

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-4442

Appeal MA22-00553

City of Toronto

September 22, 2023

**Summary:** The City of Toronto received a request for access to architectural drawings for a residential property. The city issued a decision granting access to responsive records. The homeowner appealed the city's decision, claiming that the records are exempt under the mandatory exemption in section 10(1) (third party information) of the *Municipal Freedom of Information and Protection of Privacy Act*. The adjudicator finds that the records at issue are not exempt under section 10(1), and upholds the city's decision to disclose them with the appellant's name removed.

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

### OVERVIEW:

[1] This order deals with access to architectural drawings and plans submitted as part of a building permit application for construction of a new home in the City of Toronto (the city). The city received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

Architectural drawings for [a specific address], North York.

[2] The city located responsive records. Before issuing a decision, the city notified the homeowner (the appellant in this appeal) pursuant to section 21 of the *Act*, and invited him to make submissions regarding possible disclosure. The homeowner did not

make any submission to the city, and the city issued a decision granting access to the requester in full.

[3] The appellant appealed the city's decision to the Office of the Information and Privacy Commissioner of Ontario (IPC). The IPC appointed a mediator to explore resolution. During mediation, the appellant explained that he had been away when the city both sent him notice of the request and when it issued its decision to grant access to the requester. The appellant opposed disclosure of the records, claiming that they are exempt under the mandatory third party information exemption in section 10(1) of the *Act*.

[4] With a mediated resolution not reached, the appeal was moved to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry.

[5] I decided to conduct an inquiry, during which I invited the appellant and the city to submit representations. I also notified four additional parties whose interests might be affected by disclosure of the records (affected parties). These were the authors of the records at issue (namely, the survey planners and architectural, design and engineering firms identified in the records).

[6] The appellant and the city submitted representations. None of the affected parties made any submissions.

[7] In its submissions, the city noted that the appellant's name appears on four of the 50 pages of records at issue.<sup>1</sup> The city says that it intends to withhold the appellant's name on the basis of the mandatory personal privacy exemption in section 14(1). The city maintains its position that access should be granted to the architectural drawings, but with the appellant's name removed.

[8] As a result of the city's revised position, I contacted the requester to ask if he seeks access to the appellant's name contained in the records. The requester informed the IPC that he only seeks access to the drawings. Because the requester is not making a claim for access to the appellant's name, this information is not at issue in this appeal.

[9] In this order, I find that the records are not exempt under section 10(1) because they were not supplied to the city in confidence. I uphold the city's decision to disclose the records at issue to the requester, but with the appellant's name removed from them.

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<sup>1</sup> The city submits that its access unit received the building drawings from its building division after the appeal was filed.

## **RECORDS:**

[10] The records at issue consist of 50 pages of architectural drawings and plans for the construction of a residential dwelling identified in the request.

## **DISCUSSION:**

[11] The sole issue before me is whether the mandatory exemption at section 10(1) for third party information applies to the records.<sup>2</sup> The appellant claims that the records should be withheld in their entirety because they consist of architectural plans and drawings that are unique to the appellant's home, were supplied by the appellant's architect to the city in confidence, and that disclosure would expose the appellant and his family to safety risks by revealing, among other things, floor plans and points of entry.<sup>3</sup>

[12] The purpose of section 10(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,<sup>4</sup> and where specific harms can reasonably be expected to result from its disclosure.<sup>5</sup>

[13] Section 10(1) states, in part, that:

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;

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<sup>2</sup> With the appellant's name removed.

<sup>3</sup> The appellant's representations do not address the commercial harms described in section 10(1). However, because I have found that the appellant has not met part two of the three-part test for exemption under section 10(1), I do not need to consider the harms in part three of the three-part test.

<sup>4</sup> *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.*).

<sup>5</sup> Orders PO-1805, PO-2018, PO-2184 and MO-1706.

(c) result in undue loss or gain to any person, group, committee or financial institution or agency;<sup>6</sup>

[14] For section 10(1) to apply, the party arguing against disclosure – in this case, the appellant – must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information;
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and,
3. the prospect of disclosure of the records must give rise to a reasonable expectation that one of the harms specified in paragraphs (a), (b), (c) and/or (d) of section 10(1) will occur.

### **Part 1: type of information**

[15] Prior IPC orders have considered the types of information listed in section 10(1). Relevant to this appeal is “technical information,” which has been found to mean 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 field, and describes the construction, operation or maintenance of a structure, process, equipment or thing.<sup>7</sup>

[16] There is no dispute between the parties that the record contains technical information, and I agree. I find that the records consist of drawings and information that relate directly to the design and construction of a home. I find that they meet the definition of technical information for the purpose of section 10(1) of the *Act* and that part one of the three-part test for exemption under section 10(1) has therefore been met.

### **Part two: supplied in confidence**

[17] Part two of the three-part test for section 10(1) to apply itself has two parts: the

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<sup>6</sup> Section 10(1)(d), which is not relevant and therefore not addressed in this order, is intended to protect “information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.” The appellant submits that section 10(1)(d) applies because he is involved in litigation with the requester for alleged non-delivery of services relating to completion of the home. The term “labour relations” refers to matters arising from a collective bargaining relationship between an institution and its employees (See *Ontario Minister of Health and Long-Term Care v. Ontario (Assistant Information and Privacy Commissioner)*, [3002] O.J. No. 4123 (C.A.) and Order PO-2157). Based on the appellant’s submissions, this is a private contractual dispute and does not involve matters arising from a collective bargaining unit as the term “labour relations” has been defined, so that section 10(1)(d) does not apply.

<sup>7</sup> Order PO-2010.

third party must have “supplied” the information to the city, and must have done so “in confidence,” either implicitly or explicitly.

[18] 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.<sup>8</sup>

[19] 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.<sup>9</sup>

[20] In order to satisfy the “in confidence” component of part two, the party resisting disclosure (again, the appellant in this case) must show that both the individual supplying the information and the recipient (in this case, the city), expected the information to be treated confidentially, and that their expectation is reasonable in the circumstances. This expectation must have an objective basis.<sup>10</sup>

[21] 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 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
- was prepared for a purpose that would not entail disclosure.<sup>11</sup>

### ***Representations***

[22] The appellant says that the records were supplied to the city in confidence by his architect, a third party. He submits they are for the appellant’s own use, and are one-of-a-kind drawings unique to his home. He submits that they were not otherwise disclosed or available from sources to which the public has access, and contain information about his home that is not common knowledge and should not be shared or made public.<sup>12</sup>

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<sup>8</sup> Order MO-1706.

<sup>9</sup> Orders PO-2020 and PO-2043.

<sup>10</sup> Order PO-2020.

<sup>11</sup> Orders PO-2043, PO-2371 and PO-2497, upheld in *Canadial Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

<sup>12</sup> The balance of the appellant’s representations describes the harms he says could reasonably be expected to arise from disclosure. I have not summarized those representations in this order because,

[23] The city submits that it has "a routine disclosure practice" in place that affirms that building plans for residential homes are not considered to have been supplied in confidence.<sup>13</sup> It says that this practice would generally be contrary to a reasonable and objective expectation of confidentiality on the part of any person. Further, the city notes that records were not stamped as confidential or otherwise noted as having been supplied to it in confidence.

[24] The city also says that it confirmed that its building division does not have an objection letter on file for the appellant's property. The city says that an objection letter, while it does not have applicability to matters under the *Act*, alerts building division staff that a homeowner objects to the plans being disclosed under the city's routine disclosure process.

### ***Analysis and findings***

[25] Based on the city's and the appellant's representations, I am satisfied that the records were supplied to the city, but I find that they were not supplied in confidence. I therefore find that part two of the three-part test in section 10(1) has not been met and that the records at issue must be disclosed to the requester, with the appellant's name removed (for the reasons discussed above).

[26] The appellant has not provided me with a basis on which I could conclude that the records were supplied to the city on the basis that they were, and were to be kept, confidential, that they were treated consistently by the third parties in a manner that indicated a concern for confidentiality, or prepared for a purpose that would not entail disclosure. As noted above, the appellant as the party opposing the disclosure must show that both the individuals supplying the information (in this case, the architects, engineers or planners and authors of the drawings, plans, site plans and surveys that make up the records) and the recipient (the city) had a reasonable expectation that the information would be treated confidentially, and that this expectation has an objective basis.

[27] The city has explained that its practice is to routinely disclose building records, and none of the individuals who prepared the records opposed their disclosure or made any submissions that their drawings and plans were supplied to the city in confidence. In the circumstances, I find that the records were not treated in a way that would imply confidentiality. I find that there is no basis to conclude that there was a reasonable expectation of confidentiality surrounding the submission of the records, and that the opposite may be true.

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having found that part two of the three-part test for exemption under section 10(1) has not been met, I do not need to address the third part of the test (harms).

<sup>13</sup> The city's routine disclosure policy is posted on its website, [www.toronto.ca](http://www.toronto.ca), and states that it allows anyone access (including for viewing and copying) to residential building plans associated with permit applications submitted after December 31, 2006.

[28] The parties have also not provided any information about the circumstances surrounding the submission of the records to the city from which any implied assurance of confidentiality could be inferred, that any express assurances were given, or that the third parties had an expectation of confidentiality that was reasonable in the circumstances.

[29] In conclusion, while I agree that the third parties supplied the records to the city, I have insufficient evidence on which to conclude that they did so in confidence. I therefore find that part two of the three-part test in section 10(1) has not been met. Because I have found that part two of the test for exemption under section 10(1) has not been met, it is not necessary for me to consider the harms test in part three.

[30] In conclusion, since all three parts of the test must be met, I find that the records are not exempt under section 10(1). I therefore uphold the city's decision, in part. I will order the city to disclose the records to the requester, with the appellant's name removed.

**ORDER:**

1. I uphold the city's decision.
2. I order the city to disclose the records to the requester, with the appellant's name removed, by October 27, 2023 but not before October 23, 2023.
3. In order to verify compliance with order provision 2, 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

\_\_\_\_\_ September 22, 2023