Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3372

Appeal MA15-82

City of Markham

October 31, 2016

Summary: The appellant is seeking specific pricing information in invoices that a waste management company sent to the City of Markham for services rendered. This information is expressed differently in each invoice but may include a description of each specific type of waste collection service that the waste management company provided to the city and the unit price, quantity, and specific dollar amount charged for each of these services on a particular date. The city withheld this information under the mandatory exemption in section 10(1) (third party information) of the *Act*. In addition, the waste management company objects to the disclosure of this information. In this order, the adjudicator finds that this information is not exempt from disclosure under section 10(1) and orders the city to disclose it to the appellant.

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

Orders Considered: PO-2806, MO-3258 and PO-2435.

OVERVIEW:

[1] The City of Markham (the city) and a private waste management company are parties to a contract under which the company provides waste management services, such as garbage, recycling and organic waste collection, to the city. The company bills the city on a periodic basis for services rendered by sending the city an invoice. After reviewing the invoice, the city then issues a cheque to the company.

[2] The types of information in each invoice vary but may include identifiable locations, a general description of the services rendered on particular dates (e.g., municipal organics), and "site totals" in dollar amounts, including the GST that was payable. At the end of each invoice is the grand total in a dollar amount that the company billed the city for all the services rendered during the specific time frame covered by the invoice.

[3] Each invoice also contains more specific pricing information. This information is expressed differently in each invoice but may include a description of each specific type of waste collection service that the waste management company provided to the city and the unit price,[1] quantity, and total dollar amount charged for each of these services on a particular date.

[4] In late 2013, the appellant submitted an access request under the *Municipal Freedom of Information and Protection of Privacy Act* to the city for "invoices and payments made by the [city] to [a waste management company] in the years 2010-2011." In response, the city located 572 records (1,977 pages), which include copies of the company's invoices to the city and the cheques that the city sent to the company to pay the invoices.

[5] After notifying and seeking representations from the waste management company, the city decided to provide the appellant with partial access to the records. In particular, it fully disclosed the cheques to the appellant and some information in the invoices, including identifiable locations, a general description of the services rendered on particular dates, "site totals" in dollar amounts, including the GST that was payable, and the grand total that the company billed the city for all the services rendered during the specific time frame covered by the invoice. However, the city withheld the more specific pricing information in each invoice under the mandatory exemption in section 10(1) (third party information) of the *Act*. The appellant did not appeal the city's access decision.

[6] About a year later, however, the appellant filed a new access request with the city and specified that he was seeking the information that the city had withheld from the waste management company's invoices that was the subject of his earlier access request in 2013.

[7] The city issued a decision letter to the appellant which confirmed that he was

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[1] The *Oxford Dictionary of Business and Management* (5 ed.) defines "unit price" as the price paid per unit of item purchased or charged per unit of product sold. In this appeal, the unit prices in the invoices are generally for specific services rendered.

seeking access to the information that the city had severed from the invoices that it had disclosed to him in response to his previous access request. It reiterated that this information is exempt under section 10(1) of the *Act* and attached a copy of its previous decision letter. The appellant appealed the city's new access decision to this office, which assigned a mediator to assist the parties in resolving the issues in this appeal.

[8] During mediation, the appellant claimed that there is a compelling public interest in disclosing the specific pricing information in the invoices. Consequently, the public interest override in section 16 of the *Act* is at issue.

[9] This appeal was not resolved during mediation and was moved to adjudication for an inquiry. I sought and received representations from the city, the waste management company and the appellant. I note that the appellant's representations generally do not address the issues in this appeal but instead ask a series of questions about whether the waste management company is meeting its obligations under its contract with the city.

[10] In this order, I find that the specific pricing information in the invoices is not exempt from disclosure under section 10(1) of the *Act*. I order the city to disclose this information to the appellant.

RECORDS:

[11] The information at issue in this appeal is specific pricing information in the invoices that the waste management company sent to the city. Depending on the invoice, this information may include a description of each specific type of waste collection service that the waste management company provided to the city and the unit price, quantity, and total dollar amount charged for each of these services on a particular date.

[12] The city located 572 records (1,977 pages) but only provided the IPC with 155 pages of sample records, because it generally severed the same types of information from each invoice. These invoices span a time period covering late 2009 to late 2011.

ISSUES:

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

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

DISCUSSION:

THIRD PARTY INFORMATION

A. Does the Mandatory Exemption at Section 10(1) Apply to the Specific Pricing Information in the Records?

[13] Both the city and waste management company claim that the specific pricing information in the invoices is exempt from disclosure under section 10(1) of the *Act*. This mandatory exemption 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,
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> > (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
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> > (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;
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> > (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
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> > (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.

[14] 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

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[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.*).

parties that could be exploited by a competitor in the marketplace.[3]

[15] Where an institution refuses access to a record or part of a record, the burden of proof that the record or part of the record falls within one of the specified exemptions in the *Act* lies upon the institution.[4] Third parties who rely on the exemption provided by section 10(1) of the *Act*, share with the institution the onus of proving that this exemption applies to the record or parts of the record.[5] Consequently, in the circumstances of this appeal, both the city and the waste management company share the burden of proving that the specific pricing information in the invoices is exempt from disclosure under section 10(1).

[16] For section 10(1) to apply, the city and the waste management company 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;

2. the information must have been supplied to the city 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

[17] As noted above, to satisfy part 1 of the section 10(1) test, the city and the waste management company must show that the invoices reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information.

[18] For the reasons that follow, I find that the specific pricing information in the invoices reveal commercial and financial information. Previous IPC orders have defined those terms as follows:

> "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.[6] The fact that a record

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[3] Orders PO-1805, PO-2018, PO-2184 and MO-1706.
[4] Section 42 of the *Act*.
[5] Order P-203.
[6] Order PO-2010.

> might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.[7]
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> "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.[8]

[19] Both the city and the waste management company submit that the invoices reveal commercial and financial information. The city states that the redacted information in the invoices is both commercial and financial information because it relates to the selling of services and the corresponding unit prices for the services provided to the city by the waste management company. It submits that the IPC previously found in Order MO-1536-F that unit pricing qualifies as both commercial and financial information.

[20] The waste management company states that the IPC found in Order MO-1536-F that invoices submitted to the Region of Peel in relation to an infrastructure project contained both commercial and financial information. It states that based on the accepted definitions of these terms and prior IPC decisions, the payment information found in the invoices in this appeal fall within those two categories of information.

[21] As noted above, the city and the waste management company are parties to a contract under which the company provides waste management services, such as garbage, recycling and organic waste collection, to the city. The specific pricing information in the invoices relates to the buying and selling of waste management services between the city and the company. Consequently, I find that this information qualifies as "commercial information." However, this pricing information also relates to money and its use and distribution and refers to specific data, because some of it is expressed in quantities and specific dollar amounts. Consequently, I find that the information also qualifies as "financial information."

[22] In short, I find that the specific pricing information in the invoices qualify as both commercial and financial information. Part 1 of the section 10(1) test has therefore been met.

Part 2: Supplied in Confidence

[23] To satisfy part 2 of the section 10(1) test, the city and the waste management

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[7] Order P-1621.
[8] Order PO-2010.

company must show that the specific pricing information in the invoices was supplied to the city in confidence, either implicitly or explicitly. Both the "supplied" and "in confidence" components of this test must be met. If the city and waste management company fail to establish that both of these components apply, part 2 of the section 10(1) test is not met, and the specific pricing information must be disclosed to the appellant.

Supplied

[24] The IPC has found in previous orders that 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] 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.[10]

[25] For the reasons that follow, I find that the specific pricing information in the invoices was mutually generated rather than "supplied" by the waste management company, for the purposes of section 10(1).

[26] The city states that the information in the invoices was directly supplied to it by the waste management company. The waste management company submits that the invoices were prepared by itself and supplied directly to the city to obtain payment for the provision of waste management services.

[27] Previous IPC orders have consistently found that 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.[11]

[28] Building upon that principle, further IPC orders have found that pricing information in an invoice that a third party provides to an institution cannot be considered to have been "supplied" by that third party if such information was mutually

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[9] Orders PO-2020 and PO-2043.
[10] Order MO-1706.
[11] This 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*).

agreed upon and arises from a contract negotiated between the parties.[12] For example, in Order PO-2806, one of the records before the adjudicator was an invoice that a third party submitted to Ontario Power Generation (OPG), which contained several pieces of information, including a unit price and total payment for the removal by the third party of each tonne of a particular by-product from OPG's Lambton facility. Adjudicator Daphne Loukidelis found this information was not "supplied" for the purposes of part 2 of the test for section 17(1) of the *Freedom of Information and Protection of Privacy Act* (the provincial equivalent to section 10(1)). She stated:

> As regards the withheld price per metric tonne contained in the second affected party's invoice, I also find that it represents a mutually-agreed upon unit price for the removal of each tonne of that particular by-product from OPG's Lambton facility, which is not "supplied."
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> In my view, the dollar figures mentioned above simply represent calculations arising from negotiated commercial arrangements between OPG and the affected parties. Past orders have established that where an institution has the option to accept or reject a third party's bid or pricing, it cannot argue that the pricing information was "supplied" to it by the third party. In this appeal, there is no evidence to suggest circumstances where OPG was unable to accept or reject the affected parties' unit prices or the terms of its pricing, more generally, for the provision of the removal services. As previously recognized by this office, the option to do so is itself a "form of negotiation" [Orders PO-2435 and PO-2632]. Accordingly, I find that the remaining payment amounts in the spreadsheets and the unit price given on the invoice are not "supplied" for the purposes of part 2 of section 17(1).
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> From this finding, it follows that the withheld amount of sales tax and the total for the removal of the specific by-product contained in the second affected party's invoice also does not qualify as "supplied." . . .

[29] Adjudicator Diane Smith reached a similar conclusion in Order MO-3258, where the information sought by the appellant included unit prices and quantities of goods and services contained on invoices that a third party submitted to the City of Sudbury for carrying out water and wastewater emergency repairs. Adjudicator Smith followed the reasoning in Order PO-2806 and found that this information was not "supplied" for the purposes of part 2 of the test for section 10(1). She stated:

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[12] See Orders PO-2806, MO-3258 and PO-3638.

> I also find that the information at issue in the invoices, namely the unit prices and quantity of goods or services sold to the city by the affected party, which information is used to calculate the amount owed by the city to the affected party, simply represent calculations arising from negotiated commercial arrangements between the city and the affected party. Therefore, I find that the information at issue in the invoices was not supplied by the affected party to the city.
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> Accordingly, I find that none of the information at issue in the records was supplied by the affected party to the city and that part 2 of the test under section 10(1) has not been met. Since all three parts of the test under section 10(1) must be met to find the information exempt under that exemption, I will order the information at issue in the records disclosed to the appellant.

[30] I agree with the reasoning in Orders PO-2806 and MO-3258 and find that it applies to the specific pricing information in the invoices. In my view, the specific type of waste collection service that the waste management company provided to the city and the unit price for each service would have been mutually agreed upon under the negotiated contract between the city and the company. Although the quantity for each specific service provided and the calculated total dollar amount that the company charged for each specific service in the invoices might vary over time, they are undoubtedly derived and arise from commercial and financial terms that were mutually agreed upon in the contract that was negotiated. I find, therefore, that the specific pricing information in these invoices was mutually generated by the parties rather than "supplied" by the company for the purposes of section 10(1).

[31] There are two exceptions to the general rule that 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 "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.[13] 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.[14] None of the parties provided representations about these two exceptions with respect to the specific pricing information in the invoices that is derived and arises from the contract between the city and waste management

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[13] Order MO-1706, cited with approval in *Miller Transit*, above at para. 33.
[14] *Miller Transit*, above at para. 34.

company, and in the absence of such evidence, I find that these exceptions do not apply.

[32] As noted above, the parties resisting disclosure must meet both the "supplied" and "in confidence" components of part 2 of the section 10(1) test. Given that the city and waste management company have failed to meet the "supplied" component of this test, the specific pricing information in the invoices cannot be withheld under section 10(1), and it must be disclosed to the appellant.

[33] Technically, it is not necessary for me to consider whether the city and waste management company have met part 3 (harms) of the section 10(1) test. However, in the interests of completeness, I will consider the parties' submissions on whether the harms specified in section 10(1) could reasonably be expected to occur if the specific pricing information in the invoices is disclosed.

Part 3: Harms

[34] To satisfy part 3 of the section 10(1) test, the city and the waste management company must show that the prospect of disclosing the specific pricing information in the invoices will 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.

[35] The parties resisting disclosure must provide detailed and convincing evidence about the potential for harm. They 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.[15]

[36] 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*.[16]

[37] The city submits that the harms specified in sections 10(1)(a) and (b) could reasonably be expected to occur if the specific pricing information in the invoices is disclosed, while the waste management company submits that only section 10(1)(a) applies to such information.

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[15] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.
[16] Order PO-2435.

Section 10(1)(a): Prejudice to Competitive Position

[38] I will start by examining whether disclosing the specific pricing information in the invoices could reasonably be expected to lead to the harms specified in section 10(1)(a). Under that provision, an institution must refuse to disclose information if doing so could reasonably be expected to "prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization." In the circumstances of this appeal, I will determine whether disclosing the specific pricing information in the invoices could reasonably be expected to prejudice significantly the waste management company's competitive position or interfere significantly with the contractual or other negotiations between the city and the waste management company.

[39] For the reasons that follow, I find that the city and the waste management company have not provided the detailed and convincing evidence required to show that disclosing the pricing information in the invoices could reasonably be expected to lead to the harms specified in section 10(1)(a).

[40] The specific pricing information that is at issue may include, depending on the particular invoice, a description of each specific type of waste collection service that the waste management company provided to the city and the unit price, quantity, and total dollar amount charged for each of these services on a particular date. Both the city and the waste management company submit that disclosing this pricing information could reasonably be expected to prejudice significantly the waste management company's competitive position.

[41] The city states that the redacted invoices contain information supplied by a company practising in a "highly competitive" industry, with many competing firms providing similar services. It further submits that the unit prices charged by a third party is "commercially valuable" information that could be used by others to disadvantage that party's competitive position.

[42] The waste management company states that the invoices set out unit prices for collection of waste by tonne and by type of service (e.g., tote, sideloader, etc.) and also reveal the quantities (in tonnes) of residential waste collected. It asserts that this information is an important element in arriving at a bidder's cost in any competitive process because larger quantities allow that bidder to offer a lower price. It further states that the waste management industry is "highly competitive" and profit margins for companies are "very thin." It submits that it is generally understood that if other companies in the industry obtain access to its pricing information, they will be able to make a reasonable inference as to the company's costs and margins and tailor their future bids to undercut the company.

[43] In addition, both the city and the waste management company cite some previous IPC decisions that have found that disclosing unit prices supplied to an institution by a third party could reasonably be expected to lead to the harms specified in section 10(1) of the *Act* or section 17(1) of *FIPPA*.[17]

[44] At the outset, I note that although both the city and the waste management company cite some previous IPC orders that found that unit pricing is exempt under section 10(1) or its provincial equivalent, the facts in each appeal must be assessed on a case-by-case basis and on its own merits. Moreover, there are more recent IPC orders that have found that unit pricing or similar information is not exempt under section 10(1) or section 17(1) of *FIPPA*.[18] These decisions have emphasized the requirement that the parties resisting disclosure must provide detailed and convincing evidence to support the third party information exemption claim.

[45] For example, in Order PO-2435, the records before Commissioner Brian Beamish included per diem and fee ceiling amounts that private vendors charged for services they delivered to a provincial body known as Smart Systems for Health Agency (SSHA). The parties resisting disclosure of this information (SSHA and the Ministry of Health and Long-Term Care) made similar arguments to those made in the appeal before me. Commissioner Beamish provided the following excerpts from these representations:

> The Ministry makes the following comment in its representations on harms in relation to both Record 2 and the SLAs:
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> > Disclosure of the per diem rates and contract ceiling information could reasonably be expected to prejudice significantly the affected parties' competitive position by disclosing to their competitors their best price for consulting services provided for the EPP… This commercial and financial information could be used by competitors to undercut the consultant's bid in future contracts with the government and other entities.
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> SSHA makes the following statement with regard [to] Record 1 and the harms test:
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> > The disclosure of the record will give rise to a reasonable expectation that one or all of the harms specified in section 17(1)(a), (b) or (c) will occur. The vendor's competitive position may be harmed as a competitor could obtain specific information

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[17] Orders PO-2255, MO-1536-F, MO-1846-F and MO-1888.
[18] Orders PO-2435, PO-2453 and MO-2952.

> about the vendor's business practices including an ability to determine the vendor's profit margins and mark-ups.

[46] Commissioner Beamish concluded that both the Ministry and SSHA had not provided the detailed and convincing evidence required to prove that disclosing the per diem and fee ceiling amounts that private vendors charged for services rendered could reasonably be expected to prejudice significantly the vendors' competitive position under section 17(1) of *FIPPA*. He stated:

> Having carefully reviewed the contents of the records, I am not persuaded that disclosing this information could reasonably be expected to result in any of the harms outlined in sections 17(1)(a), (b) or (c) of the *Act*.
>
> Both the Ministry and SSHA make very general submissions about the section 17(1) harms and provide no explanation, let alone one that is "detailed and convincing", of how disclosure of the withheld information could reasonably be expected to lead to these harms. For example, nothing in the records or the representations indicates to me how disclosing the withheld information could provide a competitor with the means "to determine the vendor's profit margins and mark-ups".
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> . . .
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> While I can accept the Ministry's and SSHA's general concerns, that is that disclosure of specific pricing information or per diem rates paid by a government institution to a consultant or other contractor, may in some rare and limited circumstances, result in the harms set out in section 17(1) (a), (b) and (c), this is not such a case. Simply put, I find that the institutions have not provided detailed and convincing evidence to establish a reasonable expectation of any of the section 17(1)(a), (b) or (c) harms, and the evidence that is before me, including the records and representations, would not support such a conclusion.
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> I also accept that the disclosure of this information could provide the competitors of the contractors with details of contractors' financial arrangements with the government and might lead to the competitors putting in lower bids in response to future RFPs. However, in my view, a distinction can be drawn between revealing a consultant's bid while the competitive process is underway and disclosing the financial details of contracts that have been actually signed. The fact that a consultant working for the government may be subject to a more competitive bidding

> process for future contracts does not, in and of itself, significantly prejudice their competitive position or result in undue loss to them.

[47] I agree with Commissioner Beamish's reasoning and find that it applies in the circumstances of the appeal before me. In my view, the city simply makes bald assertions, such as claiming that the waste management company operates in a "highly competitive" industry and asserting that the pricing information in the invoices is "commercially valuable." It does not explain in detail how the waste management company's competitors could use the specific pricing information in the invoices in a manner that could reasonably be expected to prejudice significantly the company's competitive position, as stipulated in section 10(1)(a).

[48] Similarly, the waste management company's submissions are insufficiently detailed to show that disclosing the pricing information in the invoices could reasonably be expected to prejudice significantly the company's competitive position. I accept that the waste management industry in Ontario is competitive and the waste management company must, therefore, win bids for municipal contracts against other companies. In addition, I accept that the company's costs and profit margins influence its pricing strategy and particularly its proposed unit pricing when bidding for municipal contracts.

[49] However, to meet the harms test in section 10(1)(a), it is not sufficient for the company to simply assert that is "generally understood" that other companies will be able to make a reasonable inference as to company's costs and margins and thereby enable its competitors to tailor their future bids to undercut the company. The company does not specifically explain how other companies could actually use the specific pricing information in the invoices, such as unit prices and quantities, to make a reasonable inference as to the company's costs and margins. In the absence of such detail, the company's assertion is speculative and does not meet the requirement that a party resisting disclosure of information provide "detailed and convincing" evidence to show that the competitive harm component in section 10(1)(a) could reasonably be expected to occur.

[50] In addition, I find that although disclosing the specific pricing information in the invoices and placing this information in the public domain might lead the waste management company's competitors to put in lower bids in future bidding processes for municipal government waste management contracts, the fact that the waste management company might be subject to a more competitive process for future contracts does not, in and of itself, prejudice significantly its competitive position under section 10(1)(a). Although pricing is certainly a key factor that municipal governments use in awarding contracts for waste management, there would be other evaluation criteria that would also be taken into consideration. Consequently, I find that although disclosing specific pricing information, such as unit prices and quantities, might provide

some assistance to the waste management company's competitors in preparing bids, it is not enough, on its own, to prejudice "significantly" the company's competitive position under section 10(1)(a).

[51] The city also makes a one-sentence submission on the alternative component of 10(1)(a), which requires an institution to refuse disclosure of a record if doing so could reasonably be expected to "interfere significantly with the contractual or other negotiations of a person, group of persons, or organization." The city simply states that disclosing the specific pricing information in the invoices could interfere significantly with the contractual relationship between the city and the waste management company, but does not provide any further explanation as to how and why this harm could reasonably be expected to occur. This falls far short of providing detailed and convincing evidence, and I find that this component of the section 10(1)(a) test has not been met.

[52] In short, I find that the city and the waste management company have failed to provide the detailed and convincing evidence required to show that disclosing the specific pricing information in the invoices could reasonably be expected to lead to the harms specified in section 10(1)(a). Consequently, I find that section 10(1)(a) does not apply to this information.

Section 10(1)(b): Similar Information no Longer Supplied

[53] The city (but not the waste management company) submits that disclosing the specific pricing information in the invoices could reasonably be expected to lead to the harm specified in section 10(1)(b). Under that provision, an institution must refuse to disclose information if doing so could reasonably expected to "result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied."

[54] For the reasons that follow, I find that the city has not provided the detailed and convincing evidence required to show that disclosing the specific pricing information in the invoices could reasonably be expected to lead to the harm specified in section 10(1)(b).

[55] The city submits that only the waste management company can reasonably be expected to identify whether disclosing the specific pricing information in the invoices would result in similar information no longer being supplied to the city. However, the waste management company's representations do not address this issue. The city then goes on to assert that it is in the public interest for it to continue to be supplied with a detailed cost breakdown in the invoices for the services it receives, because not receiving this information could reasonably be expected to impact the city's ability to

conduct business in a financially prudent manner.

[56] In my view, the fact that the waste management company did not specify that it could reasonably be expected to stop supplying similar information to the city if the specific pricing information in the invoices is disclosed, negates the application of the section 10(1)(b) exemption. In short, I find that the city has failed to show that disclosing the specific pricing information in the invoices could reasonably be expected to lead to the harm specified in section 10(1)(b). Consequently, I find that section 10(1)(b) does not apply to this information.

Summary

[57] I find that the city and the waste management company have failed to establish that the prospect of disclosing the specific pricing information in the invoices will 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. All three parts of the section 10(1) test must be met for the exemption to apply. As a result, even if this pricing information was "supplied" in confidence for the purpose of part 2 of the section 10(1) test, the city and waste management company have failed to meet part 3 of this test and this information is therefore not exempt under section 10(1).

[58] Given that the specific pricing information in the invoices is not exempt under 10(1) and no other exemptions have been claimed by the city or the waste management company, I will order the city to disclose this information to the appellant. In addition, it is not necessary to decide whether the public interest override at section 16 applies to this information (Issue B).

[59] Finally, it is important to note that disclosing this information is consistent with the public accountability and transparency principles underlying the *Act*. The courts have consistently found that access-to-information legislation must be interpreted within the context of its purpose which is to facilitate democracy by ensuring that citizens have the information required to participate meaningfully in the democratic process and to hold politicians and bureaucrats accountable to the citizenry. In addition, they have held that the exemptions in such legislation, such as the third party information exemption in section 10(1), are to be construed narrowly.[19]

[60] Waste management is a significant item in the city's budget, and members of the

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[19] See *Miller Transit Limited* above in footnote 11 at para. 45, *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)* (2004), 2004 CanLII 15009 (ON SCDC), 181 O.A.C. 251 (C.A.), at para. 66, citing *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC), [1997] 2 S.C.R. 403 at paras. 61-63.

public ultimately pay for the delivery of these services through their taxes. In my view, the city's decision to only disclose partial information from each invoice provides the public with an incomplete picture of how taxpayer dollars are being spent. However, disclosing more detailed pricing information from the invoices, including a description of each specific type of waste collection service that the waste management company provided to the city and the unit price, quantity, and total dollar amount charged for each of these services on a particular date, significantly enhances the public's capacity to determine whether the city is receiving value for money and to hold politicians and bureaucrats accountable.

ORDER:

1. The appeal is allowed.

2. I order the city to disclose the specific pricing information in the invoices to the appellant by **December 6, 2016** but not before **December 1, 2016**. In the interests of clarity, this pricing information includes all of the information that the city severed from the invoices.

Original Signed by: October 31, 2016

Colin Bhattacharjee
Adjudicator