

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2025-08

February 21, 2025

CITY OF EDMONTON

Case File Number 016658

Office URL: www.oipc.ab.ca

Summary: An individual (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 FOIP Act) for certain information about a speed camera at a particular location in Edmonton, Alberta, and information about the decision to use photo radar at that location.

The Public Body located responsive records and invited a third party (the Third Party) to provide input regarding disclosure of the records relating to the Third Party. Following this consultation, the Public Body decided to apply section 16(1) and section 17(1) of the FOIP Act to some, but not all of the information in the responsive records. The Public Body advised the Third Party of its decisions regarding access, and the Third Party requested a review by this office of the Public Body's decision to disclose some information on the basis that the Third Party believed section 16(1) applied to this information. The Third Party subsequently requested an inquiry.

The Applicant was invited to participate in the inquiry as an affected party.

The inquiry considered the application of section 16(1) only to the information in dispute between the Public Body and the Third Party. The information which the Public Body and Third Party agreed must be withheld under section 16(1), and the information the Public Body withheld under section 17(1), is not at issue in this inquiry.

The Adjudicator found that section 16(1) did not apply to the information in dispute between the Public Body and the Third Party. The Adjudicator ordered the Public Body to disclose that information to the Applicant.

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

Orders Cited: AB: Order F2024-40

I. BACKGROUND

[para 1] On February 25, 2020, the City of Edmonton (the Public Body) received a request under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the FOIP Act) from an individual (the Applicant) for access to the following information:

1. Documentation indicating make and model of the speed camera used at Fox Drive at Fort Edmonton Road (site ID ED1105)
2. All technical documentation from vendor with respect to speed camera used at Fox Drive at Fort Edmonton Road (site ID ED1105)
3. Calibration records for speed camera used at Fox Drive at Fort Edmonton Road (site ID ED1105)
4. Site selection report justifying the use of photo radar on Fox Drive at Fort Edmonton Road (site ID ED1105)
5. Pre-existing and documented safety concerns used to justify [use of photo radar] on Fox Drive at Fort Edmonton Road (site ID ED1105)

[para 2] The time period specified by the Applicant for his access request was January 1, 2015 to February 22, 2020.

[para 3] The Public Body located 679 pages of responsive records containing information created by or belonging to a third party (the Third Party).

[para 4] On July 3, 2020, the Public Body wrote to the Third Party and requested its views on the disclosure of the responsive records.

[para 5] After receiving the Third Party's views, on August 10, 2020, the Public Body informed the Third Party that it had decided to give the Applicant partial access to the records subject to exceptions under the FOIP Act.

[para 6] The Public Body advised the Third Party that the specific technical and proprietary information would not be disclosed to the Applicant; however, information such as title pages, warnings, indexes and section headings that did not reveal technical information would be disclosed. It informed the Third Party that the Applicant would be given access unless the Third Party requested a review of the Public Body's decision by the Office of the Information and Privacy Commissioner by August 30, 2020.

[para 7] On August 10, 2020, the Public Body informed the Applicant that it had notified the Third Party and had given the Third Party an opportunity to make representations. It informed the Applicant that it had decided to give the Applicant partial access to the records. It advised the Applicant that the Third Party had 20 days to request that the Commissioner review the Public Body's decision and if it did not request the Commissioner to review this decision, it would give the Applicant access to the records on August 31, 2020.

[para 8] On August 10, 2020, the Third Party requested the Commissioner review the Public Body's decision to disclose the information it believed should also be withheld under section 16(1) (the Request for Review). Subsequently, on January 27, 2021, the Third Party requested an inquiry (the Request for Inquiry).

[para 9] The Commissioner agreed to hold an inquiry and delegated the authority to conduct the inquiry to me.

[para 10] The Applicant was invited to participate as an affected party in the inquiry and agreed to participate. Although he was given the opportunity to make a submission in the inquiry if he wished to do so, the Applicant did not provide any submission.

II. RECORDS AT ISSUE

[para 11] Based on my review of the responsive records, the Public Body applied sections 16(1) and 17(1) to withhold responsive information from the Applicant. The Public Body's decision to withhold responsive information from the Applicant under sections 16(1) and 17(1) is outside the scope of this inquiry.

[para 12] The only information at issue in this inquiry is the information in the records which the Third Party objects to the Public Body disclosing to the Applicant on the basis that the Third Party believes this information should also be withheld under section 16(1).

III. ISSUE

[para 13] The Notice of Inquiry, dated November 1, 2024, sets out the following issue:

1. Does section 16(1) of the FOIP Act (disclosure harmful to business interests of a third party) apply to the information in the records?

IV. DISCUSSION OF ISSUE

1. **Does section 16(1) of the FOIP Act (disclosure harmful to business interests of a third party) apply to the information in the records?**

[para 14] Section 16(1) states:

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 15] The purpose of section 16(1) and the test for section 16(1) to apply was discussed by the adjudicator in Order F2024-40. At paragraph 8 the adjudicator stated:

[para 8] In Order F2018-32, the Adjudicator reviewed the purpose of section 16 and prior decisions of this office. She said:

Section 16 applies “to protect the informational assets of third parties in situations where those assets have been supplied to government in confidence, and that harm could result from the disclosure of these informational assets.” Previous orders have consistently stated that all three parts of the following test must be met in order for s. 16(1) to apply:

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?
2. Was the information supplied, explicitly or implicitly, in confidence?
3. Could disclosure of the information reasonably be expected to bring about one of the outcomes set out in section 16(1)(c)?

[para 16] As noted by the adjudicator at paragraph 16 of Order F2024-40, pursuant to section 71(3)(b) of the FOIP Act, where a third party challenges a public body’s decision to disclose information that is not personal information, the burden of proof in an inquiry is on the third party to establish that the applicant has no right of access to the record or part of the record:

[para 16] Finally, section 71(3) of the FOIP Act places the burden of proof in an inquiry on a third party seeking to challenge a decision of a public body that has decided to disclose information. It states, in part:

71(3) If the inquiry relates to a decision to give an applicant access to all or part of a record containing information about a third party,

(a) in the case of personal information, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party’s personal privacy, and

(b) in any other case, it is up to the third party to prove that the applicant has no right of access to the record or part of the record.

[para 17] The Third Party did not provide a submission in this inquiry; however, in its Request for Review it stated:

Please note that access to ALL records is being DENIED for the following reasons:

1. The documents contain certain types of information, including but not limited to trade secrets or commercial, financial, labour relations, scientific or technical information.
2. The information provided by the Contractor to the City was provided in confidence. The documents contain trade secrets as well as technical information of [Third Party], particularly information to [Third Party] Intellectual Property Rights including techniques, plans and designs and therefore should not be disclosed.
3. The disclosure of the information provides [Third Party] competitors information that [is] not publicly available. This could reasonably be expected to cause harm to [Third Party] by prejudicing [Third Party] competitive position in the market.

[para 18] In its Request for Inquiry, the Third Party repeated the three reasons provided in its Request for Review reproduced in paragraph 17 above, and stated:

As our Red Light Camera systems are used for enforcement in many countries around the world and their operation and function form the basis for millions of court ticketing enforcements, ANY information made public even regarding the basic operation of the system could be pieced together and potentially jeopardize the very basis of many speed and redlight enforcement programs around the world including Canada. The information is made available to suitably qualified and city approved staff to ensure the systems are operating in strict conformance with appropriate guidelines and laws. It is provided in confidence and not for general public consumption.

[para 19] The Public Body had informed the Third Party that it was *not* going to disclose the specific technical and proprietary information in the responsive records to the Applicant; however, it *was* going to disclose information such as title pages, warnings, indexes and section headings that did not reveal technical information.

[para 20] The Third Party did not explain in either its Request for Review or its Request for Inquiry how the specific information the Public Body was prepared to disclose met the three-part test for section 16(1) to apply to it.

[para 21] In its initial submission, the Public Body stated in part:

Facts

1. An Initial Request for information was submitted pursuant to the *Freedom of Information and Protection of Privacy Act* (the Act) to the City of Edmonton (the Public Body) on February 25, 2020. Additional clarification of the request was

received on April 6, 2020. The request related to the make and model of the speed camera used at Fox Drive including technical documentation, calibration records etc.

2. The Public Body located 679 pages of records that related to the third party [Name] (the Third Party). The Third Party materials included service guides, operating instructions, and installation, maintenance and calibration instructions.
3. On July 3, 2020, the Public Body asked the Third Party for its views on the disclosure of the records in accordance with Section 30 of the Act and the Third Party objected. The Public Body then redacted information taking into account the requirements of Section 16(1) of the Act. While the Public Body redacted the majority of these records, the Public Body has not redacted title pages, legal notices, tables of contents, and other types of generalized statements. Further, the Public Body did not redact information about the history of the Third Party.
4. On August 10, 2020, in accordance with section 31, the Third Party requested this matter proceed to a review, and the reviewing officer determined that [the] Public Body was correct in not redacting portions of the records.
5. On January 27, 2021, the Third Party requested an inquiry and on March 16, 2021, the Information and Commissioner (the Commissioner) confirmed an inquiry would take place.

...

Arguments

Section 16

10. While the Records at issue have almost all been redacted pursuant to Section 16(1), the Public Body has unredacted certain portions of the records that do not appear to be covered under Section 16(1). Section 16(1) applies to situations where the disclosure of information would cause harm to the business interests of a third party.

[Reproduction of section 16(1)]

11. This case does not deal with personal information. As such, Section 71(3) of the Act places the burden on the Third Party to prove that the Applicant has no right of access.

[Reproduction of section 71(3)]

12. In Order F2004-013, at paragraph 10, the Commissioner indicated that for Section 16(1) to apply to information, the requirements set out in all three paragraphs of that section must be met:

- 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 under section 16(1)(a)?
- Was the information supplied, explicitly or implicitly, in confidence under section 16(1)(b)?

- Could disclosure of the information reasonably be expected to bring about one of the outcomes set out in section 16(1)(c)?
13. In Orders F2009-028, F2010-036, and F2011-002 the Commissioner consistently found the rationale of Section 16 of the Act to be rooted in the protection of specific types of proprietary information or “informational assets” of third parties from disclosure, so that businesses may be confident that they can continue to invest in this kind of information, and to encourage businesses to provide this kind of information to government when required.
 14. It is undisputed in this inquiry that the documents “as a whole” were provided to the Public Body, either implicitly or explicitly, in confidence. It is also undisputed that the documents as a whole contain commercial, financial, technical, scientific information of the Third Party, or trade secrets of the Third Party. However, the real issue is whether the portions of the documents that the Public Body unredacted contain trade secrets, or commercial, financial, technical, or scientific information of the Third Party. Further would the release of such information bring about one of the results in Section 16(1)(c).
 15. The information that has been unredacted related to headings, title pages, legal notices, tables of contents, and other types of generalized statements.
 16. The Public Body submits that the unredacted information does not fall under Section 16(1).
 17. Trade secret is a defined term in the Act and does not appear to apply to the unredacted information. Further, the unredacted information is neither scientific nor technical information.
 18. In Order F2009-028, at para 42 “commercial information” is defined as information belonging to a third party about its buying, selling or exchange of merchandise or services. “Financial information” is defined as information belonging to a third party about its monetary resources and use and distribution of its monetary resources. Based on these definitions none of the unredacted information appears to be either commercial or financial.
 19. The unredacted information therefore does not contain information covered under Section 16(1)(a).
 20. In addition, 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)) that it is not enough to take an overly cautious approach just because there might be harm. Instead there must be a probability of harm. Here, there is simply no harm in releasing the unredacted records.
 21. Pursuant to section 72 of the Act, if the Commissioner accepts the submission of the Public Body herein and determines that the Public Body was required to provide access to the Applicant, the resulting Order must uphold the decision of the Public Body to provide the unredacted portions of the Records to the Applicant.

[para 22] Having reviewed the unredacted information in the 679 pages that the Third Party argues should be withheld under section 16(1), I agree with the Public Body's analysis and conclusion that the unredacted portions of the records do not meet the test for redaction under section 16(1)(a) of the FOIP Act, and even if the unredacted portions of the records did meet the test under section 16(1)(a), they do not meet the test under section 16(1)(c) of the FOIP Act.

[para 23] I note that prohibitions in the responsive records on the disclosure of information contained in the responsive records cannot operate to override the Public Body's statutory obligation under the FOIP Act to provide access to the information where section 16(1), or another mandatory exception, does not apply.

[para 24] As noted above, the Third Party did not provide a submission in this inquiry. The arguments of the Third Party in its Request for Review and its Request for Inquiry are insufficient to discharge its burden of proof under section 71(3)(b). It has not proven that the Applicant has no right to the information in the responsive records which the Public Body had decided to give the Applicant access to.

[para 25] As I find that the information the Third Party objects to the Public Body disclosing in the 679 pages of responsive records is not information to which section 16(1) applies, I confirm the Public Body's decision to release this information to the Applicant and will order the Public Body to disclose this information to the Applicant.

[para 26] I make no finding regarding the Public Body's decision to withhold the balance of the information contained in the 679 pages of responsive records under section 16(1) and section 17(1) of the FOIP Act.

V. ORDER

[para 27] I make this Order under section 72 of the Act.

[para 28] I find that the Public Body is not required to withhold the information that is the subject of the Third Party's objection and order the Public Body to give the Applicant access to it.

[para 29] I further order the Public Body to notify me and the Third Party in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

Carmen Mann
Adjudicator
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