

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4045

Appeal MA18-00778

City of Ottawa

April 30, 2021

Summary: The City of Ottawa (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to risk analysis information relating to milestones and timelines for the city's light rail transit project over a six-month period. The city located responsive records and decided to grant partial access. The appellant, a third party, appealed the city's decision, claiming that the records are exempt under section 10(1) (third party information) and should not be disclosed. During the appeal, the requester raised the application of the public interest override in section 16. In this order, the adjudicator finds that the records at issue are not exempt under section 10(1) and upholds the city's decision to partially disclose them.

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

Orders Considered: Orders MO-2070, MO-2151, and MO-3628.

OVERVIEW:

[1] This order deals with a third party's appeal of the decision of the City of Ottawa (the city) to grant partial access to monthly works reports relating to the construction of its Confederation Line Light Rail Transit (LRT) project for a six-month period between December 2016 and May 2017.

[2] A member of the media made a request to the city under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to risk analysis information relating to the construction of the Confederation Line LRT project.

Specifically, the request was for access to:

Records created between Dec. 1, 2016 and the date of processing this request on the subject of risk analysis, risk management and risk mitigation related to the milestones and revenue service timelines of the Confederation Line LRT.

[3] The city located a number of responsive records. In accordance with section 21(1)(a) of the *Act*, before issuing an access decision, the city notified a third party whose interests might be affected by disclosure and gave it the opportunity to make representations. The third party submitted representations to the city objecting to disclosure of the responsive records on the basis that they are exempt under section 10(1) (third party information) of the *Act* and that disclosure would harm the third party.

[4] The city issued a decision in which it decided to grant partial access to five monthly status reports prepared by an independent certifier (IC), and five monthly works reports prepared by the appellant. The third party, now the appellant, appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[5] The parties participated in mediation, during which the city located an additional responsive record – a progress report from the appellant to the city (the February 21, 2017 report) – and gave the appellant the opportunity to submit representations on its disclosure. The appellant objected to disclosure of this report, also on the basis that it was exempt under section 10(1).

[6] Despite the appellant's objections, the city issued a further decision granting partial access to this report (in addition to the records to be partially disclosed by its initial decision). The appellant appealed this decision to the IPC, claiming the exemption in section 10(1) of the *Act*.

[7] The requester did not appeal any of the decisions by the city that granted partial access, but did participate in this appeal. During mediation, the requester took the position that there is a compelling public interest in disclosure of the records. The issue of the public interest override in section 16 of the *Act* was therefore added as an issue in this appeal.

[8] When a mediated resolution could not be reached, the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry. As part of my inquiry, I received representations from the city and the appellant that were shared among the parties. The requester, although given the opportunity to do so, did not submit representations.

[9] In this order, I find that the records at issue are not exempt under section 10(1) of the *Act*. As a result, I do not need to consider whether there is a public interest in disclosure of the portions of the records at issue that clearly outweighs the purpose of

the section 10(1) exemption. I uphold the city's decision and dismiss the appeal.

RECORDS:

[10] The records at issue consist of the withheld portions of 164 pages of monthly work reports. The records are further broken down into the following three types of reports:

- i. Five monthly status reports prepared by an independent certifier (IC):

Report Number	Date of report	Pages
#45	10-Jan-2017	00001-00023
#46	31-Jan-2017	00024-00045
#47	23-Feb-2017	00046-00069
#48	03-Apr-2017	00070-00092
#49	03-May-2017	00093-00117

- ii. Five monthly works reports prepared by the appellant (listed below in chronological, not numerical, order):

Monthly Works Report	Date of Report	Pages
December 2016	17-Jan-2017	00134-00137
January 2017	02-Feb-2017	00126-00129
February 2017	14-Mar-2017	00122-00125
March 2017	28-Apr-2017	00130-00133
April 2017	12-May-2017	00118-00121

- iii. One works schedule report dated February 21, 2017, also numbered as pages 00001-00027.

DISCUSSION:

Does the mandatory exemption at section 10(1) apply to the records?

Background provided in the parties' representations

[11] According to the city and the appellant, the city's LRT system, which includes the LRT line referred to as the Confederation Line, is the city's largest ongoing infrastructure project. The appellant was the primary contractor for the construction of Phase One of the project. The appellant is a consortium of companies created for the purpose of the public-private partnership project that designed and built Phase One of the project and that was successful in a competitive procurement bidding process. The parties' respective obligations with respect to Phase One are set out in a project agreement.

[12] The documents at issue were created and exchanged for the purpose of monitoring the project's progress. They provide an overview of the progress and evolution of Phase One of the project. As noted above, in addition to monthly works reports prepared by the appellant, the records include reports prepared by an independent certifier (IC), a consulting firm reporting to both the city and the appellant. The IC's reports were produced pursuant to the project agreement, which provides for independent certification of the appellant's progress and milestones, and obligates the IC to certify the fulfillment of requirements for various project events, including payment events.

[13] In its decision, the city denied access to some information in the records, such as information associated with the costs of work, variances, and with delays encountered during the construction. As noted above, the city's redactions to portions of the records are not at issue in this appeal, as the requester has not appealed the city's decision to grant partial access. The appellant, however, objects to disclosure of any of the records at issue on the basis that they are exempt under the mandatory exemption in section 10(1) of the *Act*.

The section 10(1) exemption

[14] Section 10(1) states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

(c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

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

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

[16] 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

[17] The types of information listed in section 10(1) have been discussed in prior IPC orders. Relevant to this appeal are the following:

Trade secret, which means information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which

¹ *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal denied, Doc. M32858 (C.A.) (*Boeing Co.*).

² Orders PO-1805, PO-2018, PO-2184 and MO-1706.

- (i) is, or may be used in a trade or business,
- (ii) is not generally known in that trade or business,
- (iii) has economic value from not being generally known, and
- (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.³

Technical information is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. While it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing.⁴

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.⁵ The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.⁶

Representations

[18] Both the city and the appellant submit that the first part of the three-part test in section 10(1) is met because the records contain technical and commercial information. The appellant submits that the records also contain trade secrets that would reveal its learning curve acquired in or applied to addressing certain project milestones or delays.

[19] The city submits that the records contain both technical and commercial information. It says that, although some of the information was compiled in documents produced by the city and/or the IC, the records contain information that was generated by the appellant. This includes information about the appellant's progress toward contractual milestones for the LRT project, schedule updates, and monthly summaries that contain information about the construction, design, environmental items, light rail vehicle testing and acquisition, and contractual variances.

³ Order PO-2010.

⁴ Order PO-2010.

⁵ Order PO-2010.

⁶ Order P-1621.

[20] The appellant submits that the records were created by experts in their respective fields and contain commercial and technical information. According to the appellant, the IC's reports are highly detailed documents that provide a comprehensive overview of the project's monthly progress. The appellant says that the works reports capture the appellant's own description of its monthly progress and that these reports, submitted to the city monthly, are prepared by the appellant's lead planners, who are qualified engineers.

[21] The appellant says that the February 2017 report provides an update of its progress to that date. The appellant submits that it also generated this report and that it is authored by qualified engineers. The appellant says that, through the project schedule excerpted in this report, the LRT project is broken down into hundreds of individual work items, with each one assigned a timeline for completion (for both broad categories of work and for individual technical work items).

[22] Finally, the appellant submits that the records contain trade secrets because, as a whole, they represent the appellant's "learning curve," that is, its acquired body of knowledge, experience and skill relating to the development of certain techniques, methods and processes that it says are unique to the construction of the LRT project.

Analysis and findings

[23] I find that the records contain information that relates directly to the construction and design of Phase One of the LRT project and that it meets the definition of technical and commercial information for the purpose of section 10(1) of the *Act*. The records contain information relating to the construction of Phase One of the project, and itemize various components of the project under construction, such as individual transit stations and related infrastructure. The records contain information about schedule updates and monthly summaries that includes information about the appellant's progress toward contractual milestones, construction, design and environmental management, light rail vehicle testing and acquisition, and contractual variances relating to the LRT project.

[24] Because I have found that the records contain technical and commercial information, it is not necessary for me to determine whether they also contain "trade secrets," as the first part of the three-part test in section 10(1) has been met.

Part 2: supplied in confidence

[25] Part two of the three-part test itself has two parts: the appellant must have "supplied" the information to the city, and must have done so "in confidence," either implicitly or explicitly.

[26] 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.⁷

[27] 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.⁸

[28] In order to satisfy the “in confidence” component of part two, the party 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.⁹

[29] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, all the circumstances 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; and
- prepared for a purpose that would not entail disclosure.¹⁰

Representations

[30] There is also no dispute between the city and the appellant that the information was supplied to the city in confidence. The appellant submits that the records were supplied to the city through password-protected software that was accessible by only a small number of city staff, and that the IC’s reports are themselves explicitly marked as confidential. The city also submits that that the appellant provided the information in the records to it and/or the independent certifier in confidence.

[31] The appellant and the city both submit that the project agreement requires the information exchanged between them be treated confidentially, even if some documents might not have been individually labeled as confidential.

⁷ Order MO-1706.

⁸ Orders PO-2020 and PO-2043.

⁹ Order PO-2020.

¹⁰ Orders PO-2043, PO-2371 and PO-2497, upheld in *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII (ON SCDC); 298 DLR (4th) 134; 88 Admin LR (4th) 68; 241 OAC 346.

Analysis and findings

[32] Based on the parties' representations and the records, I find that the information in the records was supplied by the appellant to the city in confidence. My finding also applies to information that is not explicitly marked as confidential. In making this finding, I have taken into account the parties' submissions that the project agreement includes a provision that information related to the performance of the project will not be disclosed by the parties,¹¹ and that the information was supplied to the city by way of a password-protected system that allowed the records to be treated confidentially by limiting access to the information contained in them.¹² I therefore find that part two of the three-part test in section 10(1) of the *Act* has been met.

[33] Since the first and second parts of the three-part test in section 10(1) have been satisfied, I must consider whether the third part of the test is met, that is, whether there is a reasonable expectation that the specified harms will result from disclosure of the records.

Part 3: harms

[34] The city and the appellant diverge in their positions regarding whether disclosure of the records can reasonably be expected to prejudice the appellant.

[35] The appellant, as the party resisting disclosure, must establish a risk of harm from disclosure of the records that is well beyond the merely possible or speculative, but it need not prove that disclosure will in fact result in such harm.¹³

[36] Parties should provide detailed evidence to demonstrate the harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.¹⁴ The failure of a party resisting disclosure to provide detailed evidence will not necessarily defeat the claim for exemption where harm can be inferred from the records themselves and/or 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*.¹⁵

¹¹ Should this information be exempt under section 10(1) of the *Act*.

¹² See, for example, Order MO-3628, involving the same parties and in which Adjudicator Cathy Hamilton found that records supplied to the city through the same password-protected system as at issue in this appeal were supplied to the city in confidence.

¹³ *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616, *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2014] 1 S.C.R. 674, *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

¹⁴ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, cited above.

¹⁵ Order PO-2435.

[37] In applying section 10(1) to government contracts, the need for public accountability in the expenditure of public funds is an important reason behind the need for detailed evidence to support the harms outlined in section 10(1).¹⁶

Representations

The appellant's representations

[38] The appellant submits that the records provide a detailed roadmap for the entire LRT project and document its evolution and challenges during a six-month period of time. The appellant says that disclosure of the records would cause it significant prejudice and could reasonably be expected to harm its position in the competitive market.

[39] The appellant argues that, by documenting the monthly evolution of the LRT project, the records reveal the appellant's learning curve developed through its responses to various challenges confronted during the project.

[40] The appellant submits that the IC reports are detailed documents that provide a comprehensive project overview and construction schedule, including a list and description of major issues likely to impact the project schedule; a list and description of the progress of infrastructure design elements; a summary of the monthly progress for each major element of the LRT including whether any technical issues were encountered; a running tally of any environmental deficiencies; a monthly update to the construction schedule broken down by station work and structure, including variances to completion dates; and a description of progress regarding delay events and steps taken to address them.

[41] The works reports, according to the appellant, serve a similar function, but record the appellant's own assessment of its progress with respect to contractual milestones and obligations month over month. In the same manner as the IC reports, the appellant says that the works reports allow for the tracking of the LRT project over six months and demonstrate the ways in which the project changed and evolved.

[42] The appellant says that the February 2017 Report adds detail to the information in the IC and Works Reports, and serves to further flesh out the LRT project's progress, including the challenges faced by the appellant and their effect on the project timeline.

[43] The appellant argues that the descriptive information in the records, in conjunction with the project schedule, would allow a reviewer of the information to determine the specific impact of the appellant's challenges on the overall project schedule. The appellant says that a competitor "could use the project schedule to infer

¹⁶ Order PO-2435.

specific challenges encountered by” the appellant, and that the “highly detailed” and itemized nature of the monthly schedule updates “would allow [the appellant’s] experienced and knowledgeable competitors to infer the amount of resources and the methods employed to overcome specific challenges, on a precise and micro level.”

[44] The appellant also submits that disclosure would reveal its learning curve, that is, its acquired body of knowledge, experience and skill relating to the development of certain techniques, methods and processes unique to the appellant’s approach to the LRT project. This, the appellant says, could reasonably be expected to prejudice its competitive position by allowing its competitors to benefit from a knowledge base that required a significant investment of time and resources to develop, that may be used in the engineering or construction trades, that is generally not known in these trades, and that could only be developed by its competitors independently through the investment of similar time and effort of their own. The appellant says that this “window” into its techniques and processes would negate any competitive advantage that the appellant could derive from its development of proprietary techniques and processes and allow its competitors a “head start” that the appellant was not afforded.

[45] Finally, the appellant says that, while the contract for Phase Two of the LRT has been awarded, a third phase is contemplated and that disclosure of the records could reasonably be expected to prejudice its competitive position for future phases of the LRT.¹⁷

The city’s representations

[46] The city submits that the records are designed to provide a snapshot of the project’s progress to the three levels of government funding it. The city says that the appellant, in claiming that entire reports submitted to the city (i.e. its funder and client) are exempt from disclosure, has failed to appreciate that any necessary exemptions from the right of access should be limited and specific, and that the records are not as detailed or prone to being exploited by competitors as the appellant asserts.

[47] The city submits that the records were created and exchanged for the purpose of monitoring progress on the project, including facilitating payment by the city. It says that by their nature, the records invariably describe delays attributable to challenges with construction, but that disclosure of the records will not, in fact, result in the prejudice described by the appellant. The city says that variations in the records were simply changes to the work being completed, and that not all variations listed in the monthly status reports were adopted, or the costs (which information the city has withheld) necessarily final. Although some of the information in the records, such as organizing project tasks along a time continuum (as in the February 21, 2021 report)

¹⁷ According to its representations, the appellant is not involved in Phase Two of the LRT project.

may have involved a significant amount of resources, the city submits that the scope of work listed for each task was broad in the context of the size of the project. The city says that it is unclear how a competitor could reverse engineer this information to discover the appellant's unique processes or techniques.

[48] The city also says that it withheld commercially sensitive information from the records under section 10(1). For example, the city says it withheld the dollar amounts for the estimated cost impact contained in the project variations section of the IC monthly status reports, and the risk register portions of the monthly works reports where disclosure may reveal commercially valuable information generated by the appellant. The city says that it did not deny access to other portions of the records because, on balance, the information is summary in nature and necessarily became less sensitive with the passage of time.

[49] With respect to the remaining information, the city submits that there are publicly- available documents that contain information pertaining to the progress of construction. It says that city staff have made numerous presentations to city committees that are open to the public and that have included ongoing project progress updates. The city says that its Confederation Line website also contains weekly construction updates for the time period that corresponds with the creation date of the records at issue in this appeal.¹⁸

Analysis and findings

[50] I have reviewed the portions of the records at issue and find that they are not as detailed or prone to exploitation by competitors as the appellant asserts. I accept the city's position and find that the records provide a snapshot of the project's progress over a six-month period and contain information that is more summary in nature, as opposed to detailed information about the particulars of the work undertaken to complete the project's constituent components. A significant portion of the records consists of itemizing or listing the various project works, accompanied by columns setting out their scheduled completion and variances to the schedule. The records also identify delay events that presented challenges to the completion of milestones, with associated variances to the affected milestones. While the records identify other records (such as memoranda and correspondence) that might reasonably be expected to contain details of the techniques and processes or designs either proposed or used by the appellant to remedy delay events or address challenges, those details are not contained in the records at issue in this appeal.

[51] For example, in its representations, the city refers to a sinkhole that formed next to a station under construction and which is identified in the records as a delay event

¹⁸ <https://www.ligneconfederationline.ca/>

that impacted the completion of certain project milestones. Based on my review of the records, I find that they do not contain details about the appellant's methods, either proposed or used, to address the sinkhole or the related (or other) project variances. The IC reports refer the reviewer to specific correspondence and memoranda for information about the evaluation of specific designs, or works and measures to be undertaken in relation to the delay event, but the contents of those documents are not revealed in the portions of the records at issue and those documents are not part of the records at issue.

[52] In support of its position, the appellant argues that the harm that could reasonably be expected to result from disclosure of the records is substantially similar to that identified in Order MO-3628. I disagree.

[53] Order MO-3628, involving the same parties and project, dealt with a request for access to certain non-conformance reports. The records contained detailed information regarding surveying techniques, methods for dealing with the water table, and specific mixes of concrete developed and used by the appellant. The adjudicator found that some of the records contained a significant amount of technical information relating to unique concrete mixes that the appellant developed in response to on-site conditions and that disclosure of this type of information could result in a reasonable expectation of harm that was well beyond merely possible. The adjudicator found that this unique information could be incorporated into a competitor's own construction practices and then used to directly compete against the appellant for the contracts for future phases of the LRT.

[54] I find that this is not the case here. In my view, the level of detail regarding unique or proprietary developments (such as unique concrete mixes) is not present in the portions of the records at issue in this appeal. Neither has the appellant directed me to technical or proprietary information in the records that could be similarly used by a competitor, except to say that a competitor could "infer" information from the six-month progress overview that could be competitively damaging. Similarly, the appellant has not provided me with sufficient basis on which to conclude that the information in the records at issue could be used or adopted by a competitor into its own construction practices. The appellant has not elaborated on what specific information in the records could reasonably be expected to help a competitor infer construction or testing processes, techniques or methodologies developed and acquired over the course of the project that it could later use, and those methodologies do not appear to be described with any detail in the records themselves.

[55] While the appellant may have employed specific or unique solutions in response to delay events, as I have already noted, the records at issue do not contain the appellant's detailed responses to those events. I find that the status reports, for example, do not provide information or details about the methods used or proposed by the appellant to address delay events. Each IC report identifies project variations, and a chart that lists the impact of work on schedule, lifecycle and operational services. The

records itemize components of the project but do not contain the high level of detail the appellant submits, such as detailed information about design approaches for specific project components, or details regarding the appellant's methodology or detailed information regarding key activities.

[56] The appellant also relies on Orders MO-2070 and MO-2151 in support of its position that the records are exempt. In Order MO-2070, the adjudicator found that disclosure of records relating to the setting up of a voting system were sufficiently detailed to allow competitors to learn the bid proponent's methods, techniques, training and project schedule and to determine how to offer a similar service. In Order MO-2151, the adjudicator found that small portions of a bid proposal for a community centre expansion contained detailed and specific information that revealed a particular approach to a project by a third party, including specific templates to be used by the proponent that could be exploited.

[57] I find that Orders MO-2070 and MO-2151 are distinguishable from the facts before me. The information at issue in each was contained in proposals that were submitted to municipalities as part of procurement processes. Conversely, I find that the records at issue in this appeal were created during the performance of a contract already awarded and produced for the purpose of providing status updates on the project's progress.

[58] While the appellant submits the city has suggested in its representations that I may order certain portions of the records withheld, the appellant has not directed me to what specific portions of the records it believes could reasonably be expected to cause it competitive harm. The parties make specific reference to pages 12 to 14 of the records and to certain charts contained in the February 21, 2017 report.

[59] The charts in the February 21, 2017 report illustrate the project schedule and list work items along a time continuum. Although the appellant argues that a competitor "could use the project schedule to infer specific challenges encountered by" the appellant, the appellant has not provided me with sufficient evidence to conclude that information contained in these charts or the project schedule could be used by a competitor to discover the appellant's specific or unique processes or techniques.

[60] Pages 12 to 14 of the records are part of the IC's report #45. Pages 12 to 14 contain, under the title "Schedule," information regarding the project schedule, including revised draft works schedules. These pages also contain a chart that sets out the status of construction and project milestones at the date of the report, which are summarized as a list of specific works and milestones with columns for dates, updated schedule dates and variances for each item, including the number of days, if any, the item may be behind or ahead of (or on) schedule. The appellant has not provided me with a basis on which to conclude that this information (which appears in all five IC reports), is commercially sensitive or that its disclosure could reasonably be expected to be commercially damaging and to cause it competitive harm. I find the same to be true for the remaining portions of the records at issue.

[61] Finally, the appellant has also not elaborated on how disclosure of the information at issue could reasonably be expected to be more prejudicial to it than the information about construction and project schedules that the city says is already publicly-available.

[62] In conclusion, I find that the appellant's representations do not provide sufficiently detailed evidence to establish how disclosure of the portions of the records that are at issue could reasonably be expected to result in the harms contemplated in section 10(1) of the *Act*. I find that the appellant's representations amount to speculation of possible harms, and I am not persuaded that the harms in section 10(1) are inferable from the information itself. Accordingly, I find that the appellant has not established that there is a reasonable expectation of harm that could be expected to result from disclosure of the portions of the records the city intended to disclose. I find that the third part of the three- part test in section 10(1) has not been met and that the portions of the records at issue are therefore not exempt from disclosure under section 10(1).

[63] Since I have found that the portions of the records at issue are not exempt under section 10(1), it is not necessary for me to consider the application of the public interest override in section 16 of the *Act*. For the reasons set out above, the appeal is dismissed.

ORDER:

1. I order the city to disclose the records in accordance with its access decision to the requester by **June 7, 2021** but not before **May 31, 2021**.
2. In order to verify compliance with provision 1 of this order, I reserve the right to require the city to provide me with a copy of the records which it disclosed to the requester.

Original signed by: _____
Jessica Kowalski
Adjudicator

_____ April 30, 2021