



REVIEW REPORT 054/2015 & 055/2015

City of Regina

August 19, 2015

Summary:

In February 2015, an Applicant submitted an access to information request to the City of Regina (City). The City provided partial access the information requested and withheld the financial and commercial information of two third parties pursuant to subsection 18(1)(b) and (c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Upon review, the Commissioner found that the information withheld was the financial and commercial information of two third parties and recommended the information continue to be withheld pursuant to subsection 18(1)(b) of LA FOIP.

I BACKGROUND

- [1] On February 26, 2015, the City of Regina (City) received two access to information requests from the Applicant for:

Access to information request #1:

COR2341 Street Infrastructure Renewal Package No. 14B, Tender Number 14B

Access to information request #2:

COR2074 – Contract #5400-157-300 Street Infrastructure Renewal Package No. 13,
Tender Number 2074

- [2] The City responded to the requests by a letter dated March 4, 2015 indicating that access was partially granted. The City advised the Applicant that portions of the record were

being withheld pursuant to subsections 18(1)(b) and (c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] On March 20, 2015, my office received two Requests for Review from the Applicant.

[4] My office notified the City and the Applicant of our intention to undertake a review on April 1, 2015. A submission was received from the City on April 17, 2015. No submission was received from the Applicant.

[5] On August 12, 2015, my office invited the third parties to provide submissions for our consideration during this review. My office received a submission from Site Management Services Regina Inc. on August 13, 2015. On August 17, 2015, my office received a submission from Pasqua Paving. No submission was received from the Applicant.

II RECORDS AT ISSUE

[6] The records at issue constitute two documents each titled, *Form of Tender*. The Applicant is only interested in the unit prices and total prices severed from these two documents.

III DISCUSSION OF THE ISSUES

[7] The City is a “local authority” pursuant to subsection 2(f)(i) of LA FOIP.

[8] Pasqua Paving is a “third party” pursuant to subsection 2(k) of LA FOIP.

[9] Site Management Services Regina Inc. is a “third party” pursuant to subsection 2(k) of LA FOIP.

1. Did the City properly apply subsection 18(1)(b) of LA FOIP to the withheld record in question?

[10] Subsection 18(1)(b) of LA FOIP is a mandatory exemption and provides:

18(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to the local authority by a third party;

[11] Subsection 18(1)(b) of LA FOIP is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to local authorities. Although one of the central purposes of the Act is to shed light on the operations of local authorities, subsection 18(1)(b) of LA FOIP serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.

[12] All three parts of the following test must be met in order for subsection 18(1)(b) of LA FOIP to be found to apply:

- i. The information in question must qualify as financial, commercial, scientific, technical or labour relations information;
- ii. The information must have been supplied by the third party; and
- iii. The information must have been supplied in confidence either implicitly or explicitly.

[13] The City applied subsection 18(1)(b) of LA FOIP to the unit prices and total prices in each of the documents.

i. Is the information in question financial, commercial, scientific, technical or labour relations information?

[14] In its submission, the City asserted that the unit prices and total prices listed in the documents was “financial” and “commercial” information.

[15] *Financial information* relates to money and its use or distribution and must contain or refer to specific data. Examples of “financial” information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.

[16] *Commercial information* is information relating to the buying, selling or exchange of merchandise or services. In British Columbia IPC Order F05-09, a number of types of information which its jurisdiction considered to be included in the definition of commercial information are as follows:

- Offers of products and services a third-party business proposes to supply or perform;
- A third-party business’s experiences in commercial activities where this information has commercial value;
- Terms and conditions for providing services and products by a third party;
- Lists of customers, suppliers or sub-contractors compiled by a third-party business for its use in its commercial activities or enterprises; such lists may take time and effort to compile, if not skill;
- Methods a third-party business proposes to use to supply goods and services; and
- Number of hours a third-party business proposes to take to complete contracted work or tasks.

[17] The City severed the unit prices and total prices for goods and services provided by the third parties. However, it released the total tender prices. In its submission, the City asserted that the unit prices disclosed pricing and pricing practices of the third parties in a competitive contract award process. The numbers concurrently specify the price per unit at which the third parties were willing to sell certain goods and services to the City.

[18] I agree with the City. The unit prices and total prices constitute commercial and financial information of the third parties.

ii. Was the information supplied by the third party to the local authority?

[19] Information may qualify as “supplied” if it was directly supplied to a local authority by a third party.

[20] The City asserted in its submission that the tender package supplied by the City to bidders contained a blank Form of Tender. Bidders entered their specific financial and commercial data in Schedule A of the form and returned the form to the City as part of their bid package.

[21] I find that the information was supplied by the third parties to the City.

iii. Was the information supplied in confidence implicitly or explicitly?

[22] Based on the City’s submission, the third parties provided the information explicitly in confidence.

[23] *Explicitly* in confidence means that the request for confidentiality has been clearly expressed, distinctly stated or made definite. There may be documentary evidence that shows that the information was supplied on the understanding that it would be kept confidential. (Service Alberta, *FOIP Guidelines and Practices*, 2009 at p. 104) Factors to consider when determining whether a document was supplied in confidence explicitly include:

- The existence of an express condition of confidentiality in an agreement between a public body and the third party;
- The fact that the public body requested the information be supplied in a sealed envelope;
- The third party’s statement that it considered the information to have been supplied in confidence.

[24] In its submission, the City asserted that clause 19 of the Instructions to Bidders issued by the City contains an explicit acknowledgement that financial and commercial information supplied by bidders to the City to compete for the contracts was confidential information.

[25] I reviewed the confidentiality clauses referred to by the City. It is clear that the City acknowledges that the information provided in the tender packages will be provided in confidence as contemplated by section 18 of LA FOIP.

[26] I find that the third parties provided the information explicitly in confidence to the City.

[27] In conclusion, I find that subsection 18(1)(b) of LA FOIP applies to the severed information and it should continue to be withheld. As subsection 18(1)(b) of LA FOIP has been found to apply, there is no need to consider further subsections applied by the City.

IV FINDINGS

[28] I find that the City appropriately applied subsection 18(1)(b) of LA FOIP.

V RECOMMENDATIONS

[29] I recommend the City continue to withhold the third party information.

Dated at Regina, in the Province of Saskatchewan, this 19th day of August, 2015.

Ronald J. Kruzeniski, Q.C.
Saskatchewan Information and Privacy
Commissioner