) test as set out above, and are exempt from disclosure under section 10(1)(a), (b) or (c).

[40] I am not satisfied that the following pages from the winning submission which remain at issue, could reasonably be expected to result in any of the harms contemplated by the exemptions in sections 10(1)(a), (b) or (c):

- page 3, which is the letter from the winning proponent to the police enclosing its RFP submission
- pages 42 and 43, which describe the winning proponent's firm, legal structure and ownership history (with the exception of the portion of page 42 which I have found exempt above)
- part of page 45 and all of page 46, which set out the various positions of key staff and their roles for the project
- page 47, a project organizational chart
- page 62, entitled "Additional Project Development Team Resources"

- page 68, which represents Schedule "A" under the qualifications of proponent and assigned personnel section of the proposal.

[41] None of these seven pages contains information that is sufficiently detailed so as to provide insight into the winning proponent's confidential business strategies or mode of operation. The representations before me and the records themselves do not provide me with detailed and convincing evidence that any of the harms contemplated by section 10(1) could reasonably be expected to result from disclosure. Accordingly, I will order these pages disclosed, with the exception of the names of the team members in pages 45, 46 and 47, which are not at issue in this appeal.

[42] The last records I must address are pages 48 to 58 which consist of the resumes of the winning proponent's team members, excluding the names. In reviewing the information that remains at issue in these resumes, it appears to me that the mandatory personal privacy exemption may apply, despite the fact that neither the police nor the winning proponent has relied on it. Accordingly, I will defer my decision with respect to these pages in order to provide the appellant, and potentially the other parties, an opportunity to address the possible application of this mandatory exemption.

B. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 10(1) exemption?

[43] 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.

[44] 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.

[45] 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.¹⁵

[46] 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*

¹⁵ Order P-244.

central purpose of shedding light on the operations of government.¹⁶ 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.¹⁷

[47] A public interest does not exist where the interests being advanced are essentially private in nature.¹⁸ Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.¹⁹ The word "compelling" has been defined in previous orders as "rousing strong interest or attention."

[48] Any public interest in *non*-disclosure that may exist also must be considered.²⁰ If there is a significant public interest in the non-disclosure of the record then disclosure cannot be considered "compelling" and the override will not apply.²¹

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

- the records relate to the economic impact of Quebec separation²²
- the integrity of the criminal justice system has been called into question²³
- public safety issues relating to the operation of nuclear facilities have been raised²⁴
- disclosure would shed light on the safe operation of petrochemical facilities²⁵ or the province's ability to prepare for a nuclear emergency²⁶

¹⁶ Orders P-984 and PO-2607.

¹⁷ Orders P-984 and PO-2556.

¹⁸ Orders P-12, P-347 and P-1439.

¹⁹ Order MO-1564.

²⁰ *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

²¹ Orders PO-2072-F and PO-2098-R.

²² 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.).

²³ Order P-1779.

²⁴ 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.

²⁵ Order P-1175.

²⁶ Order P-901.

- the records contain information about contributions to municipal election campaigns²⁷

[50] As noted above, the appellant, who raised the public interest override as an issue in this appeal, did not submit representations. Accordingly, I have no submissions to support the assertion that there is a public interest in disclosure of the records that I have found exempt under section 10(1). In the representations that I received, the police, the winning proponent and the other proponents all submit that there is no compelling public interest in disclosure of the records that outweighs the important purpose of the section 10(1) exemption. From my review of the records, I agree with this latter position. I do not see a relationship between the exempt information and the central purpose of the *Act* which is to shed light on the operations of government. Similarly, I do not see how disclosure of the particular third party commercial information at issue could serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies. Therefore, I find that the public interest override has no application in this appeal.

ORDER:

1. I uphold the decision of the police to withhold pages 24 to 41, 59, 60, 66, 67, 70 to 84, and parts of pages 42, 88, 89, 91, 92, 93, 95, 96, 97, 99 to 104, 109 and 118 to 120 under section 10(1) of the *Act*.
2. I order the police to disclose to the appellant by **September 4, 2014**, but not before **August 29, 2014**:
 - the information relating to the consenting proponent at pages 90, 98, 106, 114 and part of 88; and
 - the pages and portions that I have found do not qualify for exemption under section 10(1); specifically, pages 1, 3, 5 to 14, 43, 44, 62, 68, 94, 105, 107, 108, 110 to 113 and 115 to 117, and parts of 42, 45, 46, 47, 88.
3. For certainty, I am providing the police with a copy of the pages listed in provision 2 above which are to be disclosed in part, highlighting the information that is **not** to be disclosed.

²⁷ *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.

4. To verify compliance with this order, I reserve the right to require the police to provide me with a copy of the records disclosed to the appellant in accordance with provision 2 above.

Original signed by: _____
Stella Ball
Adjudicator

_____ July 31, 2014