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## **Freedom of Information and Major Procurements: Ontario**

*Information and Privacy Commissioner/Ontario, Order MO-2193, Appeal MA-060139-1, The Corporation of the Town of Orangeville, May 11, 2007*

A design/build process was used by the Town of Orangeville for the construction of its new police station/firehall. The Town received a request under the Ontario *Municipal Freedom of Information and Protection of Privacy Act* for access to all proposals submitted in the RFP process.

The Town refused access to the three design/build proposals that it received, relying on section 10(1) of the *Act*. The RFP process had required that each proposal be submitted in an opaque, sealed envelope marked “Confidential Tender ...” The requester appealed the Town’s denial of access to the Information and Privacy Commissioner (IPC)/Ontario.

First, the Ontario IPC made it clear that contracts resulting from RFP competitions are generally available for release to the public. Section 10(1) is designed to protect, from outside parties, information that is supplied in confidence to government institutions (e.g., RFP proposals). But section 10(1) has little relevance to a signed contract, because the contract was neither “supplied” by the bidder, nor provided under the claim of “confidence.” Instead, a final contract arises from negotiations between the government and the winning proponent.

In this case, the IPC first ordered the Town to release the winning proposal and the two other proposals, but with certain parts severed. The final contract only covered the design/build of the police station; the parts of the winning proposal dealing with the firehall were not disclosed. Second, résumés of the proponent’s staff were found to contain personal information, and were not disclosed. Third, the proposals contained relatively small bits of unique information that revealed a particular approach to the project taken by the proponent, so these portions were also not disclosed.

Reprinted from *The Legal Edge* Issue 73, June – July 2007

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