

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3132

Appeal MA13-117

Regional Municipality of Peel

December 2, 2014

Summary: The region received a request for records relating to the appellant and its contracted water main project. The region, after giving notice under section 21, granted access to all the responsive records. The appellant appealed the region's decision to grant access citing the mandatory third party information exemption in section 10(1) of the *Act*. The original requester submitted that the public interest override in section 16 applies to the withheld information. The adjudicator partially upholds the region's decision and finds that section 16 does not apply to the withheld information.

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

Orders and Investigation Reports Considered: MO-2115, MO-2260, MO-2715 and MO-2787-I.

OVERVIEW:

[1] The Regional Municipality of Peel (the region) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

I would like to request a copy of any and all communication and materials both print and electronic submitted by [named third party] or [named company] relating to the Region of Peel Project #10-1205 or Hanalan

Feedermain Contract 1 South contract and any response or correspondence from the Region of Peel to [above named third party] or [above named company] regarding this project. Specifically relating to pipe.

[2] After notifying the third parties under section 21 of the *Act* and considering the submitted representations, the region issued a decision advising that full access would be granted to the responsive records.

[3] One of the third parties, now the appellant, appealed the region's decision.

[4] During mediation, the requester took the position that there is a public interest in the disclosure of the records at issue raising the possible application of the public interest override in section 16 to the appeal. Also during mediation, the requester, a competitor, consented to the disclosure of his identity to the appellant.

[5] In my inquiry into this appeal, I sought representations from the appellant, the region, the requester, and another affected party. I received representations from the appellant only.

[6] In this order, I uphold the region's decision, in part, and find that section 16 does not apply to the withheld information.

RECORDS:

[7] The records at issue include emails, letters, reports, drawings and photos totalling 2990 pages. I have included an index of records in the appendix to this order.

ISSUES:

- A. Are the records exempt under the mandatory exemption in section 10(1)?
- B. Is there a compelling public interest in the disclosure of the records that overrides the purpose of the section 10(1) exemption?

DISCUSSION:

A. Are the records exempt under the mandatory exemption in section 10(1)?

[8] The appellant submits that the records at issue are 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;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

[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) to apply, the appellant must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 10(1) will occur.

[11] For the purpose of making submissions, the appellant categorized the records in the following manner:

- Category 1: Correspondence between CH2M Hill and the Region or Varcon that refers to [the appellant]
- Category 2: Correspondence between CH2M Hill or Varcon and [the appellant]

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.) (*Boeing Co.*).

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

- Category 3: [Appellant's] design documents and drawings
- Category 4: [Appellant's] invoices
- Category 5: Contractual documents such as change order and stop work orders
- Category 6: Miscellaneous (e.g. invoices from supplier to [appellant], Quebec certification and inspections.

Part 1: type of information

[12] The appellant submits that the records in each of the six categories contain both commercial and financial information concerning the project, including information relating to:

- Detailed specifications for [the appellant's] products, including installation guides, design drawings (Category 3);
- The pricing of [the appellant's] products (Category 4);
- Contractual relations between CH2M Hill, Varcon and [appellant] (Categories 1, 2 and 5); and
- Various matters not directly related to the project (Category 6).

[13] The appellant submits that the records also contain trade secrets and proprietary information relating to its products, including important specifications which it consistently treats as a trade secret. The appellant submits that this information is not available from sources otherwise accessible by the public and cannot be obtained by observation or independent study by a member of the public acting on his or her own.

[14] The types of information listed in section 10(1) have been discussed in prior orders. I find the following definitions to be relevant in this appeal:

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

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

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

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

Commercial information is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises.⁵ The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.⁶

Financial information refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.⁷

[15] Based on my review of all the records, I find that they contain commercial, financial and technical information within the meaning of section 10(1). I am satisfied that the records relate to the appellant's sale of both its products and services relating to the Hanlan Feedermain project and that the records also contain engineering information about the project. The records contain the appellant's invoiced prices to the region for the project. With respect to the commercial information contained in the records, I find that they contain the appellant's various responses to other affected parties about the completion of the project and the fulfillment of certain contractual terms.

[16] I find that the appellant has not established that the records contain information that would constitute a trade secret for the purposes of section 10(1). The appellant has identified its "detailed specifications" as information which it treats as trade secret

³ Order PO-2010.

⁴ Order PO-2010.

⁵ Order PO-2010.

⁶ Order P-1621.

⁷ Order PO-2010.

information, but the records and information in its Category 3 records is both extensive and varied. It is not evident to me that all of this information is not generally known in this business or trade and that it has economic value from not being known. The fact that these records and information were being circulated between the various parties to the project does not indicate to me that the appellant attempted to keep this information secret and confidential.

[17] However, as I have found that the records contain commercial, financial and technical information within the meaning of section 10(1), I find the appellant has met Part 1 of the test for section 10(1).

Part 2: supplied in confidence

Supplied

[18] The requirement that the information was “supplied” to the institution reflects the purpose in section 10(1) of protecting the informational assets of third parties.⁸

[19] Information may qualify as “supplied” if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.⁹

[20] 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 10(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.¹⁰

[21] There are two exceptions to this general rule which are described as the “inferred disclosure” and “immutability” exceptions. The “inferred disclosure” exception applies where disclosure of the information in a contract would permit accurate inferences to be made with respect to underlying non-negotiated confidential information supplied by the third party to the institution.¹¹ The immutability exception applies where the contract contains information supplied by the third party, but the information is not susceptible to negotiation. Examples are financial statements, underlying fixed costs and product samples or designs.¹²

⁸ Order MO-1706.

⁹ Orders PO-2020 and PO-2043.

¹⁰This approach was approved by the Divisional Court in *Boeing Co.*, cited above, and in *Miller Transit Limited v. Information and Privacy Commissioner of Ontario et al.*, 2013 ONSC 7139 (CanLII) (*Miller Transit*).

¹¹ Order MO-1706, cited with approval in *Miller Transit*, above at para. 33.

¹² *Miller Transit*, above at para. 34.

In confidence

[22] In order to satisfy the “in confidence” component of part two, the parties resisting disclosure must establish that the supplier of the information had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.¹³

[23] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, all the circumstances are considered, 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 by the third party in a manner that indicates a concern for confidentiality
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure¹⁴.

Appellant’s representations

[24] The appellant submits that the records relate to a commercial relationship between itself, Varcon Construction Corporation and CH2M Hill¹⁵ and it emphasizes that none of these entities are subject to disclosure requirements under the *Act* or similar legislation. The appellant submits that it did not directly supply the records to the region and that it is unclear as to how the region obtained many of the records. The appellant submits that it had limited direct contact with the region through the course of the project and corresponded primarily with either Varcon or CH2M Hill. The appellant submits that it reasonably assumed that its communications with these two entities was on a strictly confidential basis.

[25] The appellant states:

Accordingly, [the appellant] was not aware that its commercial and financial information was being provided to the region and that this information would be subject to disclosure requests under the *Act*. The

¹³ Order PO-2020.

¹⁴ Orders PO-2043, PO-2371 and PO-2497, upheld in *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC); 298 DLR (4th) 134; 88 Admin LR (4th) 68; 241 OAC 346.

¹⁵ CH2M Hill is the engineering firm hired by the region to oversee the project. Varcon Construction Corporation is the general contractor for the project.

unauthorized disclosure of [the appellant's] correspondence with the region by other parties violated [the appellant's] expectation of confidentiality. To that end, a Legal Notice is provided at the bottom of outgoing emails from the [appellant] that *prohibits* the dissemination of the contents of emails to unauthorized third parties.

[26] The appellant quotes its confidentiality notice that is on its emails.

Analysis and finding

[27] I must first consider whether the appellant "supplied" the records to the region for the purposes of section 10(1). The appellant submits that it did not directly supply the records to the region and instead, that either Varcon or CH2M Hill disclosed, without authorization, the records which contains its information to the region.

[28] In Order MO-2260, Adjudicator Colin Bhattacharjee considered an appeal from a request for all plans, contracts, and schedules relating to an ongoing road sewer project in London, Ontario (the city). Adjudicator Bhattacharjee identified the affected third parties as: the engineering firm hired by the city to manage the storm sewer project (the contract administrator); the firm that was contracted to lead the work on the storm sewer project (the contractor); the firm that was subcontracted to build the tunnel for the storm sewer (the tunnel subcontractor). The appellant in Order MO-2260 was the tunnel subcontractor.

[29] The tunnel subcontractor did not provide representations on the "supplied in confidence" part of the test, so Adjudicator Bhattacharjee found the following:

Based on my review of the records at issue, it appears that the contractor sent correspondence that it received from the appellant to the contract administrator, who then provided these records to the city. The city submits that it was appropriate for the engineering firm acting as the contract administrator to provide the records at issue to the city. It asserts that the contract administrator had a contractual obligation to report back to the city with respect to how the tunnel project was progressing.

In my view, the contract administrator hired to oversee the project was acting as the city's agent. I accept the city's submission that the contract administrator had an obligation to report back to the city on the progress of the project, which included providing the city with relevant documentation submitted by the appellant and other parties involved in the construction of the tunnel.

Given that the contract administrator was acting as the city's agent, I find that any information in the records at issue that was provided to the contract administrator was, procedurally speaking, directly "supplied" to the city, for the purposes of section 10(1) of the *Act*.

[30] I agree with this rationale and apply it here.

[31] In the present appeal, CH2M Hill was the engineering firm hired to be the contract administrator for the project and Varcon Construction Corporation (Varcon) was the general contractor. The appellant was the subcontractor providing the pipes for the project. This is evident from both the records and based on public information about the project. Similarly to the reporting relationship in Order MO-2260, when Varcon received records and information from the appellant, it provided this information to CH2M Hill which in turn provided it to the region. This is also evident from the records.

[32] While I did not receive representations from the region describing its relationship with Varcon, CH2M Hill or the appellant, I conclude that CH2M Hill was contractually required to provide status and update information about the project to the region. Furthermore, it is evident that the appellant was also contractually required to provide information to Varcon for the purposes of the project. Varcon was then required to provide information about the pipe and its installation to CH2M Hill. It is not evident to me how the disclosures of information by CH2M Hill and Varcon to the region were "unauthorized" given that the appellant does not dispute the fact that they were the pipe subcontractor on this project for the region.

[33] Accordingly, although I am unable to find a similar "agency" relationship between CH2M Hill and the region without specific representations establishing this, I find, for the purposes of this appeal, that when the appellant supplied information to Varcon and CH2M Hill, it was supplying the information to the region for the purposes of section 10(1)¹⁶.

[34] After reviewing the records, I found that a number of the records meet the "supplied" component of the part 2 test in that the records would either directly or indirectly disclose information supplied by the appellant to the region. I will consider whether these records also meet the "in confidence" component in my discussion below. However, I find that the following records do not contain information supplied by the appellant to the region; nor would it be possible to infer the appellant's information from disclosure of the following:

Documents 1 – 4, 6, 7, 11 (in part), 16 – 22, 23, 25, 27 – 36, 38 – 40, 43, 45, 46, 48, 50, 53, 55, 56, 58, 59, 62 – 65, 67, 72 – 74, 77, 79, 80, 82 –

¹⁶ I note that several references in the record refer to the fact that CH2M Hill was the agent for the region, including page 257.

87, 89, 90 – 93, 96, 99 – 102, 104, 105, 125, 126, 128, 129A, 130, 132, 134, 140, 143 – 146, 149, 154 – 156, 159, 162, 166, 168, 171, 175, 176, 181 – 183, 186 – 193, 195 – 197, 200 – 207, 209, 220 – 224, 234, 235, 237 – 247, 249, 250, 252, 253, 255 – 257, 259, 261, 271, 274, 277.

[35] In addition to the records listed above, there are several others which I find contain information that was “supplied” by the appellant or whose disclosure would reveal information “supplied ” by the appellant but, also contain information not supplied by the appellant. While I do not list them here, I find that portions of these records were not supplied by the appellant for the purposes of section 10(1) and thus do not meet the part 2 test of section 10(1).

[36] Document 98 consists of the appellant’s invoices for the various submittals. The invoices consist of the submittal number, the total value, HST amount and then total invoice amount. The appellant argues that disclosure of its pricing information would be exploited by its competitors to underbid the appellant in future procurement projects. This office has found in past orders that pricing information contained in contracts do not qualify as having been “supplied” for the purposes of section 10(1). Instead, this type of information is characterized as being mutually generated and the product of negotiation. In this case, the invoiced pricing is not found in a contract, but in the invoice which relates to a contract.

[37] In Order MO-2787-I, Adjudicator Cathy Hamilton considered whether invoices between an affected party and the City of Dryden (the city) were “supplied in confidence” for the purpose of section 10(1). The city argued that the invoice was a document created and furnished by a third party over which the city had no input and thus cannot be said to be the product of negotiation. The affected party argued that the invoice was directly supplied by it to the city and that disclosure of the information would permit the accurate inference to be made with respect to the underlying non-negotiated confidential information.

[38] In finding that the invoice did not contain information supplied by the affected party to the city, Adjudicator Hamilton reviewed Orders MO-2115 and MO-2715. In Order MO-2115, Adjudicator Diane Smith considered whether invoices submitted by an affected party to the City of Windsor in relation to the disposal and treatment of the City of Windsor’s sewage sludge was “supplied”. During her review of the invoices, Adjudicator Smith stated:

Record 2 is comprised of invoices from the affected party to the City with the rate charged per metric tonne of sludge cake and the amount charged severed. The number of metric tonnes of sludge cake has been disclosed. Therefore, by revealing the rate, the amount charged can be calculated and vice versa. Schedule “E” provides the formula for the calculation of the rate as it lists unit pricing, including adjustment details. I found above

that the information in Schedule "E" has not been supplied for the purposes of section 10(1). For the same reasons, I conclude that the severed items in Record 2, the invoice amounts and rate charged per metric tonne, as calculated by the formula set out in Schedule "E", has not been supplied, as well.¹⁷

[39] Adjudicator Hamilton reviewed Order MO-2715, where Assistant Commissioner Brian Beamish considered an appeal from a request for the unit costs, estimated costs and item costs in two schedules of the contract between the city and the affected party and the invoices seeking payment from the affected party to the city. In finding that section 10(1) did not apply, the Assistant Commissioner found that neither the pricing information nor the invoices were supplied to the city by the affected party for the purposes of section 10(1) as they were the products of negotiation between the city and the affected party.

[40] Finally, in finding that the invoices were not supplied by the affected party to the City of Dryden, Adjudicator Hamilton states:

Applying the reasoning taken by Assistant Commissioner Beamish and Adjudicator Smith, I find that the progress claims, invoices and emails are a product of negotiation between the city (and its agent, the consultant) and the affected party. I do not agree with the city that these records were simply supplied by the affected party to the city without any input from the city, especially given the fact that the city is paying the affected party to complete the project in accordance with the terms of a negotiated construction contract. Further, it is evident from some of the email communications that negotiation was ongoing between the city and the affected party in relation to cost issues as they arose. I also do not agree with the affected party that these records would permit accurate inferences to be made with respect to underlying non-negotiated confidential information, such as its construction methodologies.

Consequently, I find that these records were not supplied to the city within the meaning of section 10(1)¹⁸.

[41] Adjudicator Hamilton finds that the invoices would also fail on the "in confidence" requirement in part two. Adjudicator Hamilton found that the affected party had not provided sufficient evidence to establish that the invoices were provided in confidence. She states, at paragraph 156:

There is no notation on the invoices that indicate that they are to be kept confidential. While the lack of such a notation is not necessarily fatal to a

¹⁷ Order MO-2115, page 14.

¹⁸ Order MO-2787-I, page 37.

claim of confidentiality, in the circumstances of this appeal, despite the assertions of the affected party, it leads me to the conclusion that the invoices were not submitted to the city on the basis that they confidential and to be kept confidential.

[42] I agree with Adjudicator Hamilton's analysis and rationale with respect to invoices and apply it here.

[43] Document 98 consists of four invoices. I find that the information on the invoices was not supplied by the appellant to the region and instead was negotiated information. In particular, I find that the price for work completed listed on the invoice is information that would have been negotiated between the region and the appellant and thus does not meet the "supplied" requirement in section 10(1). Moreover, I find that disclosure of this information would not disclose the non-negotiated information supplied by the appellant to the region. Lastly, I find that the appellant has not established that the invoices were provided to the region in confidence, either explicit or implicit. Similar to the approach taken in Order MO-2787-I, the invoices do not contain a notation about confidentiality; nor does the appellant indicate in their representations that their pricing information was confidential. I find that Document 98 does not meet part 2 of the test for the application of section 10(1).

[44] As section 10(1) only applies to information supplied by a third party to an institution and the above records do not meet the "supplied" component, I find that these records are not exempt under section 10(1). As no other discretionary exemption has been claimed and no other mandatory exemption applies, these records should be disclosed to the requester.

"In confidence" finding

[45] I will now consider whether the appellant supplied the information "in confidence". The appellant submits that some of the records, specifically emails originating with the appellant, contained an explicit notice prohibiting copying or distributing the information to anyone other than the intended recipient. The appellant further submits that it was unaware that either Varcon or CH2M Hill was providing its commercial and financial information to the region. However, despite the fact that the appellant would have been aware that its information was being shared with the region throughout the project's lifetime, the appellant does not indicate that it has taken action against or raised any objects with either Varcon or CH2M Hill for disclosure of its information to the region. Nevertheless, I am prepared to find that the appellant had an explicit expectation of confidentiality when it emailed information to Varcon or CH2M Hill.

[46] I further find that the appellant's technical drawings contained in the records also contain an explicit statement as to the confidential nature of the information.

Accordingly, I find that these records were also supplied to the region with a reasonable expectation of confidentiality.

[47] While the remaining records do not contain explicit confidentiality statements, I find that the appellant would have an implicit expectation of confidentiality with respect to the information supplied. Given the nature of the project, I find that the appellant would reasonably expect that its commercial information would be treated in a confidential manner by the region.

[48] With the exception of two records, Documents 248 and 258, I find that the records which the appellant supplied to the region were provided with an explicit or implicit expectation of confidentiality. I find that the appellant has met the second part of the test for the application of section 10(1) for these records and I will proceed to consider whether the appellant has established the required harm in disclosure.

[49] I find that with respect to Documents 248 and 258, the appellant did not have an implicit or explicit expectation of confidentiality. Document 248 is an email chain relating to the appellant's view of the agreement between itself and the region, which the appellant relayed to an individual employed by CH2M Hill. I find that there was no expectation of confidentiality with respect to the information. Record 258 contains general information regarding the pipe installation which is found in a manual. I find that the appellant did not establish that there was an expectation of confidentiality with respect to this information. As these two records do not meet the part 2 test and no additional mandatory exemptions apply and no discretionary exemptions were claimed, they should be disclosed to the requester.

Part 3: harms

[50] The party resisting disclosure must provide detailed and convincing evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.¹⁹

[51] 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 the surrounding circumstances. However, parties should not assume that the harms under section 10(1) are self-evident or can be proven simply by repeating the description of harms in the *Act*.²⁰

¹⁹ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

²⁰ Order PO-2435.

[52] The appellant submits that the harms in subsections (a) and (c), set out above, could reasonably be expected to occur should the region disclose the record to the requester.

Appellant's representations

[53] As stated above, the requester consented to the disclosure of his identity to the appellant, but provided no representations during my inquiry. The appellant identifies the requester as one of its competitors and states that disclosure can reasonably be expected to harm its competitive position and cause it undue loss given the requester's identity.

[54] The appellant submits that it is in the business of supplying a variety of infrastructure products, such as pipelines, bridge components, engineered precast products and storm/sanitary products, and is regularly submitting proposals in response to procurements issued by public agencies, municipalities and contractors in Ontario and other jurisdictions. Disclosure of the records would provide the requester and other competitors with confidential information about its products pricing and specifications, according to the appellant. The requester and other competitors would use this information to prepare their own proposals in future procurement processes. This would prejudice the appellant's competitive position in future procurement processes and contractual negotiations.

[55] The appellant argues that it would also suffer undue loss as disclosure would result in the requester gaining access to its product development information which it invested in. The appellant submits that the requester and other competitors would use the information gleaned from the records to replicate the appellant's products and thus undermine the appellant's chances of successfully competing in future procurement processes. The appellant emphasizes that its losses and any prejudice suffered would not only be limited to Ontario but also other jurisdictions where it competes for procurement projects.

[56] Lastly, the appellant submits that the expectation of harm is not speculative. The appellant argues that the fact that the requester is a competitor gives credence to its position that its business is competitive and the information at issue has value. The appellant states, "It is evident that this request is motivated by [the requester's] desire to obtain a commercial advantage by gaining access to [the appellant's] non-public proprietary business information."

Analysis and finding

[57] The records at issue consist of emails, submittals, drawings and correspondence relating to the region's water main project. The records do not contain the contract

between the region and any of the parties; nor does it contain the appellant's proposal for the project.

[58] Based on the appellant's representations and my review of the records, I find that disclosure of some of the information could reasonably be expected to significantly prejudice its competitive position or result in undue loss to the appellant. I find that disclosure of the appellant's calculations and technical drawings, as well as information about the pipe's construction and manufacture could reasonably be expected to result in undue loss to the appellant as the appellant would have invested resources in these records that describe the design of the pipe. Accordingly, I find the following records, meet the third part of the test under section 10(1) of the *Act*:

Document 9, 10, 11 (in part), 13 (in part), 14 (in part), 15 (in part), 24 (in part), 26 (in part), 37 (in part), 44 (in part), 49 (in part), 66 (in part), 68 (in part), 69, 75 (in part), 76 (in part), 78 (in part), 81 (in part), 88 (in part), 95 (in part), 103 (in part), 106 (in part), 107 (in part), 108 (in part), 110 (in part), 113 (in part), 115 (in part), 116 (in part), 118 (in part), 120 (in part), 121 (in part), 122 (in part), 123 (in part), 127 (in part), 131 (in part), 136 (in part), 137 (in part), 139 (in part), 141, 142 (in part), 147 (in part), 148 (in part), 150 (in part), 152 (in part), 153 (in part), 157 (in part), 158 (in part), 160 (in part), 161 (in part), 163 (in part), 164, 165 (in part), 167 (in part), 169 (in part), 170 (in part), 173 (in part), 174 (in part), 177 (in part), 178 (in part), 179 (in part), 180 (in part), 185 (in part), 194 (in part), 198 (in part), 199 (in part), 208 (in part), 215 (in part), 218 (in part), 225 (in part), 226 (in part), 227 (in part), 228 (in part), 232 (in part), 233 (in part), 236 (in part), 251 (in part), 260 (in part), 263 (in part), 264 (in part), 267 (in part), 269 (in part), 270 (in part), 272 (in part), 275 (in part).

[59] However, I find that disclosure of the remaining records could not reasonably result in prejudice to the appellant's competitive position or result in undue loss to the appellant or undue gain to the appellant's competitors. These records consist of the appellant's responses to various issues surrounding the project or information submitted as part of "a submittal". While these records contain commercial and some technical information, I find that it relates to the appellant's attempts to respond to various complaints by CM2H Hill about the pipe's construction. Many of these records relate to the type of steel used in the fabrication of the pipe and the appellant does not establish how disclosure of this information could be used by its competitors to gain competitive advantage over it, or how the appellant would suffer undue loss from the disclosure of this information.

[60] Accordingly, I find that this information would not aid the appellant's competitors in future procurement proposals or in the development of their products. Furthermore, the appellant did not provide detailed and convincing evidence to establish that

disclosure of this information would either result in prejudice to its competitive position or undue loss or gain. Moreover, it is not evident from the records themselves how this information could be used to the appellant's prejudice or the requester's gain.

[61] A number of the records which contain the examination reports or results of testing conducted on the pipe for the appellant are also not exempt under section 10(1). Again, the appellant has not established that disclosure of the test results for the steel or the pipes could be used by the requester or other competitors to gain a commercial advantage over the appellant. It is not evident to me from the information in these records that the appellant's product development could somehow be reverse engineered or that the information contained therein could be used by the appellant's competitors to improve their own products or to win procurement projects to the appellant's detriment. I find that the harm is not established for these kinds of records and they are not exempt under section 10(1).

[62] Accordingly, with the exception of those records identified above, I find that the remaining records do not meet part three of the test for the application of section 10(1). As the region did not claim discretionary exemptions for these records and no other mandatory exemptions apply to them, they should be disclosed to the requester.

[63] For the information I have found to be exempt under section 10(1), I will now consider whether there exists a compelling public interest in the disclosure of this information which overrides the purpose of the section 10(1) exemption.

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

[64] Section 16 states:

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

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

[66] 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.²¹

Compelling public interest

[67] 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.²² 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.²³

[68] A public interest does not exist where the interests being advanced are essentially private in nature.²⁴ Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.²⁵

[69] The word “compelling” has been defined in previous orders as “rousing strong interest or attention”.²⁶

[70] As stated above, while I sought the requester’s representations, I did not receive any submissions from him. Normally, when information is requested about an infrastructure project for an institution, the public interest in the information relates to accountability for the expenditure of public funds. In this case, I have not been presented with this argument. Furthermore, the requester has identified himself as one of the appellant’s competitors and thus his interest in the records appears to be a private interest and not a public one. Lastly, based on the records I have ordered disclosed, including the pricing information in Document 98, I find that disclosure of the information that I have withheld, would not serve the purpose of enlightening the citizenry on the region’s activities.

[71] Accordingly, as I am not able to find a compelling public interest in the disclosure of the records at issue, I find that section 16 does not apply.

²¹ Order P-244.

²² Orders P-984 and PO-2607.

²³ Orders P-984 and PO-2556.

²⁴ Orders P-12, P-347 and P-1439.

²⁵ Order MO-1564.

²⁶ Order P-984.

ORDER:

1. I uphold the region's decision to disclose some of the records to the requester by providing him with a copy of the records, in accordance with the information that I have highlighted on the records accompanying the region's order by **January 12, 2015** but not before **January 5, 2015**. To be clear, the highlighted information **should not** be shared with the requester.
2. I order the region to withhold the remaining records from disclosure.

Original Signed By:
Stephanie Haly
Adjudicator

December 2, 2014

APPENDIX

INDEX OF RECORDS CATEGORIZED BY THE APPELLANT

| Document number | Page Number | Record Description | Category | Finding |
|-----------------|-------------|---|----------|-------------------|
| 1 | 1 – 6 | Email and attached letter re: terms and conditions of acceptance of CPP | 1 | Disclose |
| 2 | 7 – 9 | Email and attached letter re: pipe handling instructions | 1 | Disclose |
| 3 | 10 – 11 | Email and stop work order re: installation methods of pipe installation | 5 | Disclose |
| 4 | 12 – 14 | Email and attachment re: timeline of issues | 1 | Disclose |
| 5 | 15 – 16 | Varcon letter re: response to Feb. 17 letter | 2 | Disclose |
| 6 | 17 – 27 | CH2M letter Varcon re: pipe installation issues with pictures | 1 | Disclose |
| 7 | 28 | Varcom email to CH2M re: Pipe Changes Response | 1 | Disclose |
| 8 | 29 – 30 | Letter from appellant to Varcon Re: Pipe installation | 2 | Disclose |
| 9 | 31 – 32 | Letter from appellant to Varcon re: Joint gap calculation | 3 | Withhold |
| 10 | 33 – 34 | Letter from appellant to Varcon re: joint field modification detail | 3 | Withhold |
| 11 | 35 – 37 | Letter from CH2M to Varcon re: CPP Compliance concerns –May 9/12 | 1 | Withhold, in part |
| 12 | 38 – 40 | Abbreviated timeline – summary of main issues | 6 | Disclose |
| 13 | 41 – 48 | Visual examination report – Aug. 20/12 with diagrams | 1 | Withhold, in part |
| 14 | 49 – 57 | Visual Examination Report – July 3, 2012 | 1 | Withhold, in part |
| 15 | 58 – 67 | Visual Examination Report – | 1 | Withhold, in |

| | | | | |
|----|-----------|--|---|-------------------|
| | | Oct. 11/12 | | part |
| 16 | 68 – 77 | Stop Work Order #2 – June 28/12 letter | 5 | Disclose |
| 17 | 78 – 79 | Letter RE: Pipe Modification concerns | 1 | Disclose |
| 18 | 80 – 81 | Letter re: pipe installation | 1 | Disclose |
| 19 | 82 – 83 | Email re: summary of outstanding items | 2 | Disclose |
| 20 | 84 – 85 | Weekly summary of work | 1 | Disclose |
| 21 | 86 – 87 | Follow up on email re: outstanding responses | 1 | Disclose |
| 22 | 88 – 89 | Letter re: terms and conditions for the acceptance of CPP | 1 | Disclose |
| 23 | 90 | Email re: costs associated with water for testing | 1 | Disclose |
| 24 | 91 – 98 | Visual Inspection Report – May 8, 2012 | 1 | Withhold, in part |
| 25 | 99 | Pipe issues | 1 | Disclose |
| 26 | 100 – 107 | Visual Examination Report May 15, 2012 | 1 | Withhold, in part |
| 27 | 108 – 113 | Request for clarification on pipe handling | 1 | Disclose |
| 28 | 114 | Stop Work Order – June 20, 2012 | 5 | Disclose |
| 29 | 115 – 118 | Email and attachment re: pipe QA/QC documentation | 1 | Disclose |
| 30 | 119 | Email re: cement lining repairs | 1 | Disclose |
| 31 | 120 – 121 | Email re: acceptance of terms and conditions | 1 | Disclose |
| 32 | 122 – 125 | Emails re: CPP warranty | 1 | Disclose |
| 33 | 126 – 129 | Letter re: Terms and conditions of the acceptance of the CPP | 2 | Disclose |
| 34 | 130 – 136 | Emails re: CPP warranty | 1 | Disclose |
| 35 | 137 – 143 | Emails re: terms and conditions for the acceptance of | 1 | Disclose |
| 36 | 144 – 147 | Emails re: stop work order #2 | 1 | Disclose |
| 37 | 148 – 151 | Emails re: tie rods | 2 | Withhold, in part |

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|----|-----------|--|---|-------------------|
| 38 | 152 – 158 | Emails re: Hanlan feedermain temporary AFO installation update | 1 | Disclose |
| 39 | 159 – 161 | Emails re: lakefront promenade schedule | 1 | Disclose |
| 40 | 162 – 164 | Emails re: arranging meeting with appellant | 1 | Disclose |
| 41 | 165 – 167 | Emails re: pipe changes | 2 | Disclose |
| 42 | 168 – 179 | Emails re: warranty letter drafts | 2 | Disclose |
| 43 | 180 – 190 | Emails re: terms and conditions for acceptance of CPP | 1 | Disclose |
| 44 | 191 – 194 | Emails re: tie rods | 2 | Withhold, in part |
| 45 | 195 | Email re: submittal 056 | 1 | Disclose |
| 46 | 196 – 197 | Email re: weekly activity report | 1 | Disclose |
| 47 | 198 – 200 | Emails re: warranty letter draft | 2 | Disclose |
| 48 | 201 | Emails re: cement lining repairs | 1 | Disclose |
| 49 | 202 – 214 | Emails re: concrete base slabs | 2 | Withhold, in part |
| 50 | 215 – 223 | Emails re: critical review items | 2 | Disclose |
| 51 | 224 – 240 | Varcon submittal 060 | 3 | Disclose |
| 52 | 241 – 243 | Emails re: stop work order #2 | 2 | Disclose |
| 53 | 244 – 247 | Emails re: terms and conditions for the acceptance of | 1 | Disclose |
| 54 | 248 – 250 | Emails and attachment re: appellant certificate | 6 | Disclose |
| 55 | 251 | Email re: pipe damage during welding | 1 | Disclose |
| 56 | 252 – 254 | Emails re: CPP warranty – pressure testing | 1 | Disclose |
| 57 | 255 – 257 | Letters re: terms and conditions for the acceptance of the | 2 | Disclose |
| 58 | 258 – 269 | Emails and attachments re: acceptance of terms and | 1 | Disclose |

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| | | conditions Nov 15 | | |
| 59 | 270 – 273 | Emails and attachment re: outstanding pipe issues | 1 | Disclose |
| 60 | 274 – 278 | Email and attachment re: remaining outstanding issues | 2 | Disclose |
| 61 | 279 – 281 | Emails re: stop work order #2 – notching | 1 | Disclose |
| 62 | 282 – 283 | Emails re: Hanlan contract 1 south AFO | 1 | Disclose |
| 63 | 284 – 291 | Emails re: Hanlan CPP Resolution | 1 | Disclose |
| 64 | 292 – 293 | Emails re: pressure test | 1 | Disclose |
| 65 | 294 – 295 | Emails re: damage during welding | 1 | Disclose |
| 66 | 296 - 298 | Varcon submittal | 1 | Withhold, in part |
| 67 | 299 – 302 | Emails and attachment re: pressure testing procedures | 6 | Disclose |
| 68 | 303 – 305 | Letters re: pipe issues | 2 | Withhold, in part |
| 69 | 306 – 307 | Letter re: joint gap | 3 | Withhold |
| 70 | 308 – 312 | Varcon letter and appellant response: outstanding pipe issues | 2 | Disclose |
| 71 | 313 – 332 | Appellant letter and supporting test certificates re: issues | 2 | Disclose |
| 72 | 333 | Stop work order #2 | 5 | Disclose |
| 73 | 334 – 338 | Letter re: terms and conditions for the acceptance of CPP | 2 | Disclose |
| 74 | 339 | Varcon Letter re: outstanding pipe issues | 1 | Disclose |
| 75 | 340 – 349 | CH2M letter and diagrams: joint repairs | 3 | Withhold, in part |
| 76 | 350 – 361 | Submittal #064 and attachments | 3 | Withhold, in part |
| 77 | 362 – 365 | CH2M letter re: remaining outstanding issues | 1 | Disclose |
| 78 | 366 - 369 | CH2M Letter re: pipe QA/QC documentation | 3 | Withhold, in part |
| 79 | 370 – 372 | Submittal #067 | 2 | Disclose |
| 80 | 373 – 375 | CH2M letter re: outstanding | 1 | Disclose |

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|-----|-----------|---|---|-------------------|
| | | issues | | |
| 81 | 376 – 378 | CH2M letter re: Hanlan feedermain – May 9, 2012 | 1 | Withhold, in part |
| 82 | 379 – 380 | CH2M letter re: pipe QA/QC June 22/12 | 1 | Disclose |
| 83 | 381 – 382 | CH2M letter re: pipe QA/QC June 25/12 | 1 | Disclose |
| 84 | 383 – 384 | Email re: Hanlan action items | 2 | Disclose |
| 85 | 385 – 386 | CH2M letter re: pipe installation letter from appellant June 20/12 | 1 | Disclose |
| 86 | 387 – 388 | CH2M letter re: pipe handling instructions | 1 | Disclose |
| 87 | 389 – 390 | Email re: certification of pipe placement methodology/stop work order | 5 | Disclose |
| 88 | 391 – 393 | Hanlan Feedermain contract – May 9/12 | 1 | Withhold, in part |
| 89 | 394 – 404 | CH2M letter and attached photos – Feb. 24/12 | 1 | Disclose |
| 90 | 405 – 406 | CH2M letter re: field changes – Feb. 16/12 | 1 | Disclose |
| 91 | 407 – 409 | CH2M letter – Nov. 15/12 | 1 | Disclose |
| 92 | 410 – 411 | CH2M letter – Nov. 9/12 | 1 | Disclose |
| 93 | 412 – 413 | CH2M letter – Sept. 26/12 | 1 | Disclose |
| 94 | 414 – 415 | CH2M letter – Aug. 17/12 | 1 | Disclose |
| 95 | 416 – 418 | CH2M letter – Aug. 2/12 | 1 | Withhold, in part |
| 96 | 419 – 420 | CH2M letter – July 23/12 | 1 | Disclose |
| 97 | 421 – 423 | CH2M letter re: remaining outstanding items with CPP | 1 | Disclose |
| 98 | 424 – 427 | Appellant invoice | 4 | Disclose |
| 99 | 428 – 429 | Stop work order | 5 | Disclose |
| 100 | 430 – 433 | RFI #006 | 1 | Disclose |
| 101 | 434 – 437 | RFI #008 | 1 | Disclose |
| 102 | 438 – 440 | RFI #010 | 1 | Disclose |
| 103 | 441 – 446 | RFI #007 | 1 | Withhold, in part |
| 104 | 447 – 448 | RFI #011 | 1 | Disclose |
| 105 | 449 – 456 | RFI #014/15 | 1 | Disclose |
| 106 | 457 – 525 | Submittal #001 a & b and | 3 | Withhold, in |

| | | | | |
|-----|-------------|--|---|-------------------|
| | | review of submittal and drawings | | part |
| 107 | 526 – 546 | Review of submittal 001b | 3 | Withhold, in part |
| 108 | 547 – 568 | Submittal #006 and review | 1 | Withhold, in part |
| 109 | 569 – 581 | Submittal #019 and review | 6 | Disclose |
| 110 | 582 – 621 | Submittal #021 and review | 3 | Withhold, in part |
| 111 | 622 – 630 | Submittal #033 and review | 5 | Disclose |
| 112 | 631 – 673 | Submittal #038 and review (and invoices) | 6 | Disclose |
| 113 | 674 – 694 | Submittal #048 and review | 3 | Withhold, in part |
| 114 | 695 – 704 | Submittal #050 and review | 5 | Disclose |
| 115 | 705 – 835 | Submittal #055a and review (drawings and calculations) | 3 | Withhold, in part |
| 116 | 836 – 918 | Submittal #056 and review | 3 | Withhold, in part |
| 117 | 919 – 942 | Installation and operation of computer program | 6 | Disclose |
| 118 | 943 – 947 | Submittal #056 – 2 nd portion | 3 | Withhold, in part |
| 119 | 948 – 971 | Installation and operation of computer program | 6 | Disclose |
| 120 | 972 – 1102 | Submittal #056 – 3 rd portion | 3 | Withhold, in part |
| 121 | 1103 – 1135 | Submittal #057 and review | 3 | Withhold, in part |
| 122 | 1136 – 1142 | Submittal #060 and review | 3 | Withhold, in part |
| 123 | 1143 – 1165 | Submittal #064 and review | 3 | Withhold, in part |
| 124 | 1166 – 1172 | Submittal #067 and review | 6 | Disclose |
| 125 | 1173 – 1184 | Email and attached letter and photos | 1 | Disclose |
| 126 | 1185 – 1191 | Email and attachment: progress meeting | 1 | Disclose |
| 127 | 1192 – 1197 | Emails and attached letter re: CPP – Mar. 13/12 | 2 | Withhold in part |
| 128 | 1198 – 1199 | Letter re: joint gap; letter dated Mar. 6 | 1 | Withhold |
| 129 | 1200 – 1210 | Duplicate of Document 125 | 1 | Disclose |

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|-----|-------------|--|---|-------------------|
| 130 | 1211 – 1229 | Email re: example calculations | 1 | Disclose |
| 131 | 1230 – 1233 | Email and letter re: outstanding pipe issues – July 31/12 | 1 | Withhold, in part |
| 132 | 1234 – 1239 | Emails re: CPP warranty | 1 | Disclose |
| 133 | 1240 – 1243 | Letter re: remaining outstanding items – July 9/12 | 1 | Disclose |
| 134 | 1244 – 1250 | Emails re: terms and conditions | 1 | Disclose |
| 135 | 1251 – 1260 | Emails and attachment | 2 | Disclose |
| 136 | 1261 – 1270 | Submittal #055 | 3 | Withhold, in part |
| 137 | 1271 – 1286 | Submittal #001 | 3 | Withhold, in part |
| 138 | 1287 – 1289 | Emails and attached letters re: damaged pipe | 2 | Disclose |
| 139 | 1290 – 1295 | Emails re: response from appellant | 2 | Withhold, in part |
| 140 | 1296 – 1298 | Emails re: Pipe QA/QC concerns | 1 | Disclose |
| 141 | 1299 – 1300 | Email re: additional review of submittal #055 | 1 | Withhold |
| 142 | 1301 – 1304 | Letter re: remaining outstanding letters – July 31/12 | 1 | Disclose, in part |
| 143 | 1305 – 1309 | Emails and attached letters re: terms and conditions for acceptance of CPP | 1 | Disclose |
| 144 | 1310 – 1312 | Emails and attachments re: pipe issues | 1 | Disclose |
| 145 | 1313 – 1315 | RFQ #006 | 1 | Disclose |
| 146 | 1316 – 1320 | Email and letter re: pipe issues | 1 | Disclose |
| 147 | 1321 – 1325 | Email and attachments – timelines and issues | 2 | Withhold, in part |
| 148 | 1326 – 1336 | Letter dated Mar.6/12 – response to Feb. 24 letter | 1 | Withhold, in part |
| 149 | 1337 | Varcon letter re: pipe changes | 2 | Disclose |
| 150 | 1338 – 1339 | Appellant response Mar. 7 | 2 | Withhold, in part |

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|-----|-------------|---|---|-------------------|
| 151 | 1340 – 1343 | Appellant email: joint gap – May 1/12 | 3 | Withhold |
| 152 | 1344 – 1349 | CH2M reply letter and attachments May 9 | 1 | Withhold, in part |
| 153 | 1350 – 1360 | Welding report Oct. 11 | 3 | Withhold, in part |
| 154 | 1361 – 1363 | Welding report Sept. 10 | 6 | Disclose |
| 155 | 1364 | Email re: welding reports | 1 | Disclose |
| 156 | 1365 – 1366 | Letter re: contract | 1 | Disclose |
| 157 | 1367 – 1371 | Submittal #064 | 3 | Withhold, in part |
| 158 | 1372 – 1384 | Submittal #067 | 3 | Withhold, in part |
| 159 | 1385 – 1387 | Contract | 1 | Disclose |
| 160 | 1388 – 1393 | Submittal #064 | 6 | Withhold, in part |
| 161 | 1394 – 1406 | Submittal #067 | 3 | Withhold, in part |
| 162 | 1407 – 1410 | Sept. 26/12 Letter | 1 | Disclose |
| 163 | 1411 – 1413 | CH2M response letter | 1 | Withhold, in part |
| 164 | 1414 – 1415 | Appellant letter May 1 | 3 | Withhold |
| 165 | 1416 – 1420 | Varcon appellant letter response, Mar. 13/12 and Apr. 18/12 | 2 | Withhold, in part |
| 166 | 1421 – 1423 | CH2M letter | 1 | Disclose |
| 167 | 1424 – 1494 | Submittal #001 – July 31/12 | 3 | Withhold, in part |
| 168 | 1495 – 1499 | Email and attachment – June 28/12 | 1 | Disclose |
| 169 | 1500 – 1506 | Letters | 1 | Withhold, in part |
| 170 | 1507 – 1511 | Email re: Hanlan action items – Aug. 2/12 | 2 | Withhold, in part |
| 171 | 1512 – 1514 | Email re: outstanding pipe issues | 1 | Disclose |
| 172 | 1515 – 1519 | Email and attachment | 2 | Disclose |
| 173 | 1520 – 1528 | Email and attachment – July 9/12 | 1 | Withhold, in part |
| 174 | 1529 – 1544 | Email re: stop work order form (June 28/12 and May 9/12) | 5 | Withhold, in part |
| 175 | 1545 – 1546 | Email re: Hanlan action | 2 | Disclose |

| | | items | | |
|-----|-------------|--|---|-------------------|
| 176 | 1547 – 1552 | Email re: terms and conditions | 1 | Disclose |
| 177 | 1553 – 1575 | Email and attachment (Feb. 24/12 and Feb. 16/12) | 2 | Withhold, in part |
| 178 | 1576 – 1586 | Transmittal#056 | 3 | Withhold, in part |
| 179 | 1587 – 1597 | Transmittal #001 | 3 | Withhold, in part |
| 180 | 1598 – 1612 | Review of submittal | 3 | Withhold, in part |
| 181 | 1613 – 1615 | Email – Sept. 26/12 letter | 1 | Disclose |
| 182 | 1616 – 1619 | Email - Nov. 15/12 letter | 1 | Disclose |
| 183 | 1620 – 1623 | Email | 1 | Disclose |
| 184 | 1624 – 1644 | Email and test results | 6 | Disclose |
| 185 | 1645 – 1652 | Email | 6 | Withhold, in part |
| 186 | 1653 – 1670 | Hanlan Site Meeting #10 | 1 | Disclose |
| 187 | 1671 – 1689 | Hanlan Site Meeting#11 | 1 | Disclose |
| 188 | 1690 – 1706 | Hanlan Site Meeting #12 | 1 | Disclose |
| 189 | 1707 – 1725 | Hanlan Site Meeting #13 | 1 | Disclose |
| 190 | 1726 – 1744 | Hanlan Site Meeting #15 | 1 | Disclose |
| 191 | 1745 – 1762 | Hanlan Site Meeting #16 | 1 | Disclose |
| 192 | 1763 – 1780 | Hanlan Site Meeting #17 | 1 | Disclose |
| 193 | 1781 – 1785 | Emails | 6 | Disclose |
| 194 | 1786 – 1789 | Email | 3 | Withhold, in part |
| 195 | 1790 – 1793 | Email | 1 | Disclose |
| 196 | 1794 – 1796 | Email | 1 | Disclose |
| 197 | 1797 – 1805 | Emails | 1 | Disclose |
| 198 | 1806 – 1808 | Letter Aug. 2/12 | 1 | Withhold, in part |
| 199 | 1809 – 1858 | Emails – July 9/12 letter | 1 | Withhold, in part |
| 200 | 1859 - 1861 | Email | 1 | Disclose |
| 201 | 1862 – 1864 | Email | 1 | Disclose |
| 202 | 1865 – 1867 | Email | 1 | Disclose |
| 203 | 1868 – 1876 | Varcon contract change | 5 | Disclose |
| 204 | 1877 – 1898 | Email | 1 | Disclose |
| 205 | 1899 – 1956 | Email | 1 | Disclose |
| 206 | 1957 – 1958 | Email | 1 | Disclose |
| 207 | 1959 | Email | 1 | Disclose |
| 208 | 1960 – 1965 | Email | 1 | Withhold, in |

| | | | | |
|-----|-------------|---|---|-------------------|
| | | | | part |
| 209 | 1966 – 1979 | Email | 1 | Disclose |
| 210 | 1980 – 2012 | Email | 2 | Disclose |
| 211 | 2013 – 2014 | Letter – Aug. 17/12 | 1 | Disclose |
| 212 | 2015 – 2031 | Emails | 1 | Disclose |
| 213 | 2032 – 2034 | Letter – Aug. 16/12 | 1 | Disclose |
| 214 | 2035 – 2038 | Emails | 1 | Disclose |
| 215 | 2039 – 2044 | Varcon Letter – Aug. 3/12 | 3 | Withhold, in part |
| 216 | 2045 – 2072 | Emails and attachment | 2 | Disclose |
| 217 | 2073 – 2100 | Emails and attachment | 1 | Disclose |
| 218 | 2101 – 2200 | Submittal 001a – Nov. 18/22 and July 11/12 letter | 3 | Withhold, in part |
| 219 | 2201 – 2205 | Remaining outstanding issues – July 11/12 | 2 | Disclose |
| 220 | 2206 – 2209 | Emails – stop work order | 5 | Disclose |
| 221 | 2210 – 2219 | Emails | 1 | Disclose |
| 222 | 2220 – 2227 | Emails | 1 | Disclose |
| 223 | 2228 – 2229 | Emails | 2 | Disclose |
| 224 | 2230 – 2243 | Emails | 1 | Disclose |
| 225 | 2244 – 2286 | Submittal 056c &d | 3 | Withhold, in part |
| 226 | 2287 – 2328 | Submittal 001a review – Nov. 18/11 | 3 | Withhold, in part |
| 227 | 2329 – 2339 | Submittal 001b | 3 | Withhold, in part |
| 228 | 2340 – 2353 | Submittal 021 | 3 | Withhold, in part |
| 229 | 2354 – 2357 | Submittal 033 | 2 | Disclose |
| 230 | 2358 – 2378 | Submittal 038 | 6 | Disclose |
| 231 | 2379 – 2382 | Submittal 050 | 2 | Disclose |
| 232 | 2383 – 2420 | Submittal 055 – June 25/12 | 3 | Withhold, in part |
| 233 | 2421 – 2442 | Submittal 056 – May 1/12 | 3 | Withhold, in part |
| 234 | 2443 – 2445 | Submittal 060 | 2 | Disclose |
| 235 | 2446 – 2450 | Email | 1 | Disclose |
| 236 | 2451 – 2514 | Submittal 045 review | 3 | Withhold, in part |
| 237 | 2515 – 2520 | Email | 1 | Disclose |
| 238 | 2521 – 2522 | Letter Nov. 7/12 | 1 | Disclose |
| 239 | 2523 – 2534 | Emails | 1 | Disclose |
| 240 | 2535 – 2536 | Terms and conditions | 1 | Disclose |

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|-----|-------------|------------------------------|---|-------------------|
| 241 | 2537 – 2538 | Email | 6 | Disclose |
| 242 | 2539 – 2556 | May 24 status meeting | 1 | Disclose |
| 243 | 2557 – 2576 | Email | 6 | Disclose |
| 244 | 2577 – 2597 | Emails | 1 | Disclose |
| 245 | 2598 – 2601 | Emails | 1 | Disclose |
| 246 | 2602 – 2603 | Emails | 1 | Disclose |
| 247 | 2604 – 2606 | Emails | 1 | Disclose |
| 248 | 2607 – 2611 | Emails | 1 | Disclose |
| 249 | 2612 | Emails | 1 | Disclose |
| 250 | 2613 | Email | 1 | Disclose |
| 251 | 2614 – 2624 | Letter Feb. 16/12; Mar. 6/12 | 1 | Withhold, in part |
| 252 | 2625 – 2626 | Email | 1 | Disclose |
| 253 | 2627 – 2628 | Email | 1 | Disclose |
| 254 | 2629 – 2630 | Letter | 1 | Disclose |
| 255 | 2631 – 2632 | Emails | 1 | Disclose |
| 256 | 2633 | Stop work order | 5 | Disclose |
| 257 | 2634 | Pipe handling concerns | 1 | Disclose |
| 258 | 2635 – 2636 | Letter | 1 | Disclose |
| 259 | 2637 – 2646 | Emails | 1 | Disclose |
| 260 | 2647 – 2652 | Email | 3 | Withhold, in part |
| 261 | 2653 – 2655 | Email | 1 | Disclose |
| 262 | 2656 – 2658 | Email | 2 | Disclose |
| 263 | 2659 – 2706 | Email | 3 | Withhold, in part |
| 264 | 2707 – 2724 | Emails | 3 | Withhold, in part |
| 265 | 2725 – 2730 | Email | 2 | Disclose |
| 266 | 2731 – 2753 | Email | 6 | Disclose |
| 267 | 2754 – 2818 | Email | 3 | Withhold, in part |
| 268 | 2819 – 2827 | Email | 2 | Disclose |
| 269 | 2828 – 2858 | Email | 3 | Withhold, in part |
| 270 | 2859 – 2948 | Email | 3 | Withhold, in part |
| 271 | 2949 – 2953 | Email | 2 | Disclose |
| 272 | 2954 – 2962 | Email | 1 | Withhold, in part |
| 273 | 2963 – 2970 | Email | 6 | Disclose |
| 274 | 2971 – 2974 | Email and attachment | 1 | Disclose |
| 275 | 2975 – 2981 | Email | 3 | Withhold, in |

| | | | | |
|-----|-------------|-------|---|----------|
| | | | | part |
| 276 | 2982 – 2987 | Email | 6 | Disclose |
| 277 | 2988 – 2990 | Email | 1 | Disclose |