

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3209

Appeal MA15-3

Toronto Community Housing Corporation

June 26, 2015

Summary: The Toronto Community Housing Corporation (TCHC) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for two corporate by-laws. The TCHC withdrew its reliance on the mandatory third party information exemption in section 10(1) and an affected party, who was notified because disclosure of the records may affect their rights, did not provide representations on this exemption. This decision orders disclosure of the records, less the signatory portions which were removed from the scope of the appeal by the appellant.

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

BACKGROUND:

[1] The Toronto Community Housing Corporation (TCHC) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA or the *Act*) for five corporate by-laws.

[2] The TCHC provided partial access to the responsive records for three of the five corporate by-laws, severing information under the mandatory personal privacy exemption in section 14(1) of the *Act*.

[3] The TCHC provided an affected party with notice under section 21(2) of the *Act* concerning the remaining two corporate by-laws. The TCHC then issued a second

decision relating to these two corporate by-laws, in which it denied access in full, citing sections 10(1) (third party information), and 11(a), (c) and (d) (economic and other interests) of the *Act*.

[4] The requester, now the appellant, appealed the second access decision.

[5] As mediation did not resolve the issues in this appeal, the file was moved to the adjudication stage of the appeal process where an adjudicator conducts an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the TCHC and the affected party seeking their representations. The affected party did not provide representations.

[6] The TCHC provided representations in which it withdrew its reliance on the sections 10(1) and 11 exemptions to all of the information at issue in the records. It did, however, apply the mandatory personal privacy exemption in section 14(1) to the signatory portions of the records. The appellant then advised that she was not seeking access to the signatory portions of the records.

[7] Therefore, the records at issue in this appeal are two 20-page corporate by-laws less the signatory portions.

[8] In this order, I need to determine whether the records, less the signatory portions, are exempt under the mandatory third party exemption in section 10(1) because the TCHC has withdrawn its reliance on the discretionary section 11 exemption.

[9] Section 10(1) states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, 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; or

(d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

[10] Section 10(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions. 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.¹

[11] For section 10(1) to apply, the institution and/or the third party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, 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.

[12] In this appeal, the affected party is the party that resisted disclosure at the request stage. However, it did not provide representations in response to the Notice of Inquiry on the application of the section 10(1) exemption. Based on my review of the records, I find that part 1 of the test has been met as the records contain commercial and financial information about the business of the corporations listed in the records. This type of information has 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.² The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.³

Financial information refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this

¹ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

² Order PO-2010.

³ Order P-1621.

type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.⁴

[13] Despite part 1 of the test being met, in the absence of representations from the affected party, I find that I do not have sufficient evidence to determine that parts 2 and 3 of the test under section 10(1) have been met with respect to the information that the TCHC does not object to disclosure of, being the entire records, less the signatory portions.

[14] Concerning part 3 of the test in particular, the failure of a party resisting disclosure to provide detailed and convincing evidence will not necessarily defeat the claim for the section 10(1) 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*.⁵ In this appeal, the harms under section 10(1) cannot be inferred from a review of the records.

[15] Accordingly as section 10(1) does not apply, I find that the records, which are the two corporate by-laws, less the signatory portions, are not exempt and I will order this information disclosed.

ORDER:

I order the TCHC to disclose the records, less the signatory portions, to the appellant **by August 4, 2015** but not before **July 27, 2015**.

Original signed by: _____
Diane Smith
Adjudicator

_____ June 26, 2015

⁴ Order PO-2010.

⁵ Order PO-2435.