

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3748

Appeal PA13-430

William Osler Health System - Brampton Campus

July 12, 2017

Summary: The appellant appealed the institution's decision to disclose portions of its proposal and scoring and evaluation records. The appellant claimed that that the mandatory third party exemption in section 17(1) applied to the information not withheld by the institution. In this order, the adjudicator allows the appeal, in part.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1) (definition of "personal information"), 17(1)(a) and (c).

Orders and Investigation Reports Considered: Orders PO-2225, MO-2151 and PO-3310.

OVERVIEW:

[1] William Osler Health System (Osler) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records related to a specified Request for Proposal (RFP) for the provision of nursing and personal support workers staffing services. The requester specified he sought access to information relating to all contracts awarded. Osler located records responsive to the request and issued an interim access decision and fee estimate to the requester. After receiving the interim access decision, the requester narrowed the scope of his request.

[2] As required by section 28 of the *Act*, Osler notified a third party whose interests could be affected by disclosure of the information at issue. The third party responded to the notice with submissions that explained in detail its objection to the disclosure of certain parts of the responsive records. After considering the third party's submissions, Osler issued a decision granting partial access to most of the records and complete

access to some. Osler relied on the mandatory exemptions in sections 17(1) (third party information) and 21 (personal privacy), and the discretionary exemption in section 18 (economic and other interests) to deny access to portions of the records.

[3] The third party, now the appellant, appealed Osler's decision.

[4] During mediation, the requester confirmed that he continued to seek access to the records which Osler had decided to disclose, and did not wish to pursue access to the portions of the records that Osler withheld on the basis of sections 17(1), 18(1) and 21(1).

[5] During the inquiry into this appeal, representations were sought from Osler, the appellant and the original requester. Representations were shared in accordance with this office's *Code of Procedure*. Only the appellant submitted representations.

[6] In this order, I allow the appeal in part and order portions of the appellant's proposal disclosed to the requester as well as the evaluation and score sheets.

RECORDS:

[7] The records at issue consist of the information in the following records that the appellant submits should be withheld under section 17(1) of the *Act*:

1. The appellant's RFP proposal (190 pages)
2. Scoring and evaluation records related to the appellant's RFP proposal (3 pages)

[8] In its representations, the appellant confirmed that it no longer appeals Osler's decision to disclose various portions of the agreement. Accordingly, the remaining information in the agreement is no longer at issue in this appeal and Osler can proceed to disclose it.

[9] The portions of the proposal which Osler has withheld under the sections 17(1), 18(1)(c) and 21(1) exemptions, are also not at issue.

ISSUES:

- A. Does the proposal contain personal information as that term is defined in section 2(1) of the *Act* and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 17(1) of the *Act* apply to the records?

DISCUSSION:

Issue A: Does the proposal contain personal information as that term is defined in section 2(1) of the Act and, if so, to whom does it relate?

[10] The appellant raised the issue of the possible application of the mandatory personal privacy exemption in section 21(1) of the *Act* to information relating to its employees. Pursuant to the mandatory exemption in section 21(1), if the disclosure of personal information amounts to the unjustified invasion of the personal privacy of the individual to whom the information relates, the personal information is exempt from disclosure. Therefore, I will first consider whether any information in the proposal contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1), in part as follows:

"personal information" means recorded information about an identifiable individual, including

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved.

(h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[11] Section 2(2.1) also relates to the definition of personal information. It reads:

Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

[12] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be about the individual.

[13] The appellant submits that the disclosure of the information relating to its employees will disclose their confidential employment history. The appellant also argues that disclosing information relating to an employee's job function would reveal commercial information; however, I will consider whether that information is commercial information and exempt under section 17(1) below. The information relating to the appellant's employees includes contact information, information about the employees' work history, reporting relationships and employment and current job duties.

[14] Osler withheld certain information relating to an employee's past work history

under section 21(1), and that information is not at issue in this appeal.

[15] I find that the remaining information does not qualify as personal information of identifiable individuals. I find that the employees' names with their job titles and contact information does not constitute personal information as defined in section 2(2.1) set out above. This includes the organizational chart information set out in the proposal which sets out the names of employees and their job titles. I also find that an employee's current job function, as set out in the proposal, does not constitute "employment history" for the purposes of paragraph (b).

[16] In addition, the information relating to job functions and reporting structures also does not qualify as personal information. In Order PO-2225, former Assistant Commissioner Tom Mitchinson set out the rationale for determining whether information relates to an individual in a personal context. Applying this rationale, I find that the information appears in a professional context, namely in a proposal submitted in response to an RFP. The description of the employee's job function was provided for the purpose of informing Osler as to how this person would be managing the project. I next considered whether disclosure of this information would reveal something that is inherently personal in nature. In my view, disclosure of the employee's job functions relating to the service provided would not reveal something personal in nature as it relates to the individual's professional duties within the business context. Accordingly, I find that the information relating to the employee's job functions and reporting structure does not constitute personal information and therefore cannot be subject to exemption under section 21(1). I will, however, consider whether this information is commercial information for the purposes of section 17(1) below.

Issue B: Does the mandatory exemption at section 17(1) of the *Act* apply to the records?

[17] The appellant argues that sections 17(1)(a) and (c) apply to the information it states should be withheld. These sections state:

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 where 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

[18] Section 17(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 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.

[19] For section 17(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 17(1) will occur.

Part 1: type of information

[20] The appellant submits that the information under the columns "Rate" and "Comments" on the scoring sheet is commercial information for the purposes of section 17(1). The appellant further submits that the proposal contains commercial, financial and labour relations information.

[21] Regarding the scoring sheet, the appellant states that the information claimed exempt under section 17(1) is "...candid confidential evaluations by the appellant's clients of the appellant's services." The appellant explains that this information was gathered from the appellant's reference clients by Osler.

[22] Commercial information has been defined in past orders of this office as:

...information that relates solely to the buying, selling or exchange of merchandise or services.

[23] Based on my review of the information claimed exempt under section 17(1), I accept that the information relates to the appellant's provision of nursing and personal support worker services to Osler. Accordingly, I find that the records relate to a commercial transaction between the appellant and Osler and as such contains commercial information for the purposes of section 17(1).

[24] I find that the withheld information at issue does not contain financial information. The information in the proposal that would qualify as financial information for the purposes of section 17(1) was withheld by Osler and the requester has indicated that he is not pursuing access to information that was withheld by Osler. Accordingly, this information is not within the scope of this appeal.

[25] I find that a portion of the proposal also contains information that would qualify as labour relations information. Labour relations information has been defined in past orders as:

...relations and conditions of work, including collective bargaining, and is not restricted to employee/employer relationships. Labour relations information has been found to include:

- discussions regarding an agency's approach to dealing with the management of their employees during a labour dispute
- information compiled in the course of the negotiation of pay equity plans between a hospital and the bargaining agents representing its employees,

but not to include:

- names, duties and qualifications of individual employees

[26] I find that a portion of the appellant's proposal contains information that deals with the appellant's approach with its staff during any potential labour dispute. I find that this information qualifies as labour relations information for the purposes of section 17(1). On the other hand, any information in the record which contains the names, duties and qualifications of employees does not qualify as labour relations information under the *Act*. I am prepared to find that this information is commercial information for the purposes of section 17(1).

[27] In summary, I find that the appellant has established part 1 of the test for section 17(1).

Part 2: supplied in confidence

Supplied

[28] The requirement that the information was supplied to the institution reflects the purpose in section 17(1) of protecting the information assets of third parties. 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.

In confidence

[29] 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.

[30] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, all the circumstances of the case 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 disclosure.

Representations

[31] The appellant submits that the information on the scoring sheets was gathered by Osler from reference clients on a confidential basis. The appellant does not explain or establish the confidential basis upon which the information was provided by the reference clients to Osler and Osler did not provide representations.

[32] Regarding the information in the proposal, the appellant submits that it was provided to the institution in confidence. The appellant argues that given the nature of the information in the proposal and the fact that the appellant would have spent money and time preparing and developing the information in the proposal, confidentiality would have been implicit.

[33] The appellant accepts that there is no single definition of what constitutes confidential information. However, it is, in the appellant's view, axiomatic that confidential information includes the information that has been painstakingly and laboriously prepared - whether it be in the form of computer programs, documents, policies, manuals, training modules and the like – pertaining to all aspects of a firm's business.

[34] The appellant further submits that the information in the proposal is not in the public domain. The appellant states:

Indeed, within the appellant's organization, access to the confidential information is limited to those with the need to know of the information and those persons with access to the confidential information clearly understand that it is a term of their contracts of employment that the information remain confidential. Importantly, the Proposal clearly notes that the Proposal is confidential and certain sections of the Proposal note that documents are the property of the appellant and that any reproduction or distribution of the material without the express written consent of the appellant is prohibited. This amounts to an assertion of confidentiality which, in the view of the appellant, is a significant factor...

Analysis and Finding

[35] Based on my review of the records, I find that the appellant's proposal was supplied to Osler in response to a Request for Proposal issued by Osler for Nursing and

Personal Support Workers Services. Furthermore, this is not a case where the appellant's winning proposal was incorporated into the agreement between itself and Osler and thus is deemed mutually generated rather than supplied for the purposes of section 17(1). Accordingly, I find that the proposal meets the supplied requirement for part 2.

[36] I further find that the appellant supplied its proposal to Osler in confidence. I accept that the proposal contains information that is not in the public domain and is treated in a manner within the appellant's organization to protect its confidentiality. I further note that the proposal has "confidential" written on several of the pages and the appellant identifies documents in the proposal as its proprietary information. Thus, I find that the proposal also meets the confidentiality requirement for part 2.

[37] Regarding the scoring sheets, I find that the information was not supplied by the appellant to Osler. The scoring sheets consist of a three column table. The first column consists of a question about the service offered by the provider (the appellant). The second column consists of a rate which contains a numerical value. The third column is for comments about the question asked in the first column. The appellant, as set out above, explains that the information was provided by its clients to Osler and thus, it did not supply this information to Osler. Accordingly, I find that the scoring sheet was not supplied in confidence for the purposes of section 17(1). As each part of the test for the application of section 17(1) must be met, I find that the scoring sheet is not exempt under section 17(1). As no other mandatory exemptions apply to this information and Osler did not claim any discretionary exemptions for it, I will order it disclosed.

Part 3: harms

[38] 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 reveal such harm. How much and what kind of evidence is needed will depend on the issue and seriousness of the consequences.

[39] 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 17(1) are self-evident or can be proven simply by repeating the description of harms in the *Act*.

Representations

[40] The appellant submits that disclosure of portions of its proposal would result in either of the harms set out in sections 17(1)(a) and (c). The appellant states, in general:

..the disclosure of this information will prejudice significantly the competitive position of the appellant and/or interfere significantly with its

contractual negotiations with future clients and unions. Furthermore, release of the confidential information would undoubtedly result in undue loss to the appellant and corresponding undue gain to its competitors. The appellant provides professional nursing and personal support services. In order for it to do so in a cost efficient manner that meets the quality of service standards expected by its clients, the appellant has invested considerable amounts of time, money and intellectual capital in designing its service delivery model. Its proposal makes clear that its focus in designing, developing, implementing and monitoring that delivery model is on human resources and client satisfaction. The process of creating the delivery model has included detailed evaluation of each component of the services to be delivered. That evaluation has led it to develop policies and procedures to maximize the efficiency of those services. The appellant has also incurred considerable expense in having those policies and procedures reviewed for statutory and regulatory compliance.

[41] The appellant provided specific representations on the possible harm of disclosure to the various sections of the proposal remaining at issue. I will set these out briefly below. The sections of the proposal remaining at issue consist of the following:

- Executive Summary
- 5.2 Rated Requirements Details
- Transition/Implementation Plan
- List of Policies and Procedures
- Other Agency Staff Pricing
- Nurse Practice Report
- ERPP TOC
- Standard Interview Tools
- Performance Appraisal Tools

[42] For the Executive Summary, the appellant submits that the information in this section is confidential commercial information. Regarding the job function information about the Team Lead, the appellant states:

A competitor of the appellant, on reading this section of the proposal, would then know what job duties it would have to assign to a lead person so as to ensure compliance by it to the standards set by the appellant. Disclosure of this information would prejudice the appellant because it would allow a competitor, without any investment of the time, money and

intellectual capital expended by the appellant, to know exactly how to structure its on site management function at a customer.

[43] For the other portion of the Executive Summary, specifically "Key Strengths", the appellant submits the following:

The determination by the appellant of its key strengths is important commercial information that gives it a competitive advantage because such disclosure would clearly highlight for a competitor the specific areas in which it must develop expertise in order to compete with the appellant. This would cause to the appellant significant prejudice and undue loss while rewarding a competitor that did not invest the time, money and intellectual capital that the appellant does to develop its own programs and then determine its key strengths.

[44] The 5.2 Rated Requirements Details component of the appellant's proposal contains a number of sections which the appellant submits would prejudice its competitive position if disclosed. For instance, the appellant submits that disclosure of the number of staff and size of company would disclose commercial and labour information as it would disclose the exact number of persons employed by the appellant and the percentage of extra staff it maintains to ensure contract compliance. The appellant states:

Second, the effect of the appellant's recruitment and retention plans upon its goal of achieving a given percentage of staff in excess of the required staff capacity would inform a competitor of the number of staff that it would require in order to match the appellant's services. Arriving at that percentage is a direct result of the complex confidential data analysis described earlier.

[45] The appellant submits that disclosure of its goals would disclose its approach to service and its service delivery model which would give competitors an undue advantage.

[46] The appellant submits that disclosure of its organizational chart would disclose the structure of its organization which would assist competitors in determining how to structure their operations.

[47] The appellant also submits that the disclosure of the information under Union Relations which details its position on resolving employee issues and the information setting out the number of employees represented by bargaining units and their resource classification would result in the identified harms.

[48] In regard to the section of the proposal titled, Proposed Work Plan Methodology, the appellant submits that disclosure of the Account Team Lead information would allow a competitor to know how the appellant allocates workloads and would also disclose reporting relationships in the organization

[49] For the "Overview and Index of [the appellant's] Operating Procedures", the appellant submits that the information contained in this section is set out on the appellant's intranet and states:

..the section identifies those standard operating procedures that the appellant has added to its policies and procedures and, again, would allow the appellant's competitors to simply identify what policies and procedures they may need in order to mimic the appellant's services.

[50] The appellant also identifies the following portions of its proposal and argues that these parts of the proposal should not be disclosed for the reasons already set out above:

- Overview and Index of [the appellant's] Corporate Policies and Procedures
- Overview of [the appellant's] Background Check and Hiring Process
- Overview of [the appellant's] General Orientation and Training Programs
- Overview of Training and Policies Related to Best Practices
- Overview of Supervisory Staff Training and Complaints Management
- Outline and Transition/Implementation Plan
- Providing and Maintaining Continuity and Consistency
- Overview of Training and Policies Related to Best Practices in Elder Care
- Overview of [the appellant's] Continuity Plan in Response to Emergencies
- Employee Information Tracking System
- Overview of [the appellant's] Compensation and Benefits Program
- Overview of [the appellant's] Uniform Policy
- Overview of [the appellant's] Quality Assurance Program
- Overview of [the appellant's] Dispatching Capabilities

[51] Regarding its transition and implementation plan, the appellant submits that the sequence by which it plans to implement its program and the timing for this implementation for Osler is also confidential commercial information. Disclosure of this information would result in undue gain to the appellant's competitors. The appellant states:

It is the result of work product that arises from the development of all the policies and procedures that the appellant has carefully developed so as to

allow it to implement its services in a cost-efficient way that provides high levels of services to its clients. It is highly specialized commercial information.

[52] The appellant also opposes the disclosure of the following tabs of information from its proposal:

- List of Policies and Procedures – Disclosure of the titles of the appellant's procedures would allow the appellant's competitors to achieve undue gain at the appellant's expense.
- Other Agency Staff Pricing – These reports are specialized commercial documents that were developed by the appellant at great cost and disclosure would result in undue gain to the appellant's competitors.
- Nurse Practice Report – The report is a specialized document the appellant developed at great cost and disclosure of it would result in undue gain to the appellant's competitors.
- Emergency Response and Preparedness Plan – This report is a commercial document the appellant developed at great cost and disclosure would result in undue gain to the appellant's competitors.

[53] Finally, the appellant opposes the disclosure of its Standard Interview Tools and Performance Appraisal Tools for the reasons set out above.

Analysis and finding

[54] As stated above, the appellant must provide sufficient evidence to 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.

[55] The appellant submits that sections 17(1)(a) and (c) apply to the parts of its proposal that it argues should not be disclosed. In particular, the appellant submits that disclosure will significantly prejudice its competitive position because competitors will be allowed to glean information about the way it organizes its business and thereby successfully compete against the appellant for future business. The appellant also argues that it has spent money and time creating the work product that is set out in the proposal and disclosure will give its competitors an undue advantage over the appellant and the appellant would suffer undue loss.

[56] Based on my review of the evidence and the appellant's representations, I find that disclosure of parts of its proposal could reasonably be expected to result in the harms set out in section 17(1)(a) and (c). For the parts I have found do not qualify for exemption under section 17(1), I find that the harm is not made out.

[57] Previous decisions of this office have dealt with the issue of the application of section 17(1) to a successful proposal submitted in response to a RFP. In these

decisions, notably Orders MO-2151 and PO-3310, the distinction is made between information relating to an affected party's history, experience and qualifications which may be publicly known and information about the manner in which the affected party proposes to meet the requirements of the RFP. In reviewing the proposal, the adjudicator must consider the evidence and whether disclosure of these different types of information could reasonably be expected to result in the harms set out in section 17(1)(a) and (c). In addition, this office has not found the harm in section 17(1) established where an affected party has simply argued that disclosure of the form and structure of its proposal will result in a more competitive market for the affected party in future RFP's.¹

[1] Under the Executive Summary section, I find that the appellant has not made out the harm for disclosure of the information it has identified. For the information relating to the account lead which I have found is not personal information for the purposes of the *Act*, I am not satisfied that the description of the functions to be provided by the account lead is specialized commercial information whose disclosure would result in the harm in section 17(1). The appellant submits that a competitor would benefit from the investment of time, money and intellectual capital invested to determine the job duties of the account lead. Based on my review of the summary of the account lead's duties, I find that the appellant has not established that disclosure of this information could reasonably be expected to prejudice its competitive position or result in undue gain to its competitors.

[58] Moreover, with the exception of information relating to staff capacity, I find that the appellant has also not established that disclosure of the information in its section on its Key Strengths would also result in prejudice to its competitive position or result in undue loss to itself or undue gain to its competitors. The information in this portion of the proposal is a description in broad terms as to the way in which the appellant intends to meet its obligations under the RFP. It is not evident to me from the description in the Key Strengths or the appellant's representations how a competitor could use this information to "develop expertise in order to compete with the appellant". With respect to the information relating to staffing capacity, the appellant submits that disclosure of this information would reveal its specific goals for recruitment and retention of staff in order to meet the specific requirements of the RFP. I accept that disclosure of this information could reasonably be expected to prejudice the appellant's competitive position under section 17(1)(a).

[59] For "Section A – Company's Qualifications, Experience and Certifications", the appellant submits that disclosure of the number of its staff would disclose specialized commercial and labour information to its competitors. Based on my review of this information and the appellant's representations, I find that the appellant has not established that disclosure of the total number of staff would prejudice its competitive position or unduly prejudice itself. The appellant has not satisfied me that disclosure of the total number of its staff alone could be used by its competitors to determine how

¹ Order PO-2748.

the appellant meets its service obligations. Nor does the appellant provide me with evidence that the size of its workforce is labour information for the purposes of section 17(1). However, I accept that disclosure of the information relating to staff capacity, the same information I refer to in paragraph 58, to be exempt under section 17(1)(a).

[60] The appellant submits that the goals it identifies in this section will disclose its service delivery model which it has expended money and time to design and create. Based on my review of this information, I find that the appellant has not established that disclosure of this information will result in undue loss to itself or undue gain to its competitors. This information is similar to the type of information listed under Key Strengths which contained a description of the way in which the appellant intends to deliver its services under the RFP. I find that this information is not exempt under section 17(1)(a) or (c).

[61] I also find that the organizational chart in the section of the proposal also is not exempt under section 17(1)(a) or (c). I found, above, that this information is not personal information for the purposes of the *Act* and thus not exempt under section 21(1). I further find that the appellant has not established that disclosure of the organizational chart setting out the names and titles of individuals as well as the organizational structure will result in prejudice to its competitive position under section 17(1)(a) or undue loss under section 17(1)(c).

[62] I also find that the appellant has not established that disclosure of the information listed in paragraph 3 of page 7 would either prejudice its competitive position under section 17(1)(a) or cause undue loss under section 17(1)(c). While the information relates to the appellant's resolution of employee issues it does not set out the actual ways in which it resolves these issues.

[63] However, I find that the number of employees represented by the various bargaining units and their resource and classification is information whose disclosure could reasonably result in prejudice to its competitive position. I accept that disclosure of this information will reveal the actual way in which the appellant structures its employee base to provide its level of service. Accordingly, this information is exempt from disclosure under section 17(1)(a).

[64] In section B of the appellant's proposal, I find that the information of the account lead is not exempt under sections 17(1)(a) or (c). This is the same information I found not exempt above and for the same reasons discussed above, I find that this information is not exempt. I further find the information about the reporting relationship mentioned in the following paragraph is also not exempt. As stated above, reporting relationships are not personal information for the purposes of the *Act* nor has the appellant established that its disclosure will result in the harms in sections 17(1)(a) or (c).

[65] I find that disclosure of the following information could reasonably be expected to result in prejudice to the appellant's competitive position:

- Last line of the 2nd paragraph and third paragraph in the Overview and Index of the appellant's Corporate Policies and Procedures
- Portions identified by the appellant in its Overview of its Background Check and Hiring Process
- Portions identified by the appellant in its Overview of its General Orientation and Training Programs
- Portions identified by the appellant in its Overview of Training and Policies Related to Best Practices
- For the Overview of Supervisory Staff Training and Complaints Management, the information relating to Complaints Management only.
- The Outline and Transition/Implementation Plan as identified by the appellant.
- The portions of Providing and Maintaining Continuity and Consistency that is titled, Achieving Continuity and Consistency through our Service Model, Proactive Staff Scheduling and Measuring Success.
- The Overview of Training and Policies Related to Best Practices in Elder Care as identified by the appellant.
- The Overview of the appellant's Continuity Plan in Response to Emergencies as identified by the appellant.
- The Employee Information Tracking System as identified by the appellant.
- The Overview of the appellant's Quality Assurance Program as identified by the appellant.
- The Overview of the appellant's Dispatching Capabilities as identified by the appellant.

[66] I find the information identified above relates to the appellant's specific procedures and policies for delivering its services. Between the information identified above and the appellant's representations, I accept that disclosure of this information could reasonably be expected to prejudice the appellant's competitive position.

[67] On the other hand, I find that disclosure of the appellant's overviews about its standard operating procedures (SOP's), benefit and compensation program and its uniform policy could not reasonably result in the harms set out in section 17(1)(a) and (c). The appellant has not established that the information in these sections could prejudice its competitive position or cause it undue loss.

[68] I accept the appellant's submission that disclosure of its detailed Transition and Implementation Plan could reasonably be expected to prejudice its competitive position.

The appellant's plan sets out each stage required to implement the service provision to Osler. I find that this section is exempt under section 17(1).

[69] I find that disclosure of the appellant's complete list of policies and procedures could not reasonably be expected to prejudice its competitive position or result in undue gain to the appellant's competitors. This portion of the proposal is comprised of a list of all of the appellant's policies and procedures for its service model. The appellant has not established that a list of the names of the policies and procedures alone could be used by its competitors to prejudice the appellant. I find that this section of the appellant's proposal is not exempt under section 17(1) of the *Act*.

[70] While the appellant submitted representations on the non-disclosure of the Other Agency Staff pricing, I make no finding on the application of section 17(1) to it as it was exempted from disclosure by Osler and thus is not within the scope of this appeal.

[71] I find that disclosure of the tab which indexes the appellant's emergency response and preparedness plan could not reasonably be expected to prejudice the appellant's competitive position or cause it undue loss. I find that this information is not exempt under sections 17(1)(a) and (c).

[72] Lastly, I accept the appellant's submission that disclosure of the information in its Agency Nurse Practice Report, Standard Interview Tools and the Performance Appraisal Tools could reasonably be expected to result in undue loss and this information is exempt under section 17(1)(c)

ORDER:

I uphold Osler's decision in part and order disclosure of the information which I have found not to be exempt under section 17(1). I have highlighted the information that should not be disclosed in the copy of the proposal which is attached to Osler's copy of this order. Osler should disclose a copy of this information to the requester by **August 17, 2017** but not before **August 11, 2017**.

Original Signed By: _____

Stephanie Haly
Adjudicator

July 12, 2017 _____