

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER O-3863

Appeal MA17-409

City of Toronto

November 15, 2019

Summary: The appellant has not established that the unit price information in its contract with the city is exempt from disclosure under the third party information exemption in section 10(1) or the economic interests exemption in section 11 of the *Act*. The city's decision to grant the requester access to the entire contract is upheld and the appeal is dismissed.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56, sections 10(1) and 11.

OVERVIEW:

[1] The City of Toronto (the city) received a request for access under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to contracts between the city and eleven named companies from 2014 through 2017. The city identified a five-page contract between it and a third party as responsive to the request, and it issued a decision granting the requester full access to the contract.

[2] The third party (the appellant) objected to the city's decision and appealed it to the Office of the Information and Privacy Commissioner (the IPC). The appellant took the position that the entire contract is exempt from disclosure under the mandatory exemption in section 10(1) (third party information) and the discretionary exemption in section 11 (economic and other interests) of the *Act*.

[3] The IPC attempted to mediate the appeal. During mediation, the appellant consented to disclosure of most of the contract to the requester. The appellant objected to disclosure of the information listed in the "Unit Price" category of the contract. The

requester received a copy of the contract, excluding the "Unit Price" information, but remained interested in pursuing access to the entire contract.

[4] As no further mediation was possible, the file was transferred to the adjudication stage of the appeal process in which an adjudicator may conduct an inquiry under the *Act*. The inquiry in this appeal began with an adjudicator seeking representations from the appellant on its contention that the unit price information is exempt under sections 10(1) and 11 of the *Act*. The appellant provided no representations in response. The appeal was then transferred to me to continue the adjudication process. I determined that it was not necessary to invite representations from the city or the requester. Having reviewed the unit price information at issue and for the reasons below, I uphold the city's access decision.

RECORDS:

[5] At issue is the information under the "Unit Price" category of the contract, which is composed of various hourly rates of pay for different employees.

DISCUSSION:

[6] While the appellant claims to rely on the section 10(1) and 11 exemptions, it has provided no submissions to support its position. As the party resisting disclosure, the appellant must establish that the unit price information is exempt from disclosure under section 10(1) or 11 of the *Act*. The appellant has not done so.

[7] Despite the appellant's decision to not provide representations, I reviewed the unit price information at issue and considered whether the mandatory exemption in section 10(1) applies to it. Section 10(1) is meant to protect the confidential informational assets of businesses that provide information to institutions. For section 10(1) to apply, all three parts of the following test must be satisfied:

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.¹

[8] The information at issue in this appeal is found in a contract for the purchase and sale of services, and qualifies as commercial information under the first part of the test. The IPC treats contracts as having been mutually generated—an interpretation upheld by the Divisional Court—and I have nothing before me to suggest that I should depart from this approach. I also have no information before me to suggest that any of the four harms in section 10(1) could reasonably be expected to occur if the information at issue is disclosed. The unit price information itself does not establish that its disclosure could reasonably be expected to result in any of the section 10(1) harms. Accordingly, I find that section 10(1) does not apply to the information.

[9] Section 11 is a discretionary exemption that institutions may rely on to protect their economic interests. The city has not relied on section 11 in this appeal and the appellant has provided no submissions on why it should be entitled to raise this exemption when the city did not. I find that section 11 does not apply.

[10] I uphold the city's access decision and dismiss this appeal.

ORDER:

I order the city to disclose the "Unit Price" information to the requester by **December 20, 2019**, but not before **December 15, 2019**.

Original Signed by: _____
Stella Ball
Adjudicator

November 15, 2019

¹ The harms include: (a) significant prejudice to the competitive position or significant interference with contractual or other negotiations; (b) similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied; and (c) undue loss or gain to any person, group, committee or financial institution or agency.