

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4315

Appeal MA21-00367

Town of Gravenhurst

January 10, 2023

Summary: The Town of Gravenhurst (the town) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records of an aerial fire truck provided by a successful bidder (the affected party) in response to a specified Request for Tenders (the RFT). Following notification to the affected party, the town denied access to two records pursuant to section 8(1)(i) (endanger security of a vehicle) and section 10(1) (third party information) of the *Act*. In this order, the adjudicator partially upholds the town's decision, finding that the record related to performance analysis is exempt from disclosure under section 10(1) of the *Act*. She allows the appeal in part, finding that the section 8(1)(i) and 10(1) exemptions do not apply to the drawings and ordering the town to disclose the drawings to the appellant.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 8(1)(i) and 10(1).

Order Considered: Order PO-2435.

OVERVIEW:

[1] The records at issue in this appeal are in response to a Request for Tenders (RFT), issued by the Town of Gravenhurst (the town) for an aerial ladder fire truck (the vehicle), submitted by the successful bidder (the affected party).

[2] The town received a request under the *Municipal Freedom of Information and*

Protection of Privacy Act (the *Act*) for “Chassis and body specifications and truck drawing for [a specified awarded RFT for an] aerial truck [the vehicle].”

[3] The town identified two responsive records relating to the request. The town notified an affected third party (the affected party) under section 21(1) of the *Act* to obtain its views regarding disclosure of the records. Following third party notification, the town issued a decision denying access to the records pursuant to sections 8(1)(i)¹ and 10(1) of the *Act*.

[4] The appellant appealed the town’s decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC).

[5] During mediation, the mediator notified the affected party but was unable to obtain consent to the disclosure of the records. The appellant advised that it continues to seek access to the records.

[6] No further mediation was possible and this appeal was transferred to the adjudication stage of the appeals process, in which an adjudicator may conduct an inquiry under the *Act*.

[7] As the adjudicator assigned to this appeal, I decided to conduct an inquiry into this matter. I began by inviting representations from the town and the affected party on the issues set out in a Notice of Inquiry. I received representations from both the town and the affected party,² which I shared with the appellant. Despite being invited to submit its own representations, the appellant did not submit any representations.

[8] In this order, I find that the performance analysis record is exempt from disclosure under section 10(1) of the *Act*, while the drawings are not exempt under sections 8(1)(i) or 10(1). Accordingly, I partially uphold the town’s decision for the performance analysis record and I order it to disclose the drawings to the appellant.

RECORDS:

[9] There are two records at issue, comprised of seven pages in total (collectively, the records). They are two pages of drawings (the drawings) and five pages of electrical and turning performance analysis (the performance analysis).

¹ The town’s decision cites “section 8(i)”, which should be “section 8(1)(i)”, as clarified during mediation.

² These representations are the affected party’s representations and those of its vendor, who supplied the drawings (collectively, the affected party).

ISSUES:

- A. Does the mandatory exemption at section 10(1) for third party information apply to the records?
- B. Does the discretionary exemption at section 8(1)(i) related to law enforcement activities apply to the records?

DISCUSSION:

Issue A: Does the mandatory exemption at section 10(1) for third party information apply to the records?

[10] The purpose of section 10(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,³ where specific harms can reasonably be expected to result from its disclosure.⁴

[11] 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.

[12] For section 10(1) to apply, the party arguing against disclosure must satisfy each part of the following three-part test:

³ *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

⁴ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

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 10(1) will occur.

Part one: Do the records contain technical or commercial information, or trade secrets?

[13] As explained below, I find that the records contain technical information and therefore, part one of the test is met.

[14] The IPC has described the types of information protected under section 10(1), in part, as follows:

Trade secret includes information such as a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which:

- (a) is, or may be used in a trade or business;
- (b) is not generally known in that trade or business;
- (c) has economic value from not being generally known; and
- (d) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.⁵

Scientific information is information belonging to an organized field of knowledge in the natural, biological or social sciences, or mathematics. For information to be characterized as "scientific," it must relate to the observation and testing of a specific hypothesis or conclusion by an expert in the field.⁶

Technical information is information belonging to an organized field of knowledge in the applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. Technical information usually involves information prepared by a professional in the

⁵ Order PO-2010.

⁶ Order PO-2010.

field, and describes the construction, operation or maintenance of a structure, process, equipment or thing.⁷

Commercial information is information that relates only to the buying, selling or exchange of merchandise or services. This term can apply to commercial or non-profit organizations, large or small.⁸ The fact that a record might have monetary value now or in future does not necessarily mean that the record itself contains commercial information.⁹

Representations of the parties

[15] The town submits that the records were designed by the affected party, who was awarded the contract by the town. It surmises that aspects of the records may be considered trade secrets. It also explains that:

As the specifications for the [vehicle] are considered mechanical in nature that details the operation of the vehicle, it would fall under the definition of "commercial information".

[16] The affected party submits that the records contains technical and/or commercial information. It explains that the records consist of technical information regarding the construction of the equipment to be supplied under the RFT, including design specifications and engineering drawings. It also relates to the terms upon which the affected party was prepared to contract with the town for the supply of the goods and services specified in the RFT.

Analysis and findings

[17] Based on my review of the records, I am satisfied that the records contain technical information.

[18] The town submits that the records contain commercial information and trade secrets, while the affected party submits that the records contain technical and commercial information.

[19] I agree with the town and the affected party that the records contain technical information about the construction and operation of the vehicle and that this information belongs to an organized field of knowledge in the applied sciences or mechanical arts, namely, engineering. In light of this, I do not need to make a finding on whether the records contain commercial information. In addition, I have not been provided with sufficient evidence to find that the records contain trade secrets, nor am I able to conclude this from my review of the records. However, I note that the affected

⁷ Order PO-2010.

⁸ Order PO-2010.

⁹ Order P-1621.

party has not argued that the records contain trade secrets.

[20] Accordingly, I find that the records reveal technical information and part one of the test under section 10(1) is met.

Part two: Were the records supplied in confidence?

[21] The town and the affected party submit that the records were supplied in confidence by the affected party to the town. For the reasons below, I agree with the parties for the performance analysis only.

Supplied

[22] The requirement that the information has been “supplied” to the institution reflects the purpose in section 10(1) of protecting the informational assets of third parties.¹⁰

[23] 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.¹¹

In confidence

[24] The party arguing against disclosure must show that both the individual supplying the information and the recipient expected the information to be treated confidentially, and that their expectation is reasonable in the circumstances. This expectation must have an **objective** basis.¹²

[25] Relevant considerations in deciding whether an expectation of confidentiality is based on reasonable and objective grounds include whether the information:

- was communicated to the institution on the basis that it was confidential and that it was to be kept confidential,
- was treated consistently by the third party in a manner that indicates a concern for confidentiality,
- was not otherwise disclosed or available from sources to which the public has access, and

¹⁰ Order MO-1706.

¹¹ Orders PO-2020 and PO-2043.

¹² Order PO-2020.

- was prepared for a purpose that would not entail disclosure.¹³

Representations of the parties

[26] The town submits that the affected party provided the records as part of its tender submission for the RFT in accordance with the town's Procurement By-law and the contract between the town and the affected party contains the successful RFT submission, which includes the records. It also submits that the affected party provided the records to the town with explicit statements on them that the records are to be treated confidentially, which was verbally confirmed with during the request stage.

[27] The affected party submits that it supplied the records to the town with a reasonable expectation that it would be held in confidence by the town. It submits that:

The [records contain] detailed specifications regarding the equipment to be supplied pursuant to the [tender submission]. These specifications are, essentially, a description of the existing equipment that [the affected party] proposed to supply to the town. The specifications were not negotiated (or susceptible to negotiation) when [the affected party] submitted its response to the [RFT]. Similarly, the drawing of the truck was provided by [the affected party] to the town and was not negotiated or susceptible of negotiation. As such, the [records fit] squarely within the "immutability" exception to the general rule that the contents of a contract are negotiated rather than supplied (See e.g. IPC Order PO-2497, upheld on judicial review in *Canadian Medical Protective Association v. John Doe*, 2008 CanLII 45005 (Div. Ct.).

...

All four factors are met with respect to the [records], giving rise to a reasonable and objective implicit expectation of confidentiality.

...

None of the [records] has ever been made public by [the affected party] or is otherwise available from sources to which the public has access...

Analysis and findings

[28] Based on the representations before me and my review of the records, I am satisfied that the affected party supplied the performance analysis to the town in confidence. However, while I find that the drawings were supplied, I make no finding on whether they were supplied "in confidence".

¹³ Orders PO-2043, PO-2371 and PO-2497, upheld in *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

Supplied

[29] Based on the facts of this appeal, I am of the view that the records were provided to the town as part of the affected party's tender submission in response to the town's RFT, and not mutually generated by the town and the affected party. Accordingly, I am satisfied that the records were "supplied" by the affected party to the town.

In confidence

[30] I note that the town's RFT document advised bidders that materials in response to the RFT would be subject to the *Act* and "reminded" bidders to mark confidential information as such in their tender submissions. The RFT document specifically states:

All correspondence, documentation, and information provided to staff of the [town] by every Bidder, including the submission of proposals, shall become the property of the [town], and as such, is subject to the [Act], and may be subject to release pursuant to the *Act*.

Bidders are reminded to identify in their proposal material any specific, scientific, technical, commercial, proprietary, or similar confidential information, the disclosure of which could cause them injury. Complete proposals are not to be identified as confidential.

[31] I also note that the affected party marked some of the pages of the records as being "confidential," namely, the second page of the drawings and the first page of the performance analysis. The affected party also articulates its expectation that the town would keep the records confidential.

[32] Based on the facts of this appeal, I agree with the town and the affected party that the performance analysis was supplied in confidence. With reference to the factors from previous IPC orders for determining whether an expectation of confidentiality is based on reasonable and objective grounds,¹⁴ the performance analysis appears to have been:

- communicated to the town on the basis that it was confidential and that it was to be kept confidential;
- treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the town;
- not otherwise disclosed or available from sources to which the public has access; and

¹⁴ See Orders P-561, PO-2043, PO-2371 and PO-2497, upheld in *Canadian Medical Protective Association Loukidelis*, 2008 CanLII 45005 (ON SCDC).

- prepared for a purpose that would not entail disclosure.

[33] Given the level of detail and specific information relating to the vehicle in the performance analysis, I accept that this information would have been supplied by the affected party to the town in confidence. In addition, it is clear from the representations of the town and the affected party that, at the time of submitting its tender submission, the affected party expected the town to keep its tender submission, including the performance analysis, confidential.

[34] Accordingly, I am satisfied that the affected party had both an explicit and implicit expectation of confidentiality in the performance analysis that was both reasonable and objective. As a result, I find that the performance analysis was supplied in confidence by the affected party to the town, thereby, meeting part two of the test.

[35] However, it is my view that the RFT sets out the specifications required for the vehicle, as determined by the town and industry standards, and that the drawings are visual renderings of these specifications. I also note that some details about the vehicle are available online and would be visible upon seeing the vehicle in person. Given that the vehicle was delivered to the town this past summer and is in use by the town, this means that the vehicle is operational and visible to the public.

[36] As such, it is difficult for me to find that the affected party had an expectation of confidentiality in the drawings that was both reasonable and objective because the affected party has not established that the drawings are not otherwise available from sources to which the public has access.

[37] However, I do not have to have to make a definitive finding on whether the drawings were supplied "in confidence", in light of my finding below on the third part of the test for the drawings. Below I continue my analysis of the third part of the test for all of the records.

Part three: Could disclosure of the records result in the harms listed in section 10(1)?

[38] As outlined below, I find that the town and the affected party have submitted sufficient evidence to establish the third part of the test for the performance analysis, but not for the drawings.

[39] Sections 10(1)(a) and (c) seek to protect information that could be exploited in the marketplace,¹⁵ while section 10(1)(b) seeks to prevent similar information from no longer being supplied by private sector organizations to institutions.

¹⁵ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

Representations of the parties

Sections 10(1)(a) and (c): prejudice to competitive position / undue loss or gain

[40] The town submits that, as the information contained in the records is considered confidential, it can be reasonable to assume that the disclosure of the records could result in the loss of the affected party's competitive position in the industry and thus result in undue financial loss. It also notes that there is no language in the contract that indicates there would be a breach of agreement should the records be publicly disclosed.

[41] The affected party submits that disclosure could significantly prejudice its competitive position and/or interfere significantly with its competitive position and/or interfere significantly with its contractual negotiations because disclosure could reveal information with respect to the affected party's technical and proprietary solutions for the vehicle described in the RFT. It explains that this could provide a significant advantage to the public and/or private counterparties, and the affected party's competitors in future negotiations relating to similar projects, to the detriment of the affected party.

[42] It also submits that disclosure of the records could interfere with the affected party's future negotiations in the context of other procurements. It explains that it regularly enters procurement processes with public and private procuring entities and the information in the records reflects the solution that the affected party was prepared to offer to the town in the context of the RFT. It also explains that if this information were disclosed, it could be leveraged by other public and private counterparties in future negotiations and the prejudice to it would be amplified by the fact that it would not have similar disclosure of its counterparty's proprietary technical information.

[43] The affected party refers to Order PO-2986, where the adjudicator found that some technical information was exempt from disclosure because it was proprietary and the disclosure of the format and substance of that information could be reasonably expected to be used by a competing engineering firm to prejudice another company's competitive position with respect to future projects they might be competing for.

[44] It submits that:

...[With reference to Order PO-2986, t]hese same principles are applicable here, where the [information in the records] is confidential, technical and proprietary drawings and specifications which, if disclosed, could be used by [the affected party]'s competitors to prejudice [the affected party]'s competitive position. [The affected party]'s competitors would be able to use the intellectual property developed by [the affected party] through its considerable investment in time and human resources, again without

incurring any countervailing costs. [The affected party] would thus suffer a further undue loss.

[45] It also refers to Order PO-1818, where the adjudicator found that the disclosure of the methodologies or the actual description of “here’s how we will perform the work required” in the proposal could also reasonably be expected to result in prejudice to the competitive position of a company, where competitors could make use of the methodologies described in the proposal and tailor their own proposals to imitate those of the successful bidders.

[46] It also submits that:

...[With reference to Order PO-1818], the [information in the records] is a detailed description of how [the affected party] intends to perform the work described in the [RFT]. Disclosure of the [information in the records] would thus be equally prejudicial to [the affected party].

[47] It further submits that:

...disclosure would provide [the affected party]’s competitors with an undue gain. In particular, [the affected party]’s competitors could replicate [the affected party]’s successful proposal (or build on its work to develop competing proposals), reaping the benefit of [the affected party]’s work and investment in developing the [tender submission], without those competitors having expended any efforts or costs for doing so. In particular, a competitor would be able to simply copy or adapt [the affected party]’s technical solution to perform the type of work set out in the [RFT] (including the design of the awarded [vehicle]). Permitting [the affected party]’s competitors to “ride its coattails” in this way would also result in an undue loss to [the affected party].

The detailed specifications and design drawings contained in the [tender submission] represent valuable intellectual property developed by [the affected party] as a result of the investment of considerable time, and financial and human resources. If the design specifications and drawings contained in the [tender submission] are disclosed, [the affected party]’s competitors would be able to use the intellectual property developed by [the affected party], again without incurring any of the same costs.

Section 10(1)(b): similar information no longer supplied

[48] The town submits that the records were provided through an RFT process and interest from the public is tied to the town’s ability to acquire goods that they are unable to produce themselves. It explains that the RFT process is conducted in an open and transparent manner in compliance with municipal by-laws and policies and the town’s inability to receive tenders for goods, such as fire vehicles, also could arguably

lead to public harm.

[49] The affected party submits that private entities could be reluctant to share detailed technical information with public procuring authorities or to offer their most favourable terms, if doing so risks placing this sensitive information in the public domain. It explains that if companies cannot be confident that their sensitive commercial and technical information will be protected from disclosure in the context of a public procurement, they will be reluctant to submit a proposal to a public procuring authority. It also explains that, in this case, the drawings were themselves supplied by a vendor of the affected party, and if the drawings are disclosed, the affected party could have difficulty securing partners and subcontractors for future public project if potential partners are unwilling to risk such disclosure of their sensitive information, meaning that there could be fewer proposals submitted to the procuring authority and less competitive bids.

Analysis and findings

[50] Parties resisting disclosure of a record cannot simply assert that the harms under section 10(1) are obvious based on the record. They must provide **detailed** evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 10(1) are self-evident and can be proven simply by repeating the description of harms in the *Act*.¹⁶

[51] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.¹⁷ However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.¹⁸

[52] In applying section 10(1) to government contracts, the need for accountability in how public funds are spent is an important reason behind the need for detailed evidence to support the harms outlined in section 10(1).¹⁹

The Performance Analysis

[53] The records include information related to the performance analysis of the vehicle, namely, electrical and turning performance analysis (the performance analysis).

[54] The affected party submits that the information in the records reflects the

¹⁶ Orders MO-2363 and PO-2435.

¹⁷ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

¹⁸ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

¹⁹ Order PO-2435.

solution that the affected party was prepared to offer to the town in the context of the RFT and if this is disclosed, it could be leveraged by other public and private counterparties in future negotiations. I am persuaded by this argument for the performance analysis.

[55] I note that the town's RFT do not appear to have required bidders to submit electrical and turning performance analysis. While there may be industry standards for such analysis, I have not been provided with anything to suggest that the performance analysis submitted in response to the town's RFT is widely known in the industry. Accordingly, I accept the affected party's representations that the performance analysis reveals information that, if disclosed, could be copied by competitors and could be prejudicial to the affected party's competitive position in general and on similar projects in the future, or could result in undue loss to the affected party and undue gain to its competitors. Also, I am persuaded by the argument that disclosure of the performance analysis could also interfere with the affected party's ability to negotiate other contracts for the provision of similar vehicles in the future.

[56] Accordingly, the representations of the affected party convince me that the performance analysis is of a form such that competitors could simply copy the affected party's technical information. As a result, I find that it is reasonable to expect that the disclosure of the performance analysis could result in prejudice to the affected party's competitive position, undue loss for the affected party, or undue gain to its competitors. Therefore, I find that sections 10(1)(a) and (c) of the *Act* apply. In light of this finding, I do not need to consider whether disclosing the performance analysis could reasonably be expected to result in similar information no longer being supplied to the town in the future under section 10(1)(b) of the *Act*.

[57] As all three parts of the section 10(1) test have been met for the performance analysis, I find that the performance analysis is exempt from disclosure under the mandatory third party information exemption at section 10(1) of the *Act*. As a result, I uphold the town's decision to not disclose the performance analysis to the appellant.

The drawings

[58] The records also include two pages of drawings (the drawings), which relate to a vehicle sold to the town by the affected party in response to an RFT.

[59] The affected party submits that the information in the records reflects the solution that the affected party was prepared to offer to the town in the context of the RFT and if this is disclosed, it could be leveraged by other public and private counterparties in future negotiations. I am not persuaded by this argument for the drawings.

[60] I note that the specifications, upon which the drawings are based, were largely dictated by the specifications in the town's RFT, where proponents were asked to

indicate whether they could provide each of them. Presumably, the successful bidder would be the one who could deliver a large portion of these specifications. As noted above, it is my view that the drawings are visual rendering of these specifications. I also note that some details about the vehicle are available online and would be visible upon seeing the vehicle in person. Given that the vehicle is in use by the town, the appearance and many of the vehicle's features would be observable. While the drawings contain technical information for the vehicle, it does not contain any more engineering or technical data than that could be readily apparent from looking at the vehicle in person, to allow the vehicle to be reproduced by a competitor. Also, some of the specifications are industry standard.

[61] Given the customized nature of the vehicle requested by and provided to the town, I do not accept the affected party's representations that the drawings reveal sensitive and proprietary information that, if disclosed, could be copied by competitors and could be prejudicial to the affected party's competitive position in general and on similar projects in the future, or could result in undue loss to the affected party and undue gain to its competitors. Also, I am not persuaded by the argument that disclosure of the drawings could also interfere with the affected party's ability to negotiate other contracts for the provision of similar vehicles in the future.

[62] The representations of the town and the affected party, along with the drawings, do not convince me that the information is of a form such that competitors could simply copy the affected party's design specifications. As indicated above, the specifications themselves were largely dictated and prescribed by the town.

[63] In addition, in Order PO-2435, former Assistant Commission Brian Beamish stated:

The fact that a consultant working for the government may be subject to a more competitive bidding process for future contracts does not, in and of itself, significantly prejudice their competitive position or result in undue loss to them.²⁰

[64] I agree with the finding of Assistant Commissioner Beamish. In my view, the representations of the parties regarding the drawings being disclosed to potential competitors is not sufficient, in and of itself, to establish a loss of the affected party's competitive position in the industry within the meaning of section 10(1)(a), or undue loss or gain within the meaning of section 10(1)(c), in the circumstances of this appeal.

[65] Accordingly, I am not satisfied that it is reasonable to expect that the disclosure of the drawings could result in prejudice to the affected party's competitive position, undue loss for the affected party, or undue gain to its competitors. Therefore, sections 10(1)(a) and (c) of the *Act* does not apply to the drawings.

²⁰ At page 11.

[66] I am also not satisfied that disclosing the drawings could reasonably be expected to result in similar information no longer being supplied to the town in the future. It is my view that companies doing business with institutions would not refuse to provide the information necessary to win and maintain relationships with an institution and would understand that certain information regarding how the institution plans to carry out its obligations will be made public. Accordingly, I am not satisfied that it is reasonable to expect that the disclosure of the drawings could have the effect that companies will no longer supply similar information to institutions.

[67] In my view, the affected party has not provided me with sufficient evidence or submissions to establish that disclosure of the drawings could reasonably be expected to cause the harms set out in section 10(1). Without more detailed evidence from the affected party and the town, it is difficult for me to ascertain how disclosure of the drawings could result in the harms listed under section 10(1) of the *Act*.

[68] Based on my review of the drawings and the parties' representations, I find that I do not have sufficient evidence to determine that disclosure of the drawings gives rise to a reasonable expectation that one of the harms in paragraphs (a), (b), (c) and (d) of section 10(1) will occur. Therefore, the drawings do not meet part three of the test.

[69] As a result, I find that the drawings are not exempt from disclosure under the mandatory third party information exemption at section 10(1) of the *Act*. As the town has also claimed the discretionary exemption at section 8(1)(i) of the *Act* to withhold the drawings, I will consider the application of this discretionary exemption below.

Issue B: Does the discretionary exemption at section 8(1)(i) related to law enforcement activities apply to the drawings?

[70] The town relies on section 8(1)(i), which states:

(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

(i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

[71] For section 8(1)(i) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required.

[72] Parties resisting disclosure of a record cannot simply assert that the harms under section 8 are obvious based on the record. They must provide **detailed** evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not

assume that the harms under section 8 are self-evident and can be proven simply by repeating the description of harms in the *Act*.²¹

[73] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.²² However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.²³

[74] Although this exemption is found in a section of the *Act* that deals primarily with law enforcement matters, it is not restricted to law enforcement situations. It can cover any building, vehicle, system or procedure that requires protection, even if those things are not connected to law enforcement.²⁴

Representations of the parties

[75] Only the town submitted representations on this issue. It submits that:

The specifications of the [vehicle] include details such as the requirements for vehicle ignition, as well as details for how to access or by-pass critical operational areas of the [vehicle]. Not only is their endangerment to the security of the vehicle, but the life safety of the individual(s) operating the [vehicle] – the “items” being carried in the vehicle – during an emergency response would also be endangered if the detailed specifications were publicly released and provided to an individual(s) with nefarious intent.

The specifications of the [vehicle] include details such as the requirements for vehicle ignition, which would allow anyone with this knowledge to operate and steal the vehicle. Securing this type of information is pivotal to maintaining the vehicle’s protection from theft.

Analysis and findings

[76] For the reasons explained below, I find that disclosure of the drawings could not or the security of a system or procedure established for protection of items carried by it.

[77] As noted above, it is my view that the RFT sets out the specifications required for the vehicle, as determined by the town and industry standards, and that the drawings are visual renderings of these specifications. As also noted above, some

²¹ Orders MO-2363 and PO-2435.

²² *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

²³ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

²⁴ Orders P-900 and PO-2461.

details about the vehicle are available online and would be visible upon seeing the vehicle in person given that the vehicle is in use by the town. As such, it is difficult for me to find that disclosure of the drawings could reasonably be expected to endanger the security of the vehicle, the items it carries, or a system or procedure established to protect items it carries.

[78] The town submits that the vehicle's specifications include details about the its ignition, which would allow anyone with this knowledge to operate and steal the vehicle, as well as details for how to access or bypass its critical operational areas. However, it does not explain where such information can be found or how disclosure of this information could permit someone to steal the vehicle. From my review of the drawings, I am unable to locate such information. I have not been provided with sufficient evidence to demonstrate that disclosing the drawings could result in the theft of the vehicle.

[79] Accordingly, I find that disclosure of the drawings could not reasonably be expected to endanger the security of the vehicle, the items it carries, or the security of a system or procedure established for protection of the items it carries. As a result, I find that the discretionary exemption at section 8(1)(i) does not apply to the drawings. In light of this, I do not need to consider whether the town properly exercised its discretion and I will order the town to disclose the drawings to the appellant.

ORDER:

1. I partially uphold the town's decision to not disclose the performance analysis to the appellant.
2. I allow the appeal for the drawings and I order the town to disclose the drawings to the appellant by **February 14, 2023** but not before **February 9, 2023**.
3. In order to verify order compliance, I reserve the right to require the town to provide me with a copy of the drawings disclosed in accordance with order provision 2.

Original Signed by: _____
Valerie Silva
Adjudicator

January 10, 2022