



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-231

Appeal M-9300292

Timiskaming Board of Education



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ORDER

The Timiskaming Board of Education (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of the contract between the Board and ServiceMaster of Canada Limited (ServiceMaster), a management services company retained to manage the Board's custodial and maintenance departments.

Pursuant to section 21 of the Act, the Board notified ServiceMaster of the request. ServiceMaster objected to disclosure of the record, and the Board denied the requester access to the record on the basis of the exemption in section 10(1)(a) of the Act. The requester appealed the denial of access.

Mediation was not successful, and notice that an inquiry was being conducted to review the Board's decision was sent to the appellant, the Board, and ServiceMaster. Representations were received from ServiceMaster only.

In its representations, ServiceMaster states that part of the record sets out specific rights and responsibilities of the parties to the agreement with respect to ServiceMaster's employees. ServiceMaster states that disclosure of this information would amount to an unjustified invasion of the personal privacy of these employees.

In order for disclosure of the record to constitute an unjustified invasion of personal privacy, the Act requires that the information contained in the record qualify as personal information. Section 2(1) of the Act defines personal information, in part, as "... recorded information about an identifiable individual ...". I have reviewed the record, and the employees referred to by ServiceMaster are not identified in the contract by name or any other personal identifier. The clauses in the contract refer to the employees collectively and, in my view, the privacy protection provisions of the Act do not extend to the information contained in the record.

The sole remaining issue arising in this appeal is whether the mandatory exemption provided by section 10(1)(a) of the Act applies to the record. Section 10(1)(a) of the Act states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

In order for a record to qualify for exemption under sections 10(1)(a) of the Act, the Board and/or ServiceMaster 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 must give rise to a reasonable expectation that one of the types of injuries specified in (a), (b) or (c) of section 10(1) will occur.

Failure to satisfy the requirements of any part of this test will render the section 10(1) exemption claim invalid.

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In order to satisfy the second part of the test, the information must have been **supplied** by ServiceMaster to the Board **in confidence**.

It has been held in a number of previous orders that information reflecting the results of negotiations between an institution and another party cannot be said to have been "supplied" by the other party (Orders 36, 87, 204, P-219 and P-385).

It has also been stated in previous orders that information contained in a record would "reveal" information supplied by a party, within the meaning of section 10(1) of the Act, if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the institution (Orders P-218, P-219, P-228 and P-241).

ServiceMaster submits that the requested contract was the product of extensive negotiations between ServiceMaster and the Board. A clause within the contract itself indicates that the agreement has been negotiated and prepared by the parties equally and shall not be construed as having been drafted by one party. In the circumstances of this appeal, it is my view that the record itself cannot be said to have been supplied by ServiceMaster. Having reviewed the record and the representations, it is my view that disclosure of the record would not reveal information actually supplied by ServiceMaster to the Board, as its disclosure would not permit the drawing of accurate inferences with respect to the information actually supplied to the Board.

In my view, therefore, the information in the record has not been "supplied" by ServiceMaster, and I find that the second part of the section 10(1) test has not been satisfied. As stated earlier, failure to meet any one of the three parts of the test will render the section 10 exemption claim invalid. It is, therefore, not necessary for me to consider the other parts of the test.

ORDER:

1. I order the Board to disclose the record to the appellant within 35 days following the date of this order and not earlier than the thirtieth (30th) day following the date of this order.
2. In order to verify compliance with this order, I order the Board to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1, **only** upon request.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ December 3, 1993