

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4307

Appeal PA21-00419

University of Toronto

September 28, 2022

Summary: The University of Toronto (the university) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the university's contracts for third party maintenance services. A third party service provider appealed the university's decision to grant the requester full access to a purchase order in relation to its services. The third party claimed that the purchase order was exempt from disclosure citing the third party information exemption in section 17(1) of the *Act*. In this order, the adjudicator finds that the third party information exemption under section 17(1) does not apply and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, s. 17(1).

OVERVIEW:

[1] This order disposes of the issue on appeal arising from an access request submitted to the University of Toronto (the university) pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The university received a request for access to records relating to its current contracts or, if contracts are unavailable, information of pricing, contract terms and parties, for the performance of winter maintenance, asphalt maintenance, tree maintenance and landscaping.

[3] Relevant to this appeal, the university located a one-page purchase order for a third party service provider (the affected party) as responsive to the request. The university notified the affected party of the request, enclosing a copy of the record, and invited the affected party to submit representations on its disclosure to the requester.

[4] The affected party objected to disclosure of the purchase order citing the third party information exemption in section 17(1) of the *Act*. The affected party did not provide representations specifically addressing the application of section 17(1) to the responsive record.

[5] The university decided to grant the requester full access to the purchase order.

[6] The affected party, now the appellant, appealed the university's decision to the Information and Privacy Commissioner of Ontario (IPC). A mediator was appointed to explore possible resolution.

[7] During mediation, the mediator spoke to the appellant, the university and the requester. The requester confirmed that they wish to pursue access to the purchase order that is at issue in this appeal. The university confirmed its decision to grant full access to the purchase order. The appellant advised the mediator that they maintain their position that the information contained within the purchase order should be withheld pursuant to the third party information exemption in section 17(1) of the *Act*.

[8] As a mediated resolution was not achieved, the file was transferred to the adjudication stage of the appeal process, during which an adjudicator may conduct an inquiry.

[9] I began my inquiry by inviting the appellant to submit representations. I decided to invite representations from the appellant first as they are the party opposing the disclosure of the purchase order. In particular, I asked the appellant to address the application of the third party information exemption in section 17(1) of the *Act* to the purchase order.

[10] The appellant did not provide representations within the time limit given for doing so and has not requested an extension of time. I provided the appellant with a further opportunity to provide representations and notified them that if I did not hear from them, I would proceed without further notice. I did not receive a response from the appellant.

[11] For the reasons that follow, I find that the third party information exemption in section 17(1) of the *Act* does not apply to the purchase order. Accordingly, I uphold the university's decision to disclose the record in full to the requester and dismiss the appeal.

RECORDS:

The record at issue is a one-page purchase order dated June 17, 2020.

DISCUSSION:

[12] The sole issue to be decided in this appeal is whether the third party information exemption in section 17(1) of the *Act* applies to the purchase order at issue. It is the appellant's position that the exemption applies so that the university should not grant the requester access to the purchase order in responding to the request.

[13] The third party information exemption in section 17(1) is mandatory and I will therefore consider whether it applies to the record at issue in this appeal. In reaching a determination, I will review the purchase order and the circumstances of the request.

[14] Sections 17(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] Previous orders of the IPC have held that for section 17(1) to apply, the party arguing against disclosure 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 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.

[16] As noted above, the appellant has not provided representations addressing the application of section 17(1) to the purchase order that is at issue in this appeal. Based upon my review of the purchase order, I find that the three part test set out above is not met. My reasons for arriving at this decision follow.

Part 1: Type of information

[17] Previous orders of the IPC have found that “commercial information” is information which relates solely to the buying, selling or exchange of merchandise or services.¹ The term “commercial” has been held to apply to both profit-making enterprises and non-profit organizations and has equal application to both large and small enterprises.²

[18] The purchase order at issue in this appeal relates to the provision of services by the appellant to the university. The information in the purchase order includes a description of the services and the cost of those services. In my view, this information is commercial information and accordingly, I find that the purchase order reveals commercial information so that the first part of the three-part test under section 17(1) is met.

Part 2: Supplied in confidence

[19] In order to satisfy the second part of the test, the appellant must have supplied the information to the university in confidence, either implicitly or explicitly. This requirement reflects the purpose in section 17(1) of protecting the informational assets of third parties.³

[20] 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.⁴

[21] In order to satisfy the “in confidence” component of part two, the party resisting disclosure must establish that the supplier had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.⁵

[22] I find that the purchase order does not meet the “supplied in confidence”

¹ See for example, Order PO-2010.

² See Order P-493.

³ See Order MO-1706, which considers the equivalent provision in the municipal version of the *Act*.

⁴ See Orders PO-2020 and PO-2043.

⁵ See Order PO-2020.

requirement of part two of the section 17(1) test. I am not satisfied that the commercial information contained in the purchase order was “supplied” by the appellant to the university. Previous orders of the IPC have held that purchase orders prepared and issued by an institution to a service provider do not meet the “supplied” test in section 17(1).⁶ The purchase order at issue in this appeal was issued by the university.

[23] From my review of the purchase order, I am not satisfied that its disclosure would reveal or permit an accurate inference to be drawn with respect to confidential information supplied by the appellant. For example, an accurate inference with respect to confidential information supplied by the appellant during the negotiation process that led to the agreement for the provision of services between the parties.

[24] The commercial information in the purchase order, namely the description, quantity and cost of services, likely reflects the terms of the service agreement. However, this agreement is not before me.

[25] In addition, from my review of the purchase order there is nothing to indicate that the parties intended to treat the commercial information it contains as confidential.

[26] Accordingly, I find that the purchase order at issue in this appeal was not “supplied in confidence” to the university so that the third party information exemption in section 17(1) of the *Act* does not apply.

[27] I dismiss this appeal and order the university to disclose the purchase order at issue to the requester.

ORDER:

1. I uphold the university’s decision to disclose the purchase order dated June 17, 2020.
2. I order the university to provide a copy of the purchase order to the requester by November 3, 2022 but not before October 29, 2022.
3. In order to verify compliance with provision 2, I reserve the right to require a copy of the record disclosed to the requester to be provided to me.

Original Signed By: _____
Katherine Ball
Adjudicator

September 28, 2022 _____

⁶ See for example, Orders PO-3347 and MO-3062.