

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 2000-017

April 11, 2001

THE CITY OF EDMONTON

Review Number 1825

Office URL: <http://www.oipc.ab.ca>

Summary: The Applicant applied under the *Freedom of Information and Protection of Privacy Act* (the “Act”) for access to the information contained in the photo radar contract between The City of Edmonton (the “Public Body”) and Canadian Public Technologies, Inc. (“CPT”, now Lockheed Martin IMS Systems and Services Canada Inc.). In particular, the Applicant wanted the operating manuals for the photo radar unit and the red light camera. The Public Body disclosed some information to the Applicant, but refused to disclose other information, including the manuals. The Public Body said that section 15(1) of the Act applied because disclosure would reveal the confidential commercial, scientific or technical information of CPT, and would result in harm to CPT. The Commissioner agreed with the Public Body that section 15(1) applied to almost all the information and that that information must not be disclosed. The Commissioner also found that section 31(1)(b) of the Act (disclosure in the public interest) did not require the Public Body to disclose the information to which section 15(1) applied.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, S.A. 1994, c. F-18.5, ss. 1(1)(s), 15, 15(1), 15(1)(a), (b) and (c), 15(1)(a)(i) and (ii), 15(1)(c)(i), (ii) and (iii), 31(1), 31(1)(b), 67(1), 68.

Authorities Cited: AB: Orders 96-011, 96-013, 96-014, 98-006, 99-018;
BC: Order 57-1995; **ON:** Order P-1024.

I. BACKGROUND

[para 1.] By letter dated December 19, 1999, the Applicant made an access request to The City of Edmonton (the “Public Body”) under the *Freedom of Information and Protection of Privacy Act* (the “Act”), as follows:

I wish to view the following information contained in the Photo Radar contract between The City of Edmonton and Canadian Public Technologies (CPT):

- Part 3, Requirements,
- CPT’s Equipment Service and Maintenance Policy (Pages 78-81),
- CPT’s processing service (Pages 70-72),
- Appendix D, Sample Management Reports,
- Appendix E, Sample Traffic Data Reports,
- Appendix G, Technical Reports and
- Appendix H and Appendix O, operating manuals.

The information referred to is part of CPT’s response to the city’s tender.

[para 2.] The Public Body disclosed some information to the Applicant, but withheld other information under section 15(1) (business information) and section 16(1) (personal information) of the Act.

[para 3.] By letter dated February 9, 2000, the Applicant asked me to review the Public Body’s decision. Mediation was authorized. The Public Body apparently released additional records. The Applicant decided not to pursue the information withheld under section 16.

[para 4.] Mediation was not successful on the issue of the information withheld under section 15(1). The matter was set down for an oral, public inquiry, held on July 5, 2000.

[para 5.] My Office sent a Notice of Inquiry to the following: the Public Body; the Applicant; Canadian Public Technologies, Inc., (“CPT”, now Lockheed Martin IMS Systems and Services Canada Inc.), which was identified as a third party for the purposes of section 15; and Edmonton Police Service (“EPS”), which was identified as an affected party whose interests might also be affected by disclosure of the information the Applicant requested.

[para 6.] The Public Body and the Applicant provided an advance written submission for the inquiry. The Public Body provided the records

and part of its written submission *in camera*. EPS provided an affidavit as part of the Public Body's *in camera* written submission, but did not provide a separate written submission. However, the Public Body indicated that it and EPS worked closely on the Public Body's submission.

[para 7.] CPT also did not provide a written submission. Nevertheless, representatives from both CPT and EPS were present at the inquiry, gave evidence and made oral submissions.

[para 8.] This Order proceeds on the basis of the Act as amended on May 19, 1999.

II. RECORDS AT ISSUE

[para 9.] The records at issue consist of those records specified in the Applicant's access request. The Public Body numbered each page of the records consecutively from pages 1-325, as follows:

- Part 3, Requirements (*Record pages 1-50*)
- CPT's Equipment Service and Maintenance Policy (Pages 78-81) (*Record pages 51-54*)
- CPT's processing service (Pages 70-72) (*Record pages 55-57*)
- Appendix D, Sample Management Reports (*Record pages 58-64*)
- Appendix E, Sample Traffic Data Reports (*Record pages 65-95*)
- Appendix G, Technical Reports (*Record pages 96-185*)
- Appendix H (*Record pages 186-241*) and Appendix O (*Record pages 242-325*), operating manuals

[para 10.] The Public Body says that all the foregoing records formed part of the original photo radar contract between the Public Body and CPT.

[para 11.] As a result of the Public Body's disclosures of information to the Applicant, including a further disclosure on June 9, 2000, and the fact that section 16 is not at issue, only the following pages of the records remain to be considered in this inquiry:

1, 4, 5-7, 12, 14-25, 27, 32-39, 46, 96-108, 113-131, 145-154, 186-241, 243, 244, 256-325

[para 12.] The Public Body describes the records withheld as follows:

- pages 1, 4, 5-7, 12, 14-25, 27, 32-49, and 46 are some of CPT's answers to the questions set out in the Public Body's Request for Proposal (the "RFP"). Some of the answers come from the operating manuals themselves.
- pages 96-108, 113-131, and 145-154 are parts of a consultant's report that was prepared (the "consultant's report")
- pages 186-241 are the operating manual for the Gatso photo radar unit
- pages 243, 244, and 256-325 are parts of the operating manual for the Gatso red light camera (collectively, the "operating manuals")

[para 13.] In this Order, I will refer to the foregoing records individually by page number, by description, or collectively as the "Records".

III. ISSUES

[para 14.] There are two issues in this inquiry:

A. Did the Public Body correctly apply section 15 of the Act to the Records?

B. Does section 31(1)(b) of the Act (disclosure in the public interest) require the Public Body to disclose the Records?

IV. DISCUSSION OF THE ISSUES

ISSUE A: Did the Public Body correctly apply section 15 of the Act to the Records?

1. General

[para 15.] Section 15(1) is at issue. The relevant parts of section 15(1) read:

15(1) The head of a public body must refuse to disclose to an applicant information

(a) that would reveal

(i) trade secrets of a third party, or

(ii) commercial, financial, labour relations, scientific or technical information of a third party,

(b) that is supplied, explicitly or implicitly, in confidence, and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

(iii) result in undue financial loss or gain to any person or organization...

[para 16.] As the Public Body refused access to information under section 15(1), the burden of proof is on the Public Body, as provided by section 67(1). In this case, the Public Body must establish that:

(i) disclosure of the information would reveal trade secrets of a third party, or commercial, scientific or technical information of a third party (section 15(1)(a));

(ii) the information was supplied, explicitly or implicitly, in confidence (section 15(1)(b)); and

(iii) disclosure of the information could reasonably be expected to bring about one of the outcomes set out in section 15(1)(c)(i) to (iii).

2. Would disclosure of the information reveal trade secrets of a third party, or commercial, scientific or technical information of a third party (section 15(1)(a))?

a. Who is a “third party” for the purposes of section 15(1)?

[para 17.] The Public Body says that CPT is a third party for the purposes of section 15(1), and that the information is that of CPT. EPS’s

affidavit says that the Regional Manager for CPT in Canada informed EPS that CPT had a licensing agreement giving CPT exclusive marketing and distribution rights in North America for the Gatso photo radar and red light equipment. CPT confirms that it has the exclusive rights for the equipment in North America, which its parent company, U.S. Public Technologies Inc., negotiated with the founder of Gatso directly. CPT says that it developed the software package to operate the equipment.

[para 18.] By virtue of CPT's exclusive rights to the equipment, and CPT's ownership of the software, I have no difficulty finding that CPT is the third party for the purposes of section 15(1) and that the information is that of CPT, with two exceptions.

[para 19.] First, the information in the second severed item on page 22 is not that of CPT. There is no evidence before me that the information is that of any third party. As there is no information of a third party, the requirements of section 15(1)(a) have not been met, and I find that section 15(1) does not apply. I do not uphold the Public Body's decision to withhold that information. I intend to order the Public Body to disclose that information to the Applicant.

[para 20.] Second, the information severed on page 189 is not that of CPT, but of Gatso. Therefore, Gatso is the third party for the purposes of that information.

b. Commercial information of a third party (section 15(1)(a)(ii))

[para 21.] In Order 96-013, I said that "commercial information" includes information that relates to the buying, selling, or exchange of merchandise or services. In Order 98-006, I also said that commercial information can only be ascertained from a view of the record as a whole.

[para 22.] I find that the information severed on pages 1, 39 and 46 is and would reveal the commercial information of CPT. In the context of the RFP as a whole, that information relates to the selling of services.

[para 23.] I have found that the information in the second severed item on page 22 is not and would not reveal the information of a third party. Alternatively, I find that the information is not and would not reveal the commercial information of a third party.

[para 24.] I also find that the information severed on page 113 is not and would not reveal the commercial information of CPT, even though the Public Body said that it considered that information to be commercial information. I intend to consider whether that information is or would reveal scientific or technical information of CPT.

[para 25.] The information severed on page 189 contains a map of the location of Gatso, among other information. I find that the information severed on page 189 is not and would not reveal the commercial information of Gatso.

c. Scientific or technical information of a third party (section 15(1)(a)(ii))

[para 26.] Under this heading, I do not intend to consider the information which I have already found is or would reveal the commercial information of CPT.

[para 27.] The Public Body said that the remaining information severed is the scientific or technical information of CPT. The Public Body points to Ontario Order P-1024, which found that the operator's manual for the photo radar unit then in use by the Ontario Provincial Police contained scientific or technical information.

[para 28.] Although in a previous Order I made a finding about what constitutes "scientific information" (see Order 99-018), I have not previously defined "scientific information" or "technical information" in an Order.

[para 29.] The Concise Oxford Dictionary, Ninth Edition, defines "scientific" and "technical" as follows:

Scientific: according to rules laid down in exact science for performing observations and testing the soundness of conclusions.

Technical: of or involving or concerned with the mechanical arts and applied sciences; of or relating to a particular subject or craft, etc. or its techniques.

[para 30.] The Alberta Information Management and Privacy Branch's manual entitled *Freedom of Information and Protection of Privacy Policy and Practices* (August 1998, superseded September 2000) says that "scientific information" relates to experiments, principles and procedures derived by scientific method, and "technical information" relates to particular subjects, crafts or professions that are based on a specific technique or approach.

[para 31.] British Columbia Order 57-1995 says that "scientific information" is information exhibiting the principles or methods of science, and "technical information" is information relating to a particular subject, craft or technique.

[para 32.] I adopt the wording of the definitions set out in British Columbia Order 57-1995, as that wording is simpler and more readily understood.

[para 33.] With two exceptions set out below, I find that all the remaining information the Public Body severed, including the information in the first severed item on page 22 and the information severed on page 113, is or would reveal scientific or technical information of CPT, particularly technical information.

[para 34.] I have found that the information in the second severed item on page 22 is not and would not reveal the information of a third party. Alternatively, I find that the information is not and would not reveal the scientific or technical information of a third party.

[para 35.] I also find that the information severed on page 189 is not and would not reveal the scientific or technical information of Gatso.

d. Trade secrets of a third party (section 15(1)(a)(i))

[para 36.] Under this heading, I do not intend to consider the information that I have already found is or would reveal the commercial, scientific or technical information of CPT.

[para 37.] The Public Body provided me with a list of information in the Records that it believed were “trade secrets”. The only item on that list that remains to be considered under this provision is page 189, which is contained in the operating manual for the Gatso photo radar unit. The Public Body says that it considers all the pages of the manual to be a trade secret. Under this provision, I will also consider the information in the second severed item on page 22.

[para 38.] “Trade secret” is defined in section 1(1)(s) of the Act, as follows:

1(1) In this Act,

(s) “trade secret” means information, including a formula, pattern, compilation, program, device, product, method, technique or process

(i) that is used, or may be used, in business or for any commercial purpose,

(ii) that derives independent economic value, actual or potential, from not being generally known to anyone who can obtain economic value from its disclosure or use,

(iii) that is the subject of reasonable efforts to prevent it from becoming generally known, and

(iv) the disclosure of which would result in significant harm or undue financial loss or gain.

[para 39.] The Public Body also says that it is open to me to find that the operating manuals in and of themselves can be “proprietary” information. The Public Body believes that Ontario Order P-1024 supports that approach. However, Ontario Order P-1024 focuses on the information contained in the photo radar manual. Ontario Order P-1024 does not say that the photo radar manual itself is proprietary.

[para 40.] Furthermore, section 15(1)(a) requires a consideration of the “information”, not the medium, that is, the type of record in which the information is contained. The record itself is relevant only in determining whether there is information of the kind set out in section 15(1)(a) or whether the information would reveal the kind of information set out in section 15(1)(a), ascertained from viewing the record as a whole.

[para 41.] I have found that the information in the second severed item on page 22 is not and would not reveal the information of a third party. Alternatively, I find that the information is not and would not reveal a trade secret of a third party.

[para 42.] I also find that the information severed on page 189 is not and would not reveal a trade secret of Gatso.

e. Conclusion under section 15(1)(a)

[para 43.] The information in the second severed item on page 22 and the information severed on page 189 is not and would not reveal the commercial, scientific or technical information of a third party and Gatso, respectively, and is not and would not reveal a trade secret of a third party and Gatso, respectively. Therefore, that information does not meet the requirements of section 15(1)(a). Consequently, I find that the Public Body did not correctly apply section 15(1) to that information. I

do not uphold the Public Body's decision to refuse to disclose that information. I intend to order the Public Body to disclose that information to the Applicant.

3. Was the information supplied, explicitly or implicitly, in confidence (section 15(1)(b))?

[para 44.] The Public Body gave evidence about the information that CPT maintained was supplied in confidence to the Public Body as part of the RFP. The Public Body also gave evidence about the information that CPT subsequently agreed could be disclosed to the Applicant.

[para 45.] CPT gave evidence that it supplied the information, particularly the operating manuals, in confidence to the Public Body as part of the RFP, and that it has consistently treated the operating manuals as confidential with regard to all its clients.

[para 46.] EPS gave evidence about who within its organization has copies of the operating manuals, the circumstances under which those individuals are permitted to use the operating manuals, the confidentiality required in regard to those manuals, and the consequences to an individual who did not observe that confidentiality.

[para 47.] Having reviewed all the evidence, I find that the information was supplied explicitly in confidence to the Public Body, as required by section 15(1)(b), other than the information set out below.

[para 48.] As I have found that section 15(1)(a) does not apply to the information in the second severed item on page 22 and the information severed on page 189, I do not find it necessary to decide whether that information meets the requirements of section 15(1)(b).

4. Could disclosure of the information reasonably be expected to bring about one of the outcomes set out in section 15(1)(c)(i) to (iii)?

a. Harm significantly competitive position (section 15(1)(c)(i))

[para 49.] Both the Public Body and CPT argue that disclosure of the information could reasonably be expected to harm significantly the competitive position of CPT.

[para 50.] CPT gave evidence of its competitors and the competitiveness of the marketplace. CPT says that its unique product and software make it a leader in photo enforcement. CPT believes that disclosure of the Records would harm significantly this competitive position.

[para 51.] I have reviewed the evidence and the Records. Except for the information in the second severed item on page 22 and the information severed on page 189, I find that disclosure of the information contained in the Records could reasonably be expected to harm significantly the competitive position of CPT, as set out in section 15(1)(c)(i).

b. Interfere significantly with negotiating position (section 15(1)(c)(i))

[para 52.] As I have decided that disclosure of the information could reasonably be expected to harm significantly the competitive position of CPT, as set out in section 15(1)(c)(i), I do not find it necessary to decide whether disclosure of the information could reasonably be expected to interfere significantly with the negotiating position of CPT, as set out in section 15(1)(c)(i).

c. Result in similar information no longer being supplied to the Public Body (section 15(1)(c)(ii))

[para 53.] As I have decided that section 15(1)(c)(i) applies, I do not find it necessary to decide whether section 15(1)(c)(ii) also applies.

d. Result in undue financial loss (section 15(1)(c)(iii))

[para 54.] As I have decided that section 15(1)(c)(i) applies, I do not find it necessary to decide whether section 15(1)(c)(iii) also applies.

e. Conclusion under section 15(1)(c)

[para 55.] Except for the information in the second severed item on page 22 and the information severed on page 189, the information severed could reasonably be expected to harm significantly the competitive position of CPT, as provided by section 15(1)(c)(i). Therefore, that information meets the requirements of section 15(1)(c).

[para 56.] As the information in the second severed item on page 22 and the information severed on page 189 do not meet the requirements of section 15(1)(a), I would normally not find it necessary to decide whether that information meets the requirements of section 15(1)(c). However, in case there is any doubt, I find that that information does not meet the requirements of section 15(1)(c).

5. Conclusion as to the Public Body's application of section 15(1)

[para 57.] The information in the second severed item on page 22 is not that of CPT or any other third party. Alternatively, the information is not

and would not reveal the commercial, scientific or technical information of a third party, or a trade secret of a third party.

[para 58.] As the information in the second severed item on page 22 does not meet the requirements of section 15(1)(a) and section 15(1)(c), the Public Body did not correctly apply section 15(1) to that information. I do not uphold the Public Body's decision to refuse to disclose that information. I intend to order the Public Body to disclose that information to the Applicant.

[para 59.] The information severed on page 189 is not and would not reveal the commercial, scientific or technical information of Gatso, and is not and would not reveal a trade secret of Gatso. As that information does not meet the requirements of section 15(1)(a) and section 15(1)(c), the Public Body did not correctly apply section 15(1) that information. I do not uphold the Public Body's decision to refuse to disclose that information. I intend to order the Public Body to disclose that information to the Applicant.

[para 60.] The remainder of the information severed from the Records meets the requirements of section 15(1)(a), (b) and (c). Consequently, I find that the Public Body correctly applied section 15(1) of the Act to the remainder of the information severed from the Records. I uphold the Public Body's decision to refuse to disclose that information to the Applicant. I intend to order the Public Body not to disclose that information to the Applicant.

ISSUE B: Does section 31(1)(b) of the Act (disclosure in the public interest) require the Public Body to disclose the Records?

[para 61.] Section 31(1) reads:

31(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people, to any person or to an applicant

(a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant, or

(b) information the disclosure of which is, for any other reason, clearly in the public interest.

[para 62.] Under section 31(1)(b), I intend to consider only that information for which I have found that the Public Body correctly applied section 15(1) and which the Public Body must not disclose under section 15(1).

[para 63.] The Applicant is particularly interested in disclosure of the operating manuals. The Applicant argues that disclosure of the operating manuals is in the public interest because people cannot adequately defend themselves in a court of law without the operating manuals. The Applicant also argues that the Records should be released to clearly show that the technology is accurate.

[para 64.] In Order 96-011, I said that for section 31(1)(b) to apply, the matter must be of “compelling public interest”. Furthermore, in Order 96-014, Mr. Justice Cairns made an important distinction between information that “may well be of interest to the public” and information that is “a matter of public interest”.

[para 65.] The burden is on the Applicant to prove that there is a matter of compelling public interest, such that the Public Body should disclose the information under section 31(1)(b).

[para 66.] In this case, I find that, although the information may well be of interest to the public, including the Applicant, the information cannot be considered to be a matter of public interest under section 31(1)(b). I find that the Applicant has not established that this is a matter of compelling public interest.

[para 67.] I find that section 31(1)(b) does not require the Public Body to disclose the Records.

V. ORDER

[para 68.] I make the following order under section 68 of the Act.

[para 69.] The information in the second severed item on page 22 is not that of CPT or any other third party. Alternatively, the information is not and would not reveal the commercial, scientific or technical information of a third party, or a trade secret of a third party.

[para 70.] As the information in the second severed item on page 22 does not meet the requirements of section 15(1)(a) and section 15(1)(c), the Public Body did not correctly apply section 15(1) to that information. I do not uphold the Public Body’s decision to refuse to disclose that

information. I order the Public Body to disclose that information to the Applicant.

[para 71.] The information severed on page 189 is not and would not reveal the commercial, scientific or technical information of Gatso, and is not and would not reveal a trade secret of Gatso. As that information does not meet the requirements of section 15(1)(a) and section 15(1)(c), the Public Body did not correctly apply section 15(1) that information. I do not uphold the Public Body's decision to refuse to disclose that information. I order the Public Body to disclose that information to the Applicant.

[para 72.] The remainder of the information severed from the Records meets the requirements of section 15(1)(a), (b) and (c). Consequently, the Public Body correctly applied section 15(1) of the Act to the remainder of the information severed from the Records. I uphold the Public Body's decision to refuse to disclose that information. I order the Public Body not to disclose that information to the Applicant.

[para 73.] Section 31(1)(b) of the Act (disclosure in the public interest) does not require the Public Body to disclose the Records.

[para 74.] I order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that the Public Body has complied with this Order.

Robert C. Clark
Information and Privacy Commissioner