ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2017-36

March 24, 2017

ALBERTA HEALTH SERVICES

Case File Number F8433

Office URL: www.oipc.ab.ca

Summary: Pursuant to the *Freedom of Information and Protection of Privacy Act* (the Act), Alberta Health Services (the Public Body) received an access request for records relating to air ambulance services. It contacted the Third Party which is a business that provides air ambulance services and advised the Third Party that the Public Body intended to disclose a contract to the applicant. The Third Party objected and the Public Body severed some information from the contract pursuant to section 16 of the Act but determined that the remaining information would not cause harm to the Third Party as contemplated by section 16(1)(c) of the Act. The Third Party then asked for the Office of the Information and Privacy Commissioner (our Office) to review the Public Body's decision.

The Adjudicator found that section 16 of the Act did not require the Public Body to withhold the information at issue from the applicant because the Third Party failed to meet its burden and prove that the information was supplied in confidence or that it met the harms test articulated in sections 16(1)(b) and 16(1)(c) of the Act. Therefore, the Adjudicator ordered the Public Body to disclose the information at issue to the applicant.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 16, 30, 70, 71, and 72.

Authorities Cited: AB: Orders 96-003, F2004-006, F2004-013, F2007-032, F2009-21, F2010-036, F2014-44, and F2015-03.

Cases Cited: *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31; *Qualicare Health Service Corporation v. Alberta (Office of the Information and Privacy Commissioner)*, 2006 ABQB 515l; *Imperial Oil v. Alberta (Information and Privacy Commissioner)*, 2014 ABCA 231.

I. BACKGROUND

[para 1] Pursuant to the *Freedom of Information and Protection of Privacy Act* (the Act), on April 29, 2014 Alberta Health Services (the Public Body) received an access request from an applicant for all records relating to contracts for air ambulance services or air evacuation services. The Public Body conducted a search and found responsive records which included information about the Third Party, a business. The Public Body provided the Third Party with notice pursuant to section 30 of the Act. On July 22, 2014, the Third Party received a letter from the Public Body asking for its consent to disclose the responsive records. This request was declined. In response, the Public Body decided to sever some information from the records pursuant to section 16 of the Act but to disclose other information in the responsive records. The Public Body advised the Third Party of its intention on August 15, 2014.

[para 2] On September 3, 2014, the Third Party asked this Office to review the Public Body's decision to release information to the applicant. Mediation was authorized but did not resolve the issues between the parties and on October 1, 2015, this Office received the Third Party's Request for Inquiry. The applicant was invited to participate in this inquiry but did not respond to our request. I received submissions from both the Third Party and the Public Body.

II. ISSUE

[para 3] The Notice of Inquiry dated June 20, 2016 states the issue in this inquiry as follows:

> Does section 16 of the Act (disclosure harmful to business interests of a third party) apply to the information the Third Party seeks to have severed from the records?

[para 4] The applicant is not a party to this inquiry and therefore, whether the Public Body properly applied section 16 to the information it plans to sever is not an issue in this inquiry. Once the Public Body has responded to the applicant's access request, the applicant will have the ability to request that this Office review that response. This may also include a review of the Public Body's application of section 16 of the Act. Therefore, I will not be making any findings regarding the information that the Public Body has severed from the records at issue.

III. DISCUSSION OF ISSUE

Does section 16 of the Act (disclosure harmful to business interests of a third party) apply to the information the Third Party seeks to have severed from the records?

[para 5] The portions of section 16 of the Act which are relevant to this inquiry state:

> *16(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, or*
> > >
> > > *(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.*
> > >
> > > *…*

[para 6] In its Request for Inquiry, the Third Party stated that the responsive records contain financial information and that if that information were provided to a competitor, it would result in the Third Party losing its contract with the Public Body and going out of business because this contract is its only source of revenue.

[para 7] The Public Body submits it followed the three part test set out in Order F2004-013 when it made the determination as to whether section 16 of the Act applied to the information at issue:

> Part 1: Would disclosure of the information reveal trade secrets of a third party or commercial, financial, labour relations, scientific or technical information of a third party?
>
> Part 2: Was the information supplied, explicitly or implicitly, in confidence?
>
> Part 3: Could disclosure of the information be reasonably expected to bring about one of the outcomes in section 16(l)(c)?
>
> (Order F2004-013 at para 10)

[para 8] The Public Body further submits that according to section 71(3) of the Act, the Third Party has the burden to prove that the applicant has no right of access to the record or any part of it. Citing various orders issued by our Office, the Public Body cited the specific standard of proof necessary in this case as follows:

> In Order F2007-032 an Adjudicator reviewed the standard of proof necessary to engage section 16 at paragraphs 31 and 32:
>
> > [para 31] ln *Qualicare Health Service Corporation v. Alberta (Office of the Information and Privacy Commissioner),* 2006 ABQB 515 the Court clarified evidentiary requirements for discharging the burden of proof. The Court said:
> >
> > > ln my view, the Privacy Commissioner's requirement for an evidentiary foundation withstands a somewhat probing examination. As discussed, the scope and intention of FOIPP presumes access to information, subject only to limited exceptions, and the responsibility for establishing an exception rests with the party resisting access to the information.
> > >
> > > The requirement of some cogent evidence permits the Privacy Commissioner to discharge his duty of balancing competing interests and policy considerations by rationally assessing the likelihood of reasonable expectations of harm. To suggest that requiring some evidence is unreasonable means that access to information could be denied based solely on hypothetical possibilities, and that only the most preposterous theoretical risks could be rejected by the Commissioner.
> >
> > [para 32] The Third Party therefore bears the burden of submitting cogent evidence to establish that its expectation that the information at issue was supplied in confidence is reasonable. It must also establish through evidence, that disclosure of information supplied in confidence will result in harm within the meaning of section 16(1)(c).
>
> The words "could reasonably be expected to" in section 16(1)(c) have been interpreted to mean that evidence of a reasonable expectation of probable harm is required. The word "probable" means proof "on a balance of probabilities". Proof "on a balance of probabilities" means that the evidence must involve more than speculation and more than a mere possibility of harm.

[para 9] Applying the test noted above to the information that the Third Party objected to disclosing, the Public Body determined that portions of the records were financial and commercial information of the Third Party but other portions which were internal,

general contract requisitions and documentation applicable to all air ambulance operations, were not.

[para 10] Turning next to part two of the test noted above, the Public Body decided that the information submitted by the Third Party has been supplied explicitly or implicitly in confidence.

[para 11] Finally, the Public Body turned its mind to the third part of the test and found that, other than the information it severed, the information did not meet the harms test articulated in Order F2007-032. In its submission, the Public Body stated:

> In Order 96-003, the Commissioner stated that in order for a public body to meet the "harm" test under section 15(1)(c)(i) (now 16(1)(c)(i)) ... "[The] evidence must demonstrate a probability of harm from disclosure and not just a well-intentioned but unjustifiably cautious approach to the avoidance of any risk whatsoever because of the sensitivity of the matters at issue." *(Canada (Information Commissioner) v. Canada (Prime Minister),[1992]* F.C.J. No. 1054 (Fed.T.D.)" In that Order the Commissioner also stated that the public body must provide evidence of the following to prove significant harm to the third party's competitive position under section 15(1)(c)(i) (now 16(1)(c)(i)):
>
> > (i) the connection between disclosure of the specific information and the harm which is alleged;
> >
> > (ii) how the harm constitutes "damage" and "detriment" to the matter; and
> >
> > (ii) whether there is a reasonable expectation that the harm will occur. [TAB # 6 Order 96-003 page 6]
>
> In Order F2014-44 at paragraph 61 an Adjudicator stated that:
>
> > ... a third party seeking to establish the likelihood of significant interference with negotiating position arising from disclosure must establish a direct linkage between the information at issue and the risk of significant interference it projects.
>
> Finally, in Order F2004-006 the Adjudicator indicated that in order to determine whether a third party's negotiating or competitive position would be harmed by disclosure, evidence of the nature of the market in which the third party operates would be useful. [TAB # 7 Order F2004-006 paragraphs 34 and 35]
>
> In this instance the Privacy Coordinator after reviewing the Third Party's submissions concluded that there was insufficient evidence to demonstrate that the harms test was met. The evidence presented by the Third Party during the section 30 consult was more speculative than substantive. lt pointed more to a possibility of harm rather than a direct link between disclosure and harm.
>
> (Public Body’s initial submissions at paras 11-14)

[para 12] As a result, the Public Body decided that some of the information at issue would be disclosed to the applicant because all three parts of the test had not been met. However, the Public Body did withhold some information, such as some of the pricing information, estimate uplifts and COLA because it felt, given the small market, that the disclosure of this information could have a likelihood of harm to the Third Party.

[para 13] In its submissions, the Public Body properly cited the applicable test in determining if section 16 applied to the information in the records. Given the finding of the Public Body regarding the commercial and confidential nature of the information and the submissions of the Third Party quoted above, it seems the part of the test that is of central importance to this inquiry is whether the disclosure of the information at issue could reasonably be expected to harm significantly the competitive positon or interfere significantly with the negotiating position of the Third Party (section 16(1)(c)(i) of the Act). However, I will examine each element of the three-part test below.

Section 16(1)(a):

[para 14] The Public Body states that it found that the contract contains the Third Party's commercial and financial information but that the contract also contains standard provisions and wording that is not specific to the Third Party. The Public Body proposes to disclose the latter information, which is the information at issue in this inquiry. I agree with the Public Body that this standard wording does not constitute trade secrets, commercial, financial, labour relations, scientific or technical information of a third party and is correctly disclosed by the Public Body.

[para 15] I gather from the submissions of the parties that the more contentious information is the remaining information that was determined by the Public Body to be financial and commercial information. This information includes all the numbers and calculations in the contract, some of which were withheld by the Public Body (as noted above) and some of which the Public Body believes ought to be disclosed because that information did not meet the harms test articulated in section 16(1)(c) of the Act (discussed below).

[para 16] Past orders of this Office have determined that contract amounts are a third party's commercial information as that term is used in section 16(1)(a) of the Act. For instance in Order F2010-036, the Adjudicator stated the definition of the commercial information as:

> Information belonging to a third party about its buying, selling or exchange of merchandise or services.
>
> (Order F2010-036 at para 31)

[para 17] The information the Public Body proposes to disclose includes contract prices, which fits into the definition cited above because the contract is for the exchange of services by the Third Party for a price. Therefore, I find the part of the test articulated in section 16(1)(a) has been met.

Section 16(1)(b):

[para 18] In order for the second part of the test to be met, the information at issue must have been supplied, explicitly or implicitly, in confidence. The Public Body states that it believes that this part of the test has been met. However, when I asked the Third Party to give submissions on the issue of "supplied", it stated that the information was supplied by the Public Body. The Third Party did not elaborate on why it believed that the information at issue was supplied by the Public Body.

[para 19] I assume that the numbers in the contract which the Public Body proposes to disclose were a result of a negotiation wherein the Third Party provided the Public Body with how much they would be willing to be paid for the services requested and the Public Body either accepted this or proposed a different amount. Because a contract exists between the Third Party and the Public Body, I also assume that this contract price was ultimately agreed on by the parties.

[para 20] Several orders from this Office have stated that a contract is negotiated between a public body and a third party and as a result cannot be found to have been supplied by the third party unless the information is immutable. This is true even if the bid price is the same as the contract price (which may or may not have been the case here) (see Order F2015-03 at para 39).

[para 21] In coming to its decision that the information at issue was supplied implicitly or explicitly in confidence by the Third Party, the Public Body references *Imperial Oil v. Alberta (Information and Privacy Commissioner)*, 2014 ABCA 231 (*Imperial Oil)*. In this decision of the Alberta Court of Appeal, the Court found that information that formed part of a contract was supplied by the third party. While the Court of Appeal's decision could be interpreted as standing for the notion that all information contained in a contract that had been provided to a public body by a third party is "supplied" by the third party, orders from this Office have pointed out that the Court was not addressing the contract itself, and that it agreed that the contract might not be supplied by either party (see Order F2015-003 at paras 41-48).

[para 22] I agree with the Adjudicator in Order F2015-03 that the decision of the Court in *Imperial Oil* is distinguishable from a case such as the present wherein the information at issue is a negotiated contract amount and not immutable reports which formed part of the contract.

[para 23] On the evidence and arguments before me, I find that the information at issue is part of a contract that was negotiated and therefore was not supplied by the Third Party and does not meet the second part of the test noted above. Therefore, I find that the Public Body was correct in determining that section 16 did not apply to the information at issue. However, in the event that I am incorrect, I will also determine if section 16(1)(c) of the Act applies to the information at issue.

Section 16(1)(c):

[para 24] The Public Body properly cited the test that is to be applied when determining if the harms test under section 16(1)(c) of the Act has been met. As the Supreme Court stated in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31:

> This Court in *Merck Frosst* adopted the "reasonable expectation of probable harm" formulation and it should be used wherever the "could reasonably be expected to" language is used in access to information statutes. As the Court in *Merck Frosst* emphasized, the statute tries to mark out a middle ground between that which is probable and that which is merely possible. An institution must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to reach that middle ground: paras. 197 and 199. This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and "inherent probabilities or improbabilities or the seriousness of the allegations or consequences": *Merck Frosst*, at para. 94, citing *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41, at para. 40.

[para 25] The Public Body was also correct in asserting that the burden to provide evidence to meet this test rests with the Third Party. As the Court of Queen's Bench decided in *Qualicare Health Service Corporation v. Alberta (Office of the Information and Privacy Commissioner)*, 2006 ABQB 515:

> The Commissioner's decision did not prospectively require evidence of actual harm; the Commissioner required some evidence to support the contention that there was a risk of harm. At no point in his reasons does he suggest that evidence of actual harm is necessary.
>
> The evidentiary standard that the Commissioner applied was appropriate. The legislation requires that there be a "reasonable expectation of harm." Bare arguments or submissions cannot establish a "reasonable expectation of harm." When interpreting similar legislation, courts in Ontario and Nova Scotia have held that there is an evidentiary burden on the party opposing disclosure based on expectation of harm: *Chesal v. Nova Scotia (Attorney General)* 43, at para. 56 *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information & Privacy Commissioner) 44* at para. 26.

[para 26] Therefore, the Third Party must provide adequate evidence to establish a reasonable expectation of significant harm. This will require the Third Party to provide evidence and not simply bare arguments or submissions.

[para 27] The submissions/evidence that the Third Party put before me on the harm that could occur if the information is disclosed was:

- From a letter to the Public Body dated July 28, 2014 (attached to the Third Party's Request for Review):

> By disclosing our pricing structure, we feel that the financial disclosure would be harmful to business interests for future bidding opportunities. Revealing such information could

cause potential financial loss as the current contract and future opportunity is competitive in nature. The contract was supplied in confidence and we feel that due diligence of pricing and structure was performed by both Alberta Health Services and [the Third Party] to ensure fiscal responsibility.

- From a letter to the Commissioner dated August 22, 2014 (attached to Request for Review):

…We declined the request as [the Third Party] management felt that to do so would result in undue financial loss and interfere with the future negotiating position of the company. Air ambulance contracts are tendered periodically and are competitive in nature .

[The Public Body] responded on August 15, 2014 stating that they will redact some information, data from one page out of twenty six pages of company financial data. [The Third Party] is discontent that the information of the company can be disclosed to this third party without regard to the potential loss of future bidding opportunities, the company itself and all who are employed by them.

[The Third Party] is requesting a review of the decision to the disclosure of these records. Reasons for declining disclosure are as follows:

- Would reveal financial and technical information
- The information given to [the Public Body] was supplied in confidence
- Significantly harm the competitive position for future request for proposals
- Interfere significantly with the future negotiating position of the company
- Result in undue financial loss to the company

All of the reasons listed are crucial to the function and the potential sustainability of the company. Please consider this as the livelihood of [our employees] who depend on the company to be operational and long lasting. To open the company's information would endanger the future of the company and all who work to provide the service.

- From a letter to the Senior Information and Privacy Manager dated September 29, 2015 (attached to Request for Inquiry):

As a small business in Operation for the past thirteen years, we pride ourselves in being fiscally responsible and reasonable in our bidding price. The concern is by disclosing our financial information and allowing it to be available for anyone to view discloses confidential financial information, hence taking away the competitive bidding process. By providing financial information to an opponent there is no competition for the bidding process during the next air ambulance contract. Common business sense indicates that if you provide a competitor with your numbers, there will be financial loss in a competitive process. This would be considered factual as it is not an “alleged” practice to provide competitors with financial information.

The findings state "The test regarding a reasonable expectation that a particular harm or outcome will occur must involve more than *speculation of a mere probability*." Our understanding of business would indicate that there is more than enough financial evidence being provided and that the statements saying

> that we are speculating is in fact a speculation in itself saying that it would NOT cause financial harm.
>
> We are considering that this financial information provided to the wrong parties will cause financial disparity. There is a high probability that any smart business person would use any and all competitive strategies to outbid the competition.
>
> To lose the air ambulance contract would be considered significant as the contract is the only source of revenue. [The Third Party] is a company dedicated solely on providing air ambulance service to the province of Alberta and is contractually committed to provide this essential service. There are no financial revenue streams other than the Alberta Health Service contract.
>
> Losing the contract through an unfair bidding process by providing financial information would be detrimental and would interfere significantly with the livelihood of the owners and [employees] as [the Third Party] would close its doors and cease to exist. There is a high reasonable expectation this would occur should the information be disclosed.
>
> Please consider the implications of the findings to our small business…
>
> - From a letter to our Office dated October 11, 2016:
>
> It is extremely difficult to establish a direct linkage between the information at issue and the risk of undue financial loss projected to [the Third Party]. Future activities within the organization will be dependent on a successful bid on the new air ambulance contract. Our inquiry review has not been completed therefore our rebuttal document is to be submitted as is.

[para 28] From this evidence, I take the Third Party's argument to be if a competitor knew its pricing structure (and possibly the contract price) the competitor would be able to under-bid that price and the Third Party would lose the contract. However, as noted in the letter of October 11, 2016, it was extremely difficult to establish a direct link between the disclosure of the information at issue and the harm.

[para 29] I note that the Third Party's letter to the Public Body dated July 28, 2014 is the Third Party's response to the Public Body's initial section 30 notice. In response to the Third Party's concerns, the Public Body severed almost every number from the contract. It appeared to me that only the total contract price was left in, and the "pricing structure" which I took to mean how the final price was calculated, was severed. I wasn't sure how the total contract price of a contract negotiated years ago could affect future negotiations. I asked the parties about it and the Third Party responded:

> Yes, even after the information is severed, there are still financial information that can be used to reveal our price. For example, on page 11 from the contract approval record, It shows the contract start and end date and the current value of the contract in Section II and Section III. A quick calculation between the value and the years of service would reveal a yearly cost estimate. Other pages that are not severed and are financially revealing are pg 11-13, pg 15-16, pg 18, pg 21.

(Third Party's response to questions, dated December 19, 2016)

[para 30] In response to my question about how information from 2014 could harm the Third Party, it responded:

> Potential detriment as competitors may be able to use this information to undercut our contract price with this cost estimate. A future competitor may be able to determine what to bid in a future contract by taking the cost paid out each year and adding the Canadian Price Index cost on energy. Inflation also could be added to the yearly contract price.
>
> There are only a few air ambulance program delivery providers within the province of Alberta. Most providers know how each other run their service (scheduling, staffing, etc) Knowledge of price could assist a new bidder on preparing and providing the service with slight variances within the organization. If we are aware of the intent of the FOIP'ing process and who is the requestor, we would probably be less reluctant to disclose this information if this was not a competitor or future competitor.
>
> I don't foresee any other harm besides the most important one .... the viability of our company and the employment of those who work for us…

(Third Party's response to questions, dated December 19, 2016)

[para 31] In Order F2009-021, the Adjudicator, faced with similar arguments stated:

> The Public Body submits that similar contracts for a similar scope of work will go out for a competitive RFP after the present contract has expired, and that disclosing the contract value would allow competitors to prepare a proposal to underbid the Affected Party. While the Applicant did not present a proposal for the project that was awarded to the Affected Party, the Public Body says that it considers the Applicant to be a competitor. The Affected Party submits that its ability to offer an efficient and competitive price is intricately linked to its project approach, methodology and experience and that disclosure of any detailed information from its proposal, including price, could affect its competitive position in subsequent RFPs.
>
> In response, the Applicant argues that the RFP here related to a multi-faceted project with many complex components, making it impossible for a competitor to derive the cost of any of the various components simply by knowing the total contract value. The Applicant accordingly submits that knowledge of the information at issue would not enable a competitor to underbid on future projects.
>
> I agree with the position of the Applicant. Very little, if anything, can be deduced from the contract value/price here so as to harm the competitive position of the Affected Party, interfere with its negotiating position, or cause it undue financial loss. In the "Project Description" submitted by the Applicant, there are a variety of tasks associated with the Road Network Update, such as obtaining information from municipalities, collecting field data, presenting detailed documentation annually, and delivering data and reports by specific deadlines. There are four phases to the three-year project, being the identification of data sources, detection of changes to the road network, collection and compilation of changes, and creation of a monthly update file.

> In turn, the cost estimate for each phase consists of various disbursements, expenses, sub-consultant fees and hourly rates.
>
> Because the contract value/price reflects a total amount for various tasks, phases and sub-costs, I find that a person knowing the total contract value/price would not be able to ascertain the cost that the Affected Party attributes to any particular component. Moreover, even if the Public Body issues another RFP for the same scope of work for another three-year period, cost is only one criterion (worth 25%) in awarding the contract, and the market will have changed so as to influence the pricing for the various components leading up to the overall value of a future contract. In other words, even assuming a virtually identical RFP in the future, I find it unlikely that knowledge of the contract value/price associated with the current project will enable a competitor to underbid the Affected Party three years later.
>
> (Order F2009-021 at paras 31-34)

[para 32] In Order F2014-44, the Adjudicator found that the Third Party did not establish that the harms test was met.

[para 33] I understand that the Third Party believes that its competitors could apply known factors to the existing contract price from 2014 that would enable them to project the total contract price that the Third Party would bid in a new RFP process, and that its argument is that if its competitors knew this projected price, they would be able to underbid it and deprive it of its contract. I also note its point that the many factors that go into establishing the Third Party's contract price may be roughly known by competitors, given the nature of the service that is being provided.

[para 34] Despite these things, however, I am not persuaded that this establishes a "reasonable expectation of probable harm", as the cases cited above require. This Third Party's argument depends on all of the following propositions:

- that the Third Party's new RFP bid could be accurately projected
- that competitors will be in a position to offer a lower price
- that a lower price will be determinative of who wins the bid.

[para 35] With regard to the projection of the Third Party's new contract price, while the Third Party suggests that certain factors (the Canadian Price Index cost on energy, and inflation) could be applied, it does not explain with any degree of detail how they would be applied and to which components of the total contract price. Given the level of generality of this claim, I cannot accept that a new contract price in the future can be predicted with accuracy.

[para 36] With regard to the prospect of underbidding, the Third Party offers no evidence or argument as to its concern that competitors would be in a position to reduce either costs of providing the service, or their profit margin, sufficiently to be able to undercut the Third Party and still be able to provide the service profitably. This may be true, but, it may not.

[para 37] Finally, and perhaps most importantly, the Third Party speculates but does not establish that a lower contract price would be a key or primary factor in choosing the successful bidder in a subsequent RFP. In the case just quoted, this process was only a relatively minor factor in awarding the contract. In the present case, there may well be myriad other factors in assessing bids beyond the one of the total contract price; indeed, the way the costs of the various components are being distributed in a new proposal (which will remain unknown to competitors) may be an important factor. Other factors such as experience, available equipment, qualifications of personnel, and so on, may be equally or more important.

[para 38] On account of all of the unknown variables set out above, I cannot accept the Third Party has established that disclosing the information would give rise to a reasonable expectation of the harm posited - that a competitor will be able to underbid it. Accordingly, I find that section 16(1)(c)(i) of the Act does not require the Public Body to sever the information at issue.

[para 39] As neither section 16(1)(b) nor section 16(1)(c)(i) (nor any of the other subsections of section 16(1)(c)) have been met in this case, I find that the information at issue should be disclosed to the Applicant by the Public Body.

IV. ORDER

[para 40] I make this Order under section 72 of the Act.

[para 41] I confirm the Public Body's decision and find that section 16 of the Act does not apply to the information the Public Body decided to disclose to the applicant. I order the Public Body to disclose that information to the applicant.

[para 42] I further order the Public Body to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

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Keri H. Ridley
Adjudicator