ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER FOIP2026-33

October 28, 2026

ENVIRONMENT AND PROTECTED AREAS

Case File Number 017118

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access request to Environment and Protected Areas (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act or Act) for records relating to the Provincial Park's campground reservation system.

The Public Body invited Compass Consulting Group (the Third Party) to provide input regarding disclosure of the records relating to the Third Party. The Third Party objected to the disclosure of certain parts of the records, citing section 16 of the Act. The Public Body informed the Third Party of its decisions to provide the Applicant with partial access to the records, and the Third Party requested a review by this office of the Public Body's decision to disclose some information. The Third Party subsequently requested an inquiry.

The Adjudicator found that section 16(1) of the Act did not apply to any of the information that the Public Body has not already withheld under sections 16 or 17.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 16, 71, 72.

Orders Cited: AB: Orders F2004-013, F2009-028, F2011-002, F2012-15, **Ont**: Order PO- 2435

Case Cited: *Canada (Information Commissioner) v. Canada (Prime Minister)*, 1992 CanLII 2414 (FC), [1992] F.C.J. No. 1054, *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner),* 2014 SCC 31

I. BACKGROUND

[para 1] An Applicant made an access request to Environment and Protected Areas (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act or Act) for records relating to the Provincial Park's campground reservation system, including the contract, submitted proposals, and evaluation sheets including pricing. The timeframe of the request is June 1, 2017 to July 23, 2019.

[para 2] The Public Body invited Compass Consulting Group (the Third Party) to provide input regarding disclosure of the records relating to the Third Party. The Third Party objected to the disclosure of certain parts of the records, citing section 16 of the Act.

[para 3] The Public Body decided to withhold some information under sections 16 and 17 of the Act, and decided to disclose other information. It informed the Third Party of its decisions to provide the Applicant with partial access to the records, and the Third Party requested a review by this office of the Public Body's decision to disclose some information.

[para 4] The Commissioner assigned a Senior Information and Privacy Manager (SIPM) to investigate and attempt to settle the matter. At the conclusion of this process, the Third Party requested an inquiry.

[para 5] Prior to the Notice of Inquiry being issued, the Public Body provided the Applicant with 158 pages of records, with some information withheld. Specifically, the Public Body withheld:

- information the Public Body decided must be withheld under sections 16 and 17 of the Act; and
- information the Public Body decided not to withhold, but which the Third Party argues ought to be withheld under section 16 of the Act.

[para 6] The Applicant was invited to participate in the inquiry requested by the Third Party, into the issue of whether section 16 applies to information the Public Body decided not to withhold from the Applicant. The Applicant was also invited to request a review of the Public Body's decisions to withhold other information under sections 16 and 17. The Applicant did not respond to the invitation.

[para 7] The Public Body provided a submission to this inquiry, but the Third Party did not.

II. RECORDS AT ISSUE

[para 8] The records at issue consist of the Third Party's 809-page proposal submission (Proposal). The Proposal is dated August 2017. The Public Body has withheld a small amount of information in the Proposal under section 16. The Public Body has also withheld some information under section 17.

[para 9] The only information at issue in the inquiry is the information the Public Body decided not to withhold under sections 16 or 17, that the Third Party believes must be withheld under section 16. The information the Third Party believes ought to be withheld appears in the following pages:

> 3170-3180, 3182-3183, 3194-3210, 3216-3229, 3232-3240, 3244-3647, 3655-3817, 3835-3868, and 3955-3967.

III. ISSUES

[para 10] The Notice of Inquiry, dated August 27, 2026, sets out the following issue:

> Does section 16 of the Act (disclosure harmful to business interests of a third party) apply to the information/records?

IV. DISCUSSION OF ISSUES

[para 11] Section 16 of the Act reads, in part, as follows:

> *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*

…

[para 12] Per Order F2004-013, at paragraph 10, 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)?

[para 13] As this inquiry involves information about a third party, the burden of proof set out in section 71(3) of the Act applies. It reads as follows:

> *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 14] Section 16(1) does not apply to personal information, so the Third Party has the burden, under section 71(3)(b), of establishing that the Applicant has no right of access to the records by virtue of section 16(1).

[para 15] The Third Party did not provide a submission to this inquiry. The only argument I have from the Third Party is in the cover letter attached to its Request for Review form, which states:

> The records identified for release by the Ministry exceed our recommendation / direction and contain information that is proprietary and confidential and will cause harm to the Compass Consulting Group if released.

[para 16] In its submission, the Public Body discussed some of the arguments made by the Third Party to the Public Body, presumably during the consultation process that occurred before the Public Body made its decisions regarding access. I do not have copies of these submissions or arguments so I will rely on the Public Body's descriptions of them.

Section 16(1)(a)

[para 17] Section 16(1)(a) sets out the types of information to which this provision can apply: trade secrets, and commercial, financial, labour relations, scientific or technical information of a third party.

[para 18] Nothing in the records themselves indicate that they contain labour relations, scientific or technical information of the Third Party.

[para 19] Much of the information at issue consists of the Third Party's management approach (or proposed approach), including administrative processes and service delivery processes. This information is provided in a fairly broad manner, rather than specifics that could reasonably be characterized as technical information.

[para 20] The Public Body states that the Third Party had argued to the Public Body that information in the records "reflects [the Third Party's] unique experience and understanding of the client's requirements, developed through more than a decade of direct service delivery. The Public Body states that the Third Party had argued that the information differs from that of its competitors, represents proprietary knowledge and expertise, and constitutes trade secrets because it describes methods, techniques, and processes used in the delivery of its services" (Public Body submission, at page 5).

[para 21] Section 1(s) defines "trade secret" for the purposes of the FOIP Act. This provision states:

> *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 22] The Public Body argues that none of the information in the records constitutes "trade secrets". It states:

> While portions of the records describe the Third Party's approaches, methodologies, governance structures, and service delivery practices, the Third Party has not established that the information possesses the characteristics necessary to qualify as a trade secret. In particular, aspects of the information are publicly available or are based on generally known industry practices. Furthermore, as noted in OIPC Order F2004-006, the fact that disclosure may be beneficial to others does not, in itself, demonstrate that the information derives independent economic value, actual or potential, from remaining secret.

[para 23] I agree with the Public Body's position. The information about the Third Party's processes contained in the records is not information akin to formulas, patterns, methods, techniques etc. set out in the definition above. Rather, the information appears to describe general project management processes. Without specific arguments to explain how such information meets the definition of "trade secret", I find that it does not.

[para 24] The other types of information in section 16(1)(a) that could be relevant are commercial or financial information. Past Orders of this office have defined "commercial information" as information belonging to a third party about its buying, selling or exchange of merchandise or services. "Financial information" is information belonging to a third party about its monetary resources and use and distribution of its monetary resources (Order F2009-028, at para. 42). In Order F2011-002 the adjudicator found that fees for services performed by a third party for a public body, which were contained in requested records, were "commercial information" of third parties because "the information is about the terms under which [the third parties] performed and sold services to the Public Body" (at para. 15).

[para 25] Some of the 809-page Proposal seems to be information that can be characterized as commercial information of the Third Party. However, some of the information the Third Party identified as information that ought to be withheld appears to relay general project management statements, rather than specifics about the Third Party's buying, selling or exchange of merchandise or services. In some cases, it is difficult for me to discern any significant difference in the character of the information the Third Party believes is subject to section 16, and the information it did not identify as subject to section 16. Without arguments from the Third Party, I am unable to make a finding that all of the information identified by the Third Party is information that falls within the scope of section 16(1)(a).

[para 26] As some of the information appears to fall within the scope of section 16(1)(a), I will consider whether any of the information meets the test for sections 16(1)(b) and (c).

[para 27] A small amount of information in the records is pricing information; the Public Body withheld this information under section 16(1) (for example, on pages 3601, 3623-3625, 3955-3965 and 3967-3969). Only the Public Body's decisions *not* to apply section 16(1) to information identified by the Third Party is at issue here; therefore, I do not need to consider the Public Body's application of section 16 to pricing information.

Section 16(1)(b)

[para 28] In order for section 16(1)(b) to apply, the information must be supplied by the third party to the public body, explicitly or implicitly in confidence or would reveal information that was supplied in confidence.

[para 29] The Public Body points to page 3647 of the Proposal, in which the Request for Proposal (RFP) terms and conditions are set out. On this page, the Third Party's Proposal specifically states that it does not consider any part of the Proposal to be confidential.

[para 30] The Public Body states that "[t]his is inconsistent with the Third Party's later representations and undermines any assertion that the information was supplied in confidence or was intended to remain confidential."

[para 31] I agree that this statement at page 3647 of the records undermines a claim that the Proposal was provided to the Public Body by the Third Party in confidence. The Public Body has not explained how it considered this statement in deciding that some information – specifically the pricing information identified above – should be withheld under section 16. However, I do not need to consider that decision of the Public Body as it is not at issue here.

[para 32] It is possible that there are circumstances that negate or override this statement in the Proposal, such that it would be reasonable to conclude that at least some information in the Proposal was supplied by the Third Party in confidence. However, as the Third Party has not provided information about any such circumstances, I cannot conclude that any exist.

Section 16(1)(c)

[para 33] Section 16(1)(c) requires that disclosure of the information result in one of the harms set out in subsection (i) to (iv), set out above.

[para 34] The Supreme Court of Canada has clearly enunciated the test to be used in access-to-information legislation wherever the phrase "could reasonably be expected to" is found (such as in section 16(1)(c)). The 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 35] In *Canada (Information Commissioner) v. Canada (Prime Minister)*, 1992 CanLII 2414 (FC), [1992] F.C.J. No. 1054, Rothstein J., as he then was, made the following observations in relation to the evidence a party must introduce in order to establish that harm will result from disclosure of information. He said:

> While no general rules as to the sufficiency of evidence in a section 14 case can be laid down, what the Court is looking for is support for the honestly held but perhaps subjective opinions of the Government witnesses based on general references to the record. Descriptions of possible harm, even in substantial detail, are insufficient in themselves. At the least, there must be a clear and direct linkage between the disclosure of specific information and the harm alleged. The Court must be given an explanation of how or why the harm alleged would result from disclosure of specific information. If it is self-evident as to how and why harm would result from disclosure, little explanation need be given. Where inferences must be drawn, or it is not clear, more explanation would be required. The more specific and substantiated the evidence, the stronger the case for confidentiality. The more general the evidence, the more difficult it would be for a court to be satisfied as to the linkage between disclosure of particular documents and the harm alleged. [my emphasis]

[para 36] The Supreme Court of Canada has made it clear that there is one evidentiary standard to be used wherever the phrase "could reasonably be expected to" appears in access-to-information legislation. There must be a reasonable expectation of probable harm, and the Third Party must provide sufficient evidence to show that the likelihood of any of the above scenarios is "considerably above" a mere possibility. The Third Party has not provided any arguments as to how the disclosure of a Proposal that is nine years old could reasonably be expected to result in one of the harms set out in section 16(1)(c). This is not to say that the age of the Proposal precludes the possibility that the harms test could be met. However, to make such a finding, the Third Party would have to provide support for it, which it has not done.

[para 37] Past Orders have found that where disclosure of information could result in a more competitive bidding process on a future RFP is not sufficient to meet the threshold of significant harm to the Third Party's competitive or negotiating position (section 16(1)(c)(i)) or undue financial loss or gain (section 16(1)(c)(iii)) (see Order F2012-15 at para. 106). Ontario Order PO- 2435 makes the same point:

> The fact that a consultant working for the government may be subject to a more competitive bidding process for future contracts does not, in and of itself, significantly prejudice their competitive position or result in undue loss to them.

[para 38] With respect to the harm in section 16(1)(c)(ii), evidence must be provided to show that if the information at issue is disclosed, the same type of information will no longer be supplied by organizations generally. It is not sufficient to assert that an organization will be less willing to provide the information, particularly if supplying the information benefits the organization, such as when it submits a bid.

[para 39] Section 16(1)(c)(iv) addresses information supplied in relation to a labour relations dispute; that subsection is not relevant to the records here.

[para 40] The Public Body has made submissions regarding specific types of information in the records, based on arguments it received from the Third Party prior to this inquiry.

[para 41] Some of the records contain information about past projects the Third Party has undertaken for other clients. Many of these project clients are public bodies; noting this, the Public Body states that "where projects involve public bodies or other public entities, the existence of those projects is often publicly known, particularly where the work was awarded through a competitive procurement process such as an RFP. In such circumstances, information regarding the project and the identity of the successful proponent is typically publicly available" (submission, at pages 3-4).

[para 42] Regardless of the identity of the client, it is not clear to me how disclosing brief descriptions of past projects could reasonably be expected to lead to one of the harms set out in section 16(1)(c).

[para 43] The Public Body states that the Third Party argued that disclosing information about staff turnover rates within the Third Party, found on pages 3278-3279 ''would provide competitors with unique insight into its marketing, service delivery, and workforce management practices, thereby affecting its competitive position and resulting in undue financial loss or gain." The Public Body states that it concluded that

> … the Third Party did not provide specific or substantiated evidence demonstrating a clear cause-and-effect relationship between disclosure of the information and the alleged harm. Furthermore, it is not self-evident from the records how disclosure of the information could reasonably be expected to result in the harms contemplated by section 16(1).

[para 44] I agree that the Third Party's assertions fall short of the standard to be met, set out by the Supreme Court, and that the information in the records does not indicate how disclosure could reasonably be expected to lead to the type of harm set out in section 16(1)(c).

[para 45] With respect to the remaining information, about which no specific arguments were made, nothing in the records themselves indicates how the standard set out in section 16(1)(c) is met. As the Third Party did not provide any submissions to the inquiry, it has not met its burden to show that

disclosing the information at issue could reasonably be expected to lead to a harm set out in section 16(1)(c).

[para 46] Given this, I find that section 16(1) does not apply to any of the information at issue in this inquiry – specifically, the information the Public Body has not already withheld under sections 16 or 17. I will therefore order the Public Body to disclose this information to the Applicant.

V. ORDER

[para 47] I make this Order under section 72 of the Act.

[para 48] I find that section 16(1) of the Act does not apply to any additional information in the records not already withheld by the Public Body under sections 16 or 17. I order the Public Body to disclose this information to the Applicant.

[para 49] 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.

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Amanda Swanek
Adjudicator