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

ORDER PO-2367

Appeal PA-040047-1

Ministry of Health and Long-Term Care

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NATURE OF THE APPEAL:

The Ministry of Health and Long-Term Care (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for all records relating to the Request For Proposal (RFP) process initiated by the Ministry for the provision of CT and/or MRI services at Independent Health Facilities to be located in eight Ontario communities. During the processing of the request by the Ministry, the requester narrowed the request to apply to only two specified service providers (the affected parties).

The Ministry located twelve records containing 1808 pages as responsive to the request and denied access to them, in their entirety, based on the exemptions found in section 17(1)(a) and (c) (third party information), section 18(1)(a) (valuable government information), (c) (economic and other interests) and (g) (proposed plans of an institution) and section 21(1) (invasion of privacy), with reference to the consideration in section 21(2)(e) and the presumptions in sections 21(3)(d) and (g) of the *Act*. The requester, now the appellant, appealed the Ministry's decision.

During the mediation stage of the appeal, the appellant narrowed the scope of the request to include only specified portions of the five successful RFP submissions by the affected parties. Using the Ministry's Request For Proposal for RFP No. 2002-46 as a model, the appellant indicated that he is seeking access to the information found in each of the submissions of the affected parties that correspond to the following pages of the RFP:

> Pages 33 (section 11.2.1 - Risk Management), 34 (11.2.2 – Demonstrated Experience), 35 (11.2.3.1, 11.2.3.2 and 11.2.3.4 – Operations Management), 36 (11.2.3.5 – Operations Management cont'd.), 60, 61, 62 and 63 (Schedule "E" – Historical Experience Declaration), 76, 103, 104, 108, 109, 111, 118 (Schedule "J", Section I – Proposed Facility Operator Information, items 1., 2., 3.), 120 (Proposed Facility Operator Information (continued, items 4. and 5.), 122 (Section II – Risk Management Plan), 123 (Section III – Operations Management, items 1. and 2.), 125 (Section IV – Equipment), 130 (Section VII – Professional and Other Staff, items 1., 2., 3., 4.), 132 (Section VIII – Medical Records Management Plan), 141 (Table 1 – Beneficial Ownership of Control), 143 and 144 (Independent Health Facilities Declaration of Professional Standing).

The appellant also advised that he intends to submit a separate request for additional information contained in the submissions and that this information is, therefore, not at issue in this appeal.

I decided to seek the representations of the Ministry and the affected parties initially. Each of them provided me with submissions. One of the affected parties indicated that it has no objection to the disclosure of the information contained in Schedule E and Table 1 to the appellant. The Ministry also withdrew its reliance on the discretionary exemptions in sections 18(1)(a), (c) and (g). Because these are discretionary exemptions, I will not consider them further in this decision. I then shared the complete representations of the Ministry and the affected parties with the appellant, along with a Notice of Inquiry. The appellant did not respond to the Notice.

RECORDS:

The records at issue consist of the remaining portions of the affected parties' proposals which correspond to the pages described above in the Ministry's RFP.

DISCUSSION:

THIRD PARTY INFORMATION

Section 17(1) states:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where 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.

Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions. Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace [Orders PO-1805, PO-2018, PO-2184, MO-1706].

For section 17(1) to apply, the institution and/or the third party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 17(1) will occur.

Part one: type of information

Representations of the Ministry and the affected parties

Both of the affected parties and the Ministry take the position that the information remaining at issue from the RFP submissions qualifies as technical and commercial information for the purposes of section 17(1). The affected parties note that the commercial information contained in the records relates to all aspects of their firms' business activities and was provided in the context of a bid for the provision of certain diagnostic imaging services to the Ministry. In addition, the affected parties and the Ministry submit that because of the nature of the RFP submissions, they also contain information that qualifies as technical information.

The Ministry goes on to delineate what information from the records satisfies the criteria for "commercial information" as follows:

- Pages 10-19 of Schedule J of Record 1 (the record responsive to RFP 2002-46) and Section II of Record 2 (the record responsive to RFP 2002-44) contain the "risk management plans" of the affected parties, including details as to how they "approach risk management relating to the operation of the facility and patient safety concerns";
- Pages 20-29 of Record 1 and Section III of Record 2 contain "day-to-day management operational information about the facilities and protocols involving their personnel";
- Pages 32-34 of Record 1 and Section IV of Record 2 contain specific details on the type of equipment the affected parties intend to use in providing the services requested in the RFP issued by the Ministry;
- The name of an individual consultant retained by one of the affected parties and listed on Page 25 of Record 1 qualifies as "commercial information" for the purposes of section 17(1), following the reasoning in Order PO-1818; and
- Page 6 of Section VII in Record 2 contains detailed information concerning the medical records management plan of one of the affected parties.

In addition, the Ministry submits that the records also contain information that qualifies as "technical information" within the meaning of section 17(1). As an example, it submits that Pages 23 and 34 of Record 1 contain detailed information about "the process by which MRI services would be delivered."

The Ministry also indicates that the records contain information that qualifies as a "trade secret" for the purposes of section 17(1). It argues that the records refer to certain types of software and

methodologies to be used by the affected parties in fulfilling their service contracts, as well as information about the specific types of equipment and the design and structure of the physical facilities to house this equipment and that this information meets the definition of trade secret set forth in earlier orders of the Commissioner's office, such as Order P-1516.

The Ministry also argues that because Page 2 of Section VII of Record 2 describes one of the affected parties' organizational structure, this information qualifies as "labour relations information" within the meaning of section 17(1).

Findings with respect to part one of the section 17(1) test

I cannot agree that information relating strictly to the organizational structure of a business entity qualifies as "labour relations" information for the purposes of section 17(1). On the contrary, "labour relations information" has been held in previous orders to relate to "information concerning the **collective** relationship between an employer and its employees." [Order P-653] The information referred to in Page 2 of Section VII of Record 2 does not address that collective relationship and does not, therefore, fall within the ambit of the term "labour relations information" under section 17(1).

The term "trade secret" has been defined in previous orders of the Commissioner's office as:

> . . . 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].

In my view, the representations of the Ministry with respect to this aspect of the test under section 17(1) fall short of the level of detail required to establish that the records contain information that qualifies as "a trade secret". Neither of the affected parties made submissions on this aspect of section 17(1). I cannot agree that the records contain information that meets the criteria set forth in the above noted definition of the term "trade secret".

However, I agree with the submissions of the affected parties and the Ministry that Page 34 of Record 1 and the equivalent information contained in the other four records qualifies as "technical information" for the purposes of section 17(1). Previous orders have found that the term "technical information" refers to:

> . . . 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].

I agree that the information contained in Page 34 of Record 1 that describes the method of delivery and the actual operation of the equipment involved in the delivery of the diagnostic services falls within the ambit of the definition of that term. However, this information is limited to Page 34 of Record 1 and those pages of the other four records which correspond to it.

The term "commercial information" has been interpreted in past orders to mean:

> . . . 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].

The records relate directly to a proposed commercial transaction between the affected parties and the Ministry for the supply of certain diagnostic services. The records describe in detail the method by which those services are to be provided and the compensation flowing to the affected parties from the Ministry in exchange for those services. In my view, the records contain information that relates directly to a commercial transaction involving the selling of services by the affected parties to the Ministry and this information qualifies as "commercial information" for the purposes of section 17(1). Accordingly, I find that the information remaining at issue in the records qualifies as "commercial information" within the meaning of section 17(1), thereby satisfying the first part of the test under that exemption.

Part two: supplied in confidence

In order to satisfy the "in confidence" component of part two, the parties resisting disclosure, in this case the Ministry and the affected parties, 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 [Order 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 [Order PO-2043]

Clearly, the records at issue were "supplied" to the Ministry by the affected parties in response to the Ministry's RFP for the provision of certain diagnostic services to certain communities across Ontario. I have not been provided with any evidence that would lead me to a finding that the affected parties' proposals were adopted by the Ministry and now form the contract for the provision of these services. I will next determine whether the information in the records was "supplied" with a reasonably-held expectation that it would be treated confidentially by the Ministry.

The affected parties refer to Article 14.3 of the Ministry's RFP in support of their contention that the information contained in the records was "supplied in confidence". This section of the RFP is entitled "Freedom of Information and Protection of Privacy Act" and states, in part, as follows:

> The Respondent [to the RFP] acknowledges that all Proposals submitted to the Director [appointed under the *Independent Health Facilities Act*] are subject to the access provisions of the FIPPA. The FIPPA provides all persons with a legal right of access to information in the custody and/or control of the Director subject to a limited set of exemptions. One such exemption is information that reveals a trade secret or scientific, technical, commercial, financial or labour relations information supplied in confidence by a third party, where disclosure could reasonably b expected to result in certain harms.
>
> The Director shall consider all Proposals submitted in response to this RFP as confidential and if the Director receives a request for information in connection with any Proposal the Director shall consider this when making its decision about release.
>
> The Director's acknowledgement that the Proposal was submitted in confidence does not mean that the Proposal or any part thereof will not be disclosed if the Director is required by law to disclose the Proposal or any part thereof.

The RFP goes on to indicate that by submitting a proposal in response, a proponent is deemed to consent to its disclosure to those individuals required to evaluate it, as well as the Director. The proponent is also deemed to consent to the retention of the proposal by the Director and the public disclosure of the name of the proponent.

One of the affected parties submits that, based on the representations contained in the RFP regarding the confidentiality of its proposal, it had a reasonably-held expectation that the information contained in the records would not be disclosed pursuant to a request under the *Act*. This affected party also submits that "it was implicit from the circumstances that the information would be kept confidential", and that Order PO-1818 found that "past practice of the [G]overnment of Ontario in RFP processes generally pointed to the conclusion that the affected parties had a reasonable expectation of confidentiality."

The Ministry supports the arguments of the affected party and confirms that it continues to treat the RFP proposals as confidential and that they have not been made publicly available since their submission.

Based on the submissions of the affected parties and the Ministry and my reading of Article 14.3 of the RFP, I am satisfied that the affected parties submitted their proposals with a reasonably-held expectation that they would be treated confidentially by the Ministry. While the contents of Article 14.3 make clear that each proposal would be subject to the access provisions in the *Act*, it also clearly indicates that the information may fall within one of the exemptions in the *Act*. The provision also communicates to the affected parties the Ministry's intention to maintain the confidentiality of the information provided to it. I find that the Ministry's treatment of the information contained in the proposals received from the affected parties is consistent with the fact that it considered it to be confidential in nature and ought not to be disclosed without the affected parties' consent.

Based on this reasoning, I find that the second component of the test under section 17(1) has been satisfied by the Ministry and the affected parties.

Part three: harms

General principles

To meet this part of the test, the institution and/or the third 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.)].

The failure of a party resisting disclosure to provide detailed and convincing evidence will not necessarily defeat the claim for exemption where harm can be inferred from other circumstances. However, only in exceptional circumstances would such a determination be made on the basis of anything other than the records at issue and the evidence provided by a party in discharging its onus [Order PO-2020].

Representations of the Ministry and the affected parties

One of the affected parties submits that with respect to the application of section 17(1)(a):

> The information requested contains significant detail about the business of [the affected party] and how it proposed to meet the needs of the MOHLTC as expressed in the RFP.
>
> [The affected party] spent significant resources, internally and through consultants, preparing both the plans and content that make up the Proposals and in formulating, formatting and preparing the Proposals themselves. Three senior [affected party] personnel, along with the paid external consultants, spent a month putting the Proposals together.
>
> [The affected party] submits that disclosing the requested information will significantly prejudice [it] in future RFP bidding processes because its valuable proprietary information will be in the public domain. This could provide a competitive advantage to other potential bidders. Disclosure would allow competitors to copy the substance of [the affected party's] Proposals or compare it to their own in order to assess their relative strengths and weaknesses. Potential competitors would, in essence, have the significant competitive advantage of 'knowing the competition'.
>
> In making this point, the affected party notes that there is a competitive advantage not only in the information itself, but in the form and manner in which it is presented. Significant work went into developing the Proposals including fine-tuning the language, presentation and overall style. Disclosure of [the affected party's] methodology in preparing the Proposals could, itself, result in prejudice to [its'] competitive position because competitors could make use of this in future proposals to imitate [its'] successful bid.

The Ministry submits that the records contain detailed operational, technical and trade secrets information relating to how the affected parties would operate their facilities providing diagnostic services to the people of Ontario. It suggests that the disclosure of this information would reveal details of their business operations and thereby cause harm to their competitive position. The Ministry further indicates that additional RFPs for the provision of diagnostic services in other Ontario communities are likely to occur, as will harm to the affected parties' competitive position should the information in the records be disclosed to their competitors. The Ministry goes on to argue that the disclosure of the affected parties' methodologies could reasonably be expected to result in harm to their competitive position as other potential bidders could make use of the Proposals in formulating their own submissions in response to an RFP.

The other affected party points out that the diagnostic imaging industry is "a highly fragmented and competitive industry, both in the Province of Ontario and nationally." It argues that disclosure will cause it serious harm:

> . . . because it discloses directly how [this affected party] manages several important business challenges in the industry, or indirectly provides a person

> reasonably knowledgeable about the industry as to the degree in which these changes are being managed successfully by [the affected party].
>
> There are other important competitive issues in the industry, centering around chronic shortages of professional and technical staff, and keeping pace with technological advances in mission critical business systems such as efficient medical records management and equipment and diagnostic processing. How [the affected party] deals with such is very important commercial and technical information.

One of the affected parties refers to the harm set forth in section 17(1)(b) as follows:

> . . . it is quite possible that [one of the affected parties] would decide either not to respond to future RFPs, or become generally less cooperative with the Province in providing information to it over and above that which [is] compellable by the Province in the exercise of its regulatory functions.

The other affected party maintains that, with respect to section 17(1)(b):

> If potential respondents are concerned that the content of their proposals will be subject to public access, it will significantly inhibit both the quality and content of RFP responses and quite foreseeably will impact on a potential respondent's decision about whether or not to submit a proposal at all.

The Ministry does not make any submissions regarding the potential application of section 17(1)(b) to the records.

With respect to section 17(1)(c), one of the affected parties argues that:

> . . . the requested information contains significant detail about [its] staff, which is likely to lead to staff loss. In the specialized industry in which [the affected party] operates, there is significant competition for competent, trained staff. Indeed, in the RFP, the MOHLTC specifically identified the 'availability of qualified personnel', the ability to 'attract qualified personnel' and the 'ability to retain qualified personnel' as three of the five risks respondents were to address in their proposals. This highlights the importance of finding qualified staff and identifies the very real risk of staff loss in the context of this competitive environment.

The Ministry submits that the disclosure of the information contained in the records could reasonably be expected to result in undue loss to the affected parties within the meaning of section 17(1)(c) because:

> . . . there is a reasonable expectation that the affected parties' competitors could use information contained in the proposals, such as risk management, equipment

> specifications and design structure plans, to improve their own business operations without having to invest in costly and time-consuming research to make such improvements. The disclosure would therefore result in an undue gain to [the affected parties'] competitors who would then be knowledgeable about the affected parties' risk management, equipment specifications and design structure plans, and could use such information to their advantage in the future. Such an undue gain would directly result in an undue loss to [the affected parties].
>
> Disclosure of [the affected parties'] proposals would also reveal the companies' detailed operational information and would enable a competitor to gain a competitive edge over the companies in the same industry in subsequent MRI and CT proposals.
>
> In Order PO-1818 the IPC held that the disclosure of the very format used by affected parties in their RFP response proposals could result in significant prejudice to them because each affected party develops its 'own unique style for responding to RFPs which is the result of significant expenditure of time and resources and accumulated expertise of the firm.' A competitor could reasonably be expected to imitate the style, as well as the substance of the proposal in preparing for future competitions initiated by the government. Furthermore, in Order PO-1932, the IPC held, more generally, that information contained in bid documents, gathered in the course of the RFP process could be used by other similar organizations in ways that would jeopardize future contract bids and undermine the integrity of the competitive selection process as a whole.

Findings under part three of the test

Dealing first with the potential harm to the affected parties' competitive position through the disclosure of the format of the RFP responses, I find that the responses of the affected parties closely follow the outline of the RFP as drafted by the Ministry. In my view, there is nothing in the format itself of the proposals of the affected parties that is so unique as to warrant the protection afforded by section 17(1)(c). I find that the affected parties and the Ministry have not provided me with sufficient evidence to substantiate a finding that the disclosure of the format used by the affected parties in their proposals could reasonably be expected to lead to the harms contemplated by any of the subsections of section 17(1).

The affected parties place a great deal of emphasis on the competitive nature of the medical diagnostic industry, arguing that the records contain information which could be used by their competitors to undermine their competitive position in this industry. The representations of the affected parties, however, do not provide me with the kind of "detailed and convincing" evidence required to uphold the Ministry's decision not to disclose under section 17(1). The affected parties have not provided me with specific references to the contents of the records in order to assist me in making a finding that disclosure of this information could reasonably result in any of the harms contemplated by section 17(1). Without sufficiently detailed evidence linking the

harms described in section 17(1) to the disclosure of the specific information in the records, I am unable to make a finding that such harm could reasonably be expected to follow its disclosure.

Specifically, the affected parties and the Ministry appear to place a great deal of importance on maintaining a pool of trained employees and preventing "poaching" by other employers in the industry. The affected parties infer that the disclosure of the information in the records will in some way assist in this process. I find that the affected parties and the Ministry have not provided me with sufficient evidence to allow me to make a finding that the disclosure of the information in the records could reasonably be expected to result in such a scenario occurring.

In my view, the information set forth in Records 1 and 2, as well as the other three proposals, is quite similar in nature which is not surprising since they address the provision of similar diagnostic services to the Ministry and follow the format of the Ministry's own RFP very closely. Based on the representations of the affected parties and the Ministry, I am not satisfied that the records contain information which is sufficiently unique to the affected parties to qualify for exemption under the section 17(1) exemption. In my view, the affected parties' method of delivering the diagnostic services described in the records simply generically describes the manner in which the affected parties intend to address the work to be performed. As a result, I cannot agree that the records contain information whose disclosure would in any way result in the harms contemplated by section 17(1). In my view, the Ministry and the affected parties have not provided me with sufficient detail to enable me to make a finding that the information in the records is exempt under section 17(1).

PERSONAL INFORMATION/INVASION OF PRIVACY

Do the records contain "personal information"?

General principles

The Ministry argues that the records contain information that qualifies as "personal information" for the purposes of section 2(1) of the *Act* and that this personal information is exempt from disclosure under section 21(1) of the *Act*. The term "personal information" is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history

> of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except where they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

The meaning of "about" the individual

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

The representations of the affected parties and the Ministry

One of the affected parties submits that the records contain information that falls within the ambit of the definition of "personal information". It argues that the records include "significant

personal information about the owners of [the affected party] as well as its staff, including their names" and home addresses. Both affected parties object to the disclosure of records that include references to the billing numbers assigned to the health professionals which they employ. One of the affected parties also argues that the records include specific information about the status of medical professionals with the College of Physicians and Surgeons (the CPS) and the hospital privileges and discipline history of these individuals. The affected party argues that this information qualifies as the personal information of these individuals.

The Ministry also takes the position that the records contain "personal information" within the meaning of section 2(1). It argues that the following qualify as "personal information":

- in the section of the proposal entitled 'Beneficial Ownership or Control", the home addresses and marital status of certain named individuals are listed, along with the number of shares in the company each of them own. The Ministry argues that this information qualifies as "personal information" within the meaning of sections 2(1)(a), (b) and (d);
- the home addresses of the company directors included in the Articles of Incorporation also qualify as the personal information of those individuals under section 2(1)(d);
- in the Declaration of Professional Standing and Notice of Appointment portions of the proposal, the affected parties included the billing numbers, practice status and information relating to the past and current conduct of certain physicians. The Ministry argues that this information falls within the ambit of the definition of "personal information";
- an attachment to Schedule J of Record 1 includes the resume of a proposed facility operator, while the Conflict of Interest Declaration in Record 2 describes an individual's employment history. The Ministry argues that this information qualifies as the personal information of these individuals under section 2(1)(b) of the definition; and
- an e-mail address in Schedule D appears to belong to a private individual as opposed to a business entity, thereby qualifying as the personal information of that individual under section 2(1)(d).

Findings with respect to "personal information"

I have reviewed each of the records referred to in the representations of the Ministry and the affected parties. I agree that the information included under the heading "Beneficial Ownership or Control" relating to the marital status of identifiable individuals qualifies as their personal information within the meaning of section 2(1)(a). Similarly, information relating to the number of shares which they hold in the corporate affected parties qualifies as their personal information under section 2(1)(b). In addition, I find that the home addresses and e-mail address contained in the records referred to above also satisfy the requirements of the definition of the term personal information.

Further, I find that the billing numbers of certain physicians and other health professionals included in the records qualifies as their personal information under section 2(1)(c), as they represent "any identifying number" assigned to these individuals. I also find that the information about the hospital privileges, discipline history and their status with the CPS also qualifies as the personal information of these individuals under sections 2(1)(b) or (h). Finally, I agree that the resume and other employment history of identifiable individuals described above qualify as their personal information under section 2(1)(b).

Based on these findings, I am satisfied that all of the information in the records identified by the affected parties and the Ministry as "personal information" meets the criteria of the definition of that term contained in section 2(1). Because similar information is included in all five records at issue, my findings with respect to Records 1 and 2 apply equally to the equivalent information in the other proposals.

Is the personal information in the records exempt under section 21(1)?

Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21. In the circumstances, it appears that the only exception that could apply is paragraph (f). The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be "an unjustified invasion of privacy under section 21(1)(f).

If any of paragraphs (a) to (c) of section 21(4) apply, the information is not exempt under section 21. If any of paragraphs (a) to (h) of section 21(3) apply, the information is exempt under section 21. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239].

The appellant has not provided me with any representations setting out any factors in section 21(2) that may favour the disclosure of the personal information contained in the records. I find that the exceptions listed in section 21(4) do not apply and the appellant has not referred to any "public interest" in the disclosure of the records under section 23.

I find that, in the absence of any considerations favouring the disclosure of the personal information in the records, it is exempt under section 21(1). I will, accordingly, dismiss that part of the appeal.

ORDER:

1. I order the Ministry to disclose to the appellant each of the five records remaining at issue with the exception of the personal information described above by **March 9, 2005** but not

before **March 4, 2005**.

2. I uphold the Ministry's decision to deny access to the personal information contained in the records.

3. In order to verify compliance with the terms of this order, I reserve the right to require the Ministry to provide me with copies of the records that are disclosed to the appellant pursuant to Order Provision 1.

Original signed by: February 4, 2005
Donald Hale
Adjudicator