Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-1789

Appeal MA-020134-1

City of Ottawa

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NATURE OF THE APPEAL:

The requester (now the appellant) made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the City of Ottawa (the City) for access to records relating to the evaluation of proposals submitted to the Request for Proposal (RFP) process for the provision of transportation services. In particular, the appellant requested all records, notes, reports, memoranda, scoring sheets, etc. prepared during the bid evaluation process by any employee of the City or any consultant and/or contractor employed by the City who was assigned to evaluate submissions received by the City in response to the said RFP.

The City's initial decision only granted access to some of the requested records. The City denied access to the records, in part or in full, on the basis of section 7 (advice or recommendations), section 10 (third party information), and section 11 (economic and other interests) of the *Act*.

With regard to the section 10 claim, the City notified the two affected parties of the request for access and sought their representations. Subsequent to the receipt of those representations, the City issued a further decision that permitted access to additional records of one of the third parties, in part, and denied access to the remainder of the records, again, on the basis of section 10 (third party information).

During mediation, the appellant indicated that it was no longer interested in information regarding one of the affected parties (the losing bidder), so those records were removed from the scope of the appeal. Mediation was unsuccessful in every other respect and the appeal was moved to the inquiry stage.

Initially, I sought representations from the City and the remaining affected party on the relevant issues. I received those representations and shared the non-confidential portions of them with the appellant. I also sought and received representations from the appellant.

RECORDS:

The records at issue in this appeal are grouped as follows based on the information they contain:

1. A cost per point roll-up – page 16
2. Options/rating comments – pages 17-24, 28-39, 48-53, 54-59, and 60-65
3. Rating detail – pages 25-27, 40-44, and 45-47
4. A draft evaluation – pages 66-88
5. A draft analysis – pages 89-97
6. Charts and slides – pages 98-110

DISCUSSION:

ADVICE TO GOVERNMENT

The City applied section 7 to exempt almost all of the records in group 4, at pages 66 to 88. These pages actually comprise two draft reports, both entitled evaluations of the financial proposals, dated February 12, 2002 and February 28, 2002.

General principles

Section 7(1) states:

> A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

The purpose of section 7 is to ensure that persons employed in the public service are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making. The exemption also seeks to preserve the decision maker or policy maker's ability to take actions and make decisions without unfair pressure [Orders 24, P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.)].

"Advice" and "recommendations" have a similar meaning. In order to qualify as "advice or recommendations", the information in the record must suggest a course of action that will ultimately be accepted or rejected by the person being advised [Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.)].

Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations

- the information, if disclosed, would permit one to accurately infer the advice or recommendations given

[Orders PO-2028, PO-2084]

Examples of the types of information that have been found *not* to qualify as advice or recommendations include

- factual or background information
- analytical information
- evaluative information
- notifications or cautions

- views
- draft documents
- a supervisor's direction to staff on how to conduct an investigation

[Orders P-434, PO-1993, PO-2028, PO-2115, P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.)].

The City submits that these pages contain an opinion on the completeness of the financial proposals and advise on whether all significant cost categories have been included. The City also says that the report includes general costing comparisons between the financial proposals and advises the City about whether it should be concerned about these discrepancies/irregularities.

The appellant argues that the City cannot call factual scoring data advice. The appellant asserts that the work of an outside consultant who administered the scoring process is not advice, nor can the data be considered advice once the bid is over and a winner named. In this regard, the appellant refers to this office's Order PO-2028 (cited above) that finds that evaluative material is not advice. Finally, the appellant submits that any data within the reports falls under the section 7(2) exception to the exemption.

Analysis

Bearing these principles in mind, I have examined the reports and find that only one paragraph, found on page 81, can be considered advice for the purposes of this section. Otherwise, section 7 does not apply to these records.

For the most part, these reports contain

- analyses of the costs for the proposals
- reviews of the cost components of the proposals and assessments of their completeness
- comparison charts
- factual observations pertaining to each of the proposals
- conclusions

Previous orders of this office have found that records such as these, consisting mainly of a reviewer's evaluation and analysis of the strengths and weaknesses of financial proposals, do not qualify as advice or recommendations. See for example Orders MO-1781 and PO-1993. The Divisional Court upheld the adjudicator's findings in Order PO-1993 in *Ontario (Minister of Transportation) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 224 stating:

> As argued by counsel for the Commissioner, to the extent that the factual information is to be translated, it involves an element of judgment; however, it is not advice, because it represents an objective assessment of factual information.

I find that these reports almost exclusively represent an evaluator's objective assessment and comparative analysis of the three proposals. Therefore, they are not advisory in nature. As was the case in Order MO-1781, it appears that here the purpose of the reports was to establish the facts for review by the proposal evaluation team. However, I have found that there is a specific recommendation to the proposal evaluation team in the second full paragraph on page 81 (in the first report). There the evaluator suggests that the evaluation team take a course of action with respect to a particular issue prior to awarding the contract. This portion only can be called advice or recommendations.

To summarize, then, only one paragraph in page 81 qualifies for exemption under section 7. The remaining portions pages 66 to 88 are not exempt under section 7. Because section 11 was also applied to these pages, I will later examine the applicability of section 11 to these pages and to other records.

THIRD PARTY INFORMATION

The City relies on section 10 to exempt from disclosure the affected party's information found in the group 6 records, at pages 98 to 110. The affected party also objects to the disclosure of its information. Both the City and the affected party rely on paragraphs (a), (b) and (c) of section 10(1) in particular.

General principles

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;

Section 10(1) recognizes that in the course of carrying out public responsibilities, government agencies often receive information about the activities of private businesses. Section 10(1) is designed to protect the "informational assets" of businesses or other organizations that provide information to the government [Order PO-1805].

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 information which, while held by government, constitutes confidential information of third parties which could be exploited by a competitor in the marketplace.

For a record to qualify for exemption under sections 10(1)(a), (b) or (c), the institution and/or the affected 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,

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 (a), (b) or (c) of section 10(1) will occur.

For his part, the appellant makes general comments about the applicability of section 10. He explains that he wants disclosure only of the scores assigned to the proposals and not the pricing breakdowns. He argues that the affected party's concerns about the release of the information are vague, like its concerns about the integrity of the bidding process. Furthermore, the appellant asserts that the arguments against disclosure are not backed by specific evidence of harm.

Part 1: type of information

The City submits that pages 98-110 contain trade secrets, and commercial, financial, labour relations and technical information. The affected party submits that the information contained in these pages is both commercial and financial information.

These terms have been discussed in prior orders as follows:

> *Trade secret* 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
>
> (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 [Order PO-2010].

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 [Order PO-2010]. The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information [P-1621].

Financial information refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs [Order PO-2010].

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 [Order PO-2010].

Labour relations information has been found to include:

- discussions regarding an agency's approach to dealing with the management of their employees during a labour dispute [P-1540]

- information compiled in the course of the negotiation of pay equity plans between a hospital and the bargaining agents representing its employees [P-653],

but not to include:

- an analysis of the performance of two employees on a project [MO-1215]

- an account of an alleged incident at a child care centre [P-121]

- the names and addresses of employers who were the subject of levies or fines under workers' compensation legislation [P-373, upheld in *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)]

I have examined the records in detail. Pages 98-101, 104 and 105 contain the scoring results assigned by the City to the proposals. Pages 102, 103, 106, 107 and 108-110 contain information related to base service costs, hourly charges, performance bonds, and totals.

Previous orders of this office have found that records prepared by a company in response to an institution's request for proposals contain commercial information. In this case, the information related to base service costs and hourly charges is information that was supplied in the bids themselves. In addition, previous orders of this office have also concluded that an institution's scoring results relate to the process designed by the institution for the selection of bidders who will provide services to that institution. (See for example, orders PO-1993, PO-1957, PO-1816 and PO-1818).

Applying these principles then, I find that the information contained pages 98-110 that pertains to the affected party qualifies as commercial information.

Part 2: supplied in confidence

The requirement that it be shown that the information was "supplied" to the institution reflects the purpose in section 10(1) of protecting the informational assets of third parties [Order MO-1706].

In order to satisfy the "in confidence" component of part two, the parties 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 [PO-2020].

In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, 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 in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure [PO-2043]

Representations

The City asserts that the information in pages 98-110 was supplied to it in confidence. It claims that the scores are "supplied" for the purposes of section 10 of the *Act* because they are a direct reflection of the information actually supplied to the City in confidence. The City also represents that pages 102-103, 106 and 108-110 contain information supplied directly to the City as this information is comprised of pricing figures imported from the bids. Page 107 contains both figures imported from the bids and the scores.

The City says that the affected party requested that its bid be kept confidential and that there is an implicit reasonable expectation of confidentiality of the information in the bids. The City asserts that a confidential bid process ensures fair competition and encourages the most attractive bids and that confidentiality inspires confidence in the bidding community in the integrity of the procurement process.

The affected party says that it specifically requested confidentiality at the time of submitting its bid and maintained its request for confidentiality after learning of the access to information request. The affected party also claims that there is an implicit expectation of confidentiality as the bid submissions were part of a competitive bid process, the purpose of which is to ensure fair competition amongst bidders and to encourage attractive bids. Qualified bidders would be discouraged from bidding if they knew that bids were to be disclosed to the public. Furthermore, because the submissions by the affected party and the results of the evaluation of those submissions are inextricably linked, those evaluation results are also confidential.

The appellant generally argues that there can be no guarantee of confidentiality of information after the bid war has been fought and won. The affected party in this case has now acquired the contract for five years from 2002. Transparency of the process and the basis upon which the decision is made are also important. Public scrutiny is essential to business dealings of the government. In this regard, the appellant asserts that the city cannot claim transparency and then hold back the scores – i.e., the weight and percentage assigned to each part of the proposal. Such data is routinely disclosed in other tender environments.

Findings

I find that the information related to base service costs and hourly charges is information derived from the bids themselves and is therefore "supplied" by the affected party for the purposes of this section (see also Order PO-1957). I also find, on the basis of the representations, that this information was supplied under both explicit and implicit assurances of confidentiality.

The performance bond figures are not supplied. These figures are derived from an assessment conducted by an outside consultant about the affected party's and the other bidders' financial viability (see the group 5 record).

The scores are also not supplied. This type of information was considered in Orders PO-1993, MO-1237 and MO-1462. In those cases the adjudicators found that the scores had not been actually supplied because the scores had been calculated or derived from the information actually supplied, or had been created by a subjective evaluation of the information actually supplied.

Therefore, because the performance bond figures and the scores fail this portion of the three-part test for section 10, none of this information is exempt on this basis and I will no longer consider the application of section 10 to the scores and the performance bond figures. I will, however, continue to examine the application of section 10 to the rest of the affected party's information.

Part 3: harms

General principles

To meet this part of the test, the City and the affected party must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

Both the City and the affected party assert that the harms under paragraphs (a), (b) and (c) could reasonably be expected to result if the information is disclosed. I will first consider the alleged harms under paragraphs (a) and (c), which overlap to a certain extent.

Sections 10(1)(a) and (c): prejudice to competitive position, interference with negotiations, or undue loss or gain

The City argues that disclosure of the information contained in the bids will cause the following harms:

- prejudice to the competitive position of the bidders because the evaluation results are not a clear indicator of the actual capabilities, quality and financial position of an organization in general
- a misinterpretation of the results by the public at large leading to a false impression of the abilities of the organisation.
- an undue loss for the bidders
- an undue gain for their competitors who could exploit and misconstrue the information for their gain either publicly or in future bids for other contracts

The affected party says that the following harms could occur:

- Their competitive position could suffer because competitors might be able to reverse engineer or otherwise determine the costs in providing services or be able to determine which areas of valuation to focus on in order to be successful in a City tender.
- There could be interference with future contractual negotiations or tenders with the City or other institutions that tender similar contracts.
- There would be an undue gain to a competitor because they could take advantage of the considerable time, effort, research, experience, expertise and expense involved in the preparation of the affected party's successful submissions to compete successfully in the future.
- Disclosure of the records may misrepresent the actual capabilities, quality and financial position of the tendering parties and the scores could be misconstrued to the prejudice of the participating parties.
- There would be an undue loss to the City when the process begins anew in five years because similar information would no longer be supplied. Alternatively, bidders will be reluctant to offer their best and most innovative solutions and

> pricing for fear that they will not be adequately protected from disclosure to competitors once enshrined in a contract.

I find that the City and the affected party have failed to provide detailed and convincing evidence to establish a reasonable expectation of any of the harms identified in section 10. In my view, both parties have provided only generic submissions and have failed to link the harm to the specific information at issue. In other words, I do not know how the disclosure of the particular information might cause the harm that the parties fear. In particular, the parties have failed to demonstrate how the disclosure of information that is already several years old and where the affected party has already won a five-year contract results in a reasonable expectation of any of the identified harms. In circumstances such as these, it is incumbent on the parties resisting disclosure to squarely address the issues and provide persuasive evidence.

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

The City and the affected party argue that the information is also exempt under section 10(1)(b). The City and the affected party both essentially argue that City will not get access to this information in the future if the business community feels that their information is not protected. If fewer companies compete, the price of contracts will rise. This will result in a higher burden for Ottawa's ratepayers. If proposals are incomplete, there will be a greater element of risk in awarding contracts, resulting in diminished quality of work. Either scenario results in harms not to the City, but the taxpayers. There is a considerable public interest in having a fair and robust tendering process.

Again, I do not find these representations persuasive. Here, in fact, the arguments and evidence advanced are even more speculative that those advanced for sections 10(1)(a) and (c).

Therefore, I find that section 10 does not apply to exempt any of the information in the group 6 records.

ECONOMIC AND OTHER INTERESTS

Introduction

The City applied sections 11 (c) and (d) to all of the records at issue in this appeal. It also applied sections 11(a), (e) and (f) to the records in groups 5 and 6, pages 89-97 and 98-110.

> A head may refuse to disclose a record that contains,
>
> (a) trade secrets or financial, commercial, scientific or technical information that belongs to an institution and has monetary value or potential monetary value;
>
> (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

> (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;
>
> (e) positions, plans, procedures criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution.
>
> (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;

The purpose of section 11 is to protect certain economic interests of institutions. The report entitled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) provides the following description of the rationale for including a "valuable government information" exemption in the *Act*:

> In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute . . . Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

For sections 11(c) or (d) to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

Sections 11(c) and (d)

Representations

Under section 11(c), the City asserts that it has an economic interest both as a bidder and as an evaluator of bids.

As a bidder, the City competes for business against the private sector for large contracts. In order to compete effectively, the City is refusing to disclose information that can reasonably be expected to be injurious to its economic interests. As above, the City claims that its scores and its financial information are inextricably linked, that the scores do not generally reflect the general capabilities of the bidder and that private companies could exploit the results of the evaluation to the City's detriment. The City, as a bidder, wants to protect its ability to earn money in the marketplace.

As an evaluator, the City wants to protect the information in an effort to ensure the integrity of the procurement process. The City maintains that it has a proprietary interest both in the scoring process, which it says belongs to the City's purchasing group, and in the evaluative comments. The City's reputation as a trustworthy business associate will be harmed if the information is released. Release of the information will impact on the cost of doing business and will result in a burden on taxpayer in that the City would not receive the quality of bidders in the future.

In so far as the group 5 record is concerned, the City asserts that the evaluations of the company's liquidity ration, coverage/solvency ratio and financial leverage ration are of such a sensitive nature that to reveal them would harm the City's reputation with the supplier community. The draft details qualitative considerations such as court protection, market value, cash flow from the operation and also reveals the contents of a reference letter received by a bank on behalf of one of the companies. Consequently, it reveals a concise financial snapshot of a company. Should it be disclosed, companies would no longer supply this kind of financial information. The result would be the City's inability to assess a firm's financial viability which in turn would increase the risk of the non-delivery of an essential service and/or the quality of service the public received. This would diminish public trust.

Under section 11(d), the City asserts that its financial interests will be compromised if this scoring information is released. The City wants to have an open and trusting relationship with the bidding community. If City has a decreased number of bids it will have to pay a premium for bids of a lesser quality. The result will be harm to the City's ability to protect its own interests in financial transactions with third parties. Further, the City's ability to generate revenue through requests for proposals will be similarly compromised, where City would receive revenue from a supplier for certain rights or concessions.

The appellant says that the tendering process is not in place for the City to develop a special trust relationship with the bidding community. Furthermore, there is no evidence that the City would get fewer or incomplete bids and bring in less revenue if the information was released.

The appellant argues that there is no evidence to support the City's assertion that its economic interest as a public body and its competitive position as a bidder on certain services would suffer harm. The scoring percentage results are not directly identifiable with the details of bidders' general financial information. Evaluation data is summary data that cannot be pinned to specific evaluation comments. Each scoring result only relates to the bid made and cannot be translated into a cause for future harm to other bids not yet made.

Findings

On its own behalf, the City essentially advances the same arguments here that it raised on behalf of the affected party in respect of the section 10 exemptions. As I found with respect to the section 10 exemptions, I find that the City has failed to provide detailed and convincing evidence that disclosure of the information could reasonably be expected to prejudice the economic interests or competitive position of the City or be injurious to its financial interests. Again, the City's arguments are broad and generic in nature and it has failed to provide *evidence* that its

economic interests and competitive position could be prejudiced in the manner it suggests, or that its financial interests could be injured by the disclosure of the particular information at issue.

Sections 11(a), (e) and (f)

These sections were applied only to the groups 5 and 6 records. The group 5 record is a detailed draft analysis of the financial viability of the bidders dated December 14, 2001. It is 9 pages long. It is based on information supplied to the City by the bidders as well as some publicly available information. Pages 91-96 of this record contain information provided to the City by the bidders.

The group 6 record is the collection of charts and slides, referred to earlier under the analysis for section 10. The information exempted here under section 11 is the City's own commercial information and its scores.

Representations

The City argues that the group 5 record, the draft analysis, belongs to City and has monetary value as required by section 11(a) because it forms part of the basis for the decision to award the contract and it affected the purchase price of the contract. It also has potential value because it could be used to these companies' detriment should their competitors acquire the information. The information qualifies under this section because the City has a substantial interest in protecting the information from misappropriation by another party and the information is of a sensitive financial nature. The City routinely requests financial evaluations of companies in order to ensure the financial viability of successful bidders. Furthermore, the draft report was supplied to the City in confidence as noted on page 90.

The group 6 records are technical information. The scores belong to the City as they were created by the evaluation system created by the City to rate bids. Further, the information to obtain the scores is information submitted to the City's procurement staff by the in-house bid team. The City has a proprietary interest in this information as well. With disclosure arises the possibility of misuse of the scores to the detriment of the City. Finally, there is a potential monetary value in a neat but discreet analysis of a response to a request for proposal.

With respect to the group 5 records, the City argues again that evaluations of the company's liquidity ration, coverage/solvency ratio and financial leverage ration are of such a sensitive nature that to reveal them would harm the City's reputation with the supplier community. The draft analysis details qualitative considerations such as court protection, market value, and cash flow from the operation and discloses the contents of a reference letter received by a bank on behalf of a company. The draft analysis provides a concise financial snapshot of a company. Disclosure of this information would result in companies no longer supplying this kind of financial information and the City's inability to assess a firm's financial viability will increase the risk of the non-delivery of an essential service and/or the quality of service the public receives, diminishing public trust.

With respect to section 11(e), the City argues that the analysis of the financial viability of a company is the procedure used to determine the financial risk of entering into a contract with a particular provider. It may also determine whether or not a performance bond is required from the provider of the service. This information is used when negotiating the final terms and conditions and contract price with the provider. A favourable analysis of financial viability will translate into a better negotiating position for the selected bidder. Section 11(f) also applies for similar reasons and because the City has not made public the results of these plans.

The group 6 records, the charts and slides, contain the position of the in-house bid in the evaluation process. As these scores are used as part of the negotiations with the City's evaluation team for the award of the contract, the City applied this exemption. Section 11(f) also applies to the scores because they reflect the labour relations strategy put forward by the City and another bidder. Both companies realised they would be facing labour negotiations for the collective agreement expiring at end of 2002. Revealing the scores would undermine the implementation of the labour relations plan within a transition plan. It would put bidders at a considerable disadvantage when negotiating a collective agreement.

The appellant makes the following brief arguments. Section 11(a) cannot apply because the tendering process itself cannot be a trade secret. It is not a proprietary opportunity and cannot be trademarked or have monetary value. Sections 11(a) and (e) are about the type of record. Once a contract is in place and all negotiations are over, these sections cannot apply. Section 11(f) does not apply because evaluation scoring cannot affect either the performance bond requirement or labour relations' strategy of the City or the affected party. Section 11(d) does not apply because there is no evidence that the City would get fewer or incomplete bids and bring in less revenue if the information were disclosed. Furthermore, the tendering process is not in place for the City to develop a special trust relationship with the bidding community.

Finally, the appellant reiterates that there is no evidence to support the City's assertion that its economic interest as a public body and its competitive position as a bidder on certain services would suffer harm.

Findings

I am not persuaded that sections 11(a), (e) or (f) apply to either the group 5 or group 6 records.

First, I fail to see how section 11 can apply to the group 5 record at all. This record is a draft analysis that assesses the financial viability of two private companies. None of the information "belongs" to the City as contemplated by section 11(a). Having examined the record, I find no "positions, plans, procedures criteria or instructions to be applied to negotiations" as required by section 11(e). The draft analysis simply makes *conclusions* about the financial stability of the bidding companies based on some general and limited financial information. For similar reasons, I find that this record cannot comprise a "plan" as contemplated by section 11(f).

Referring to the group 6 records, the charts and slides, sections 11(e) and (f) cannot apply because, again, the City has failed to adequately demonstrate how these records are either "positions, plans, procedures criteria or instructions to be applied to negotiations" or "plans"

relating to the management of personnel or the administration of the City. I am also not persuaded by the City's representations about the monetary value of the City's information in these records. I fail to see how information from the City's bid and the scores assigned to that information could have intrinsic value. It seems to me that this information is relevant only to a particular time and set of circumstances and would likely change over time.

In conclusion, therefore, I find that the section 11 exemptions claimed do not apply to any of the information at issue in this appeal.

ORDER:

1. I order the City to disclose all records in groups 1, 2, 3, 5 and 6 as identified above.

2. I order the City to disclose all of the information in record group 4, but for the portion I have highlighted at page 81, in the copy of the record included with the City's copy of this order no later than June 8, 2004. To be clear, the City should not disclose the highlighted portions of this record.

Original Signed by: May 17, 2004
Rosemary Muzzi
Adjudicator