

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3341

Appeal MA15-320

The Regional Municipality of York

August 4, 2016

Summary: This order results from an appeal of an access decision made by the Regional Municipality of York (the region) in response to a request made under the *Municipal Freedom of Information and Protection of Privacy Act*. The request was for records relating to tree removal permits applied for, or issued to, a named company (the third party) in relation to a large tract of land. The region's decision was to grant access to the responsive records in their entirety. The third party appealed the region's decision, claiming the application of the mandatory exemption in section 10(1) (third party information). In this order, the adjudicator finds that the records at issue do not contain the type of information set out in the preamble to section 10(1), and that the first part of the three-part test in section 10(1) is not met. Consequently, the adjudicator finds that the records are not exempt under section 10(1). The region's decision is upheld and the appeal is dismissed.

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

OVERVIEW:

[1] This order disposes of the sole issue raised as a result of an appeal of an access decision made by the Regional Municipality of York (the region) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester's access request was for records relating to archaeology and tree removal permits applied for, or issued to, a named company during a specified time period regarding a large tract of land.

[2] The region identified 11 records that were responsive to the request, and notified the named company (the third party) to seek its position regarding the possible disclosure of the records. The third party did not respond to the region's notification. The region subsequently issued a decision to the requester advising that it was granting access to the records in their entirety.

[3] The third party (now the appellant) appealed the region's decision to this office. During the mediation of the appeal, the appellant provided consent to disclose four records to the requester, and stated its position that the remaining records are exempt from disclosure under the mandatory exemption in section 10(1) (third party information).

[4] The appeal then moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. I provided the region and the appellant with the opportunity to provide representations regarding the possible application of the exemption in section 10(1) by sending them a Notice of Inquiry. Neither party provided representations.¹

[5] For the reasons that follow, I uphold the region's decision to disclose the records in their entirety to the requester, and I dismiss the appeal.

RECORDS:

[6] The records consist of emails, some with maps and/or a photograph attached, a master environmental servicing plan, and a letter.

DISCUSSION:

[7] As previously stated, the sole issue in this appeal is whether the mandatory exemption in section 10(1) applies to the records. 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;

¹ Staff of this office contacted the appellant following the issuance of a Notice of Inquiry to determine if it was prepared to submit representations. The appellant did not respond. The region advised staff of this office that it was not going to submit representations.

(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.

[8] Section 10(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions.² 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.³

[9] 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.

Part 1: type of information

[10] In the absence of representations from the appellant and the region, my finding regarding the type of information contained in the records is based on my detailed review of the records themselves. I find that the records do not contain any of the types of information that is listed in the preamble of section 10(1).

[11] The records consist of:

- Email communications between the appellant and the region, including attached photographs and maps;
- Email communications between the appellant and consultants, including an attached map;

² *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.*).

³ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

- Email communications between a consultant and a provincial ministry;
- A letter sent to the region by a consultant; and
- A master environmental servicing plan prepared for the appellant.

[12] The records were provided to the region by the appellant in support of the appellant's application to obtain tree removal permits for a large tract of land. It appears from my review of the records that the region required the appellant to provide information to it regarding a number of issues, including archaeology, water, trees, vegetation, fish, birds, other species and buildings as part of the tree removal permit application process.

[13] The records consist of the appellant's response to the region's requirements for the tree removal permits, and set out factual information about all of the issues listed above, including the possible impact of tree removal in the area that is the subject matter of the request.

[14] In my view, the information that is set out in these records does not contain trade secrets, technical information, commercial information, financial information, scientific information or labour relations information as discussed and defined in prior orders of this office.

[15] With respect to trade secrets, past orders of this office have found that trade secrets include a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which: is, or may be used in a trade or business; is not generally known in that trade or business; has economic value from not being generally known; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.⁴ In my view, the records do not contain any information which could be construed as a trade secret for the purpose of section 10(1).

[16] I also find that the information at issue does not consist of commercial information, as it does not relate to the buying, selling or exchange of merchandise or services, as has been found in past orders of this office. Similarly, the information in the records at issue does not qualify as being financial information, because it does not relate to money and its use or distribution, nor does it refer to specific financial data such as cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.⁵

[17] I further find that the records do not contain any type of labour relations information, including information about work conditions, collective bargaining, labour disputes or negotiations.⁶ In addition, I find that the records do not contain technical information which has been defined as information belonging to an organized field or

⁴ Order PO-2010.

⁵ *Ibid.*

⁶ Orders P-1540 and P-653.

knowledge that would fall under the general categories of applied sciences or mechanical arts, including information describing the construction, operation or maintenance of a structure, process, equipment or thing.⁷

[18] The remaining type of information set out in the preamble to section 10(1) is scientific information, which is information belonging to an organized field of knowledge in the natural, biological or social sciences, or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of a specific hypothesis or conclusion and be undertaken by an expert in the field.⁸ While the records contain factual information concerning nature, such as water, vegetation, trees, birds and other species, and the possible impact of tree removal on them, I find that this information does not consist of the observation and testing of a specific scientific hypothesis or conclusion. The records simply convey factual information about the contents of the large tract of land that is the subject matter of the request, and the possible impact of tree removal to various plant and animal species. Therefore, I find that the records do not contain scientific information for the purpose of section 10(1) of the *Act*.

[19] In sum, I find that the records do not contain the type of information that is set out in the preamble to section 10(1) of the *Act* and that, consequently, the first part of the three-part test in section 10(1) has not been met. As all three parts of the test must be met in order for a record to be exempt from disclosure under section 10(1), I find that it is not necessary to consider parts two and three of the test, and that the records at issue are not exempt from disclosure. I note that, in the absence of representations from the appellant, my findings are based on my detailed review of the request, the appellant's appeal letter, and the records themselves.

ORDER:

1. I uphold the region's decision and dismiss the appeal.
2. I order the region to disclose the records to the requester by **September 9, 2016** but not before **September 2, 2016**.
3. I reserve the right to require the region to provide me with copies of the records it discloses to the requester.

Original Signed by: _____

Cathy Hamilton
Adjudicator

August 4, 2016 _____

⁷ Order PO-2010.

⁸ *Ibid.*