Federal Court Cour fédérale

Date: 20260302

Docket: T-2710-23

Citation: 2026 FC 282

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Ottawa, Ontario, March 2, 2026

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

TPG TECHNOLOGY CONSULTING LTD.

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

PUBLIC JUDGMENT AND REASONS

I. Overview

[1] This is a judicial review of a decision made in December 2023 by Public Services and Procurement Canada ("PSPC") to disclose information requested under the *Access to Information* Act, RSC 1985, c A-1 (the "ATIA"). The Applicant, TPG Technology Consulting Ltd, seeks an order prohibiting PSPC from disclosing the information at issue pursuant to paragraphs 20(1)(b), 20(1)(c), and 20(1)(d) of the ATIA.

[2] For the reasons that follow, I agree in part with the Applicant. Whereas the Applicant's financial information at issue is exempt from disclosure under paragraphs 20(1)(b) and (c) of the ATIA, and a select number of the Applicant's subcontractors are also exempt from disclosure under paragraph 20(1)(c) of the ATIA, I do not find that the publicly available profiles of the Applicant's subcontractors and the descriptions of their task-related activities benefit from such an exemption.

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II. Background

A. *Legal Framework*

[3] According to subsection 2(1) of the ATIA, the purpose of the statute is to promote an open and democratic society through enhancing accountability and transparency in federal institutions. This is reinforced by the broad right, granted in subsection 4(1) of the ATIA, that allows every Canadian citizen or permanent resident to request and be given access to any record within the government's control.

[4] Yet, the ATIA's pursuit of transparency does not purport to come at the expense of private entities' confidential, commercial or proprietary information, or information that may cause harm to entities that regularly work with the government. As demonstrated by the exemptions to disclosure under sections 16 to 21 of the ATIA, the statute balances competing interests in disclosure and confidentiality.

[5] Under subsection 20(1) of the ATIA, government institutions are barred from disclosing records that contain third-party information. The exemptions at issue in this case are provided in paragraphs 20(1)(b), (c), and (d) of the ATIA.

[6] Under paragraph 20(1)(b) of the ATIA, government institutions must refuse to disclose confidential records that contain "financial, commercial, scientific or technical information" when a third party supplied them to the government institution.

[7] Pursuant to paragraph 20(1)(c) of the ATIA, the government institution cannot disclose information that would reasonably be expected to result in prejudice to a third party's competitive position or result in a third party's material financial loss or gain.

[8] Paragraph 20(1)(d) prevents a government institution from disclosing information that could reasonably be expected to interfere with the third party's contractual or other negotiations.

[9] Where the government institution intends to disclose records that it has reason to believe contain third-party information, it must give notice and allow the third party to make submissions about why the government institution should not disclose the information (ATIA, ss 27(1), 28(1)).

[10] If the government institution decides to disclose the information contrary to the third party's submissions, the third party may apply for a judicial review of the decision (ATIA, s 44(1)).

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B. *Facts*

[11] The Applicant is a consulting and professional services company that specializes in service management in the information technology field. Its business model is to contract with private- or public-sector clients, including the Government of Canada, to provide a wide range of services in specialized fields. To perform the work under these contracts, the Applicant makes agreements with subcontractors. The Applicant's affiant described that the Applicant dedicates considerable time and resources to recruiting and retaining its subcontractors because they are highly specialized and there are often only one or two experts in the required field in Canada.

[12] In September 2017, the Applicant signed a contract with PSPC to provide skilled individuals to the Government of Canada to complete highly technical tasks (the "Contract").

[13] In August 2023, PSPC received a request under the ATIA asking for documents relating to the Contract. Specifically, the request sought the disclosure of documents related to the Task Authorizations 016 and 017, which refer to documents authorizing specific services to be completed under the Contract.

[14] In October 2023, PSPC sent a notice to the Applicant that it planned to disclose records, pursuant to the access to information request, that it had reason to believe contained information supplied by or related to the Applicant's business. Noting that some of the information may be exempt under section 20 of the ATIA, PSPC stated that it did not have sufficient basis to substantiate this exemption.

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[15] In a letter dated November 3, 2023, the Applicant responded to PSPC's notice with a copy of the record with proposed redactions and a letter stating that the redacted information was exempt under paragraph 20(1)(b), (c), and (d) of the ATIA.

[16] In December 2023, PSPC notified the Applicant that only part of the record requested was exempt from disclosure pursuant to subsection 19(1) and paragraphs 20(1)(b) and (c) of the ATIA. PSPC attached a revised version of the record with its planned redactions. The information that PSPC agreed to exempt from disclosure pertained to the hours and days of work and per diem rates for tasks, signatures of the Applicant's subcontractors, and references to the Applicant's subcontractor's previous work experience with clients other than the federal government.

[17] As a result of PSPC's December 2023 letter, the Applicant filed for judicial review of PSPC's decision to disclose information that it considers confidential, including references to its subcontractors, its subcontractors' activity, pricing references, and the Applicant's corporate information.

[18] Specifically, the Applicant seeks to prevent PSPC from disclosing its subcontractors' identities, education, experience, and professional capabilities. It further seeks to prevent the disclosure of activity reports from its subcontractors that contain information about tasks completed under the Contract and any risks that they identified associated with the tasks completed under the Task Authorizations. The pricing information that the Applicant seeks to exclude from disclosure pertains to the price per Task Authorization or invoice period, which it submits would allow competitors to determine its per diem rate.

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[19] The parties agreed at the hearing that the Applicant's corporate information, pertaining to the number of days of effort by the Applicant's subcontractors for the tasks described in the Task Authorizations, should be excluded from disclosure.

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III. Issue and Standard of Review

[20] The issue in this application is whether PSPC was required to withhold the three categories of impugned information, namely the names and profiles of the Applicant's subcontractors, the subcontractors' activity reports, and the pricing references, pursuant to paragraphs 20(1)(b), (c), or (d) of the ATIA.

[21] This application is made pursuant to subsection 44(1) of the ATIA, which means the Court conducts a *de novo* review pursuant to section 44.1 of the ATIA (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 34; *Canada (Health) v Preventous Collaborative Health*, 2022 FCA 153 ("*Preventous*") at paras 14-15). In this sense, an application filed pursuant to section 44 of the ATIA is not a judicial review of an administrative decision, but rather a review of whether the information requested should be disclosed (*Preventous* at paras 12-13). The Court's role is to determine what decision it would have made in regard to the disclosure (*Perreault v Canada (Foreign Affairs)*, 2023 FC 1051 at paras 20, 29).

IV. Analysis

A. *The Information in Dispute is Partially Exempt under Paragraph 20(1)(b) of the ATIA*

[22] Both parties agree that the test for the exemption in paragraph 20(1)(b) of the ATIA is set out in *Air Atonabee Ltd v Canada (Minister of Transport)*, 1989 CanLII 10334 (FC) ("*Air Atonabee*"). For a record to be exempt from disclosure under this section, it must be:

> (1) financial, commercial, scientific or technical information,
>
> (2) confidential information,
>
> (3) supplied to a government institution by a third party, and
>
> (4) treated consistently in a confidential manner by the third party,
> (*Air Atonabee* at 197).

[23] In support of exempting the information in dispute from disclosure under this provision of the ATIA, the Applicant submits that all of the information at issue pertains to either its finances or operations as a commercial enterprise. This information, according to the Applicant, was treated consistently in a confidential manner through its internal protocols and through the provisions in the Contract. The Applicant maintains that exempting this information from disclosure would reinforce innovation within Canada's procurement system.

[24] The Respondent submits that not all of the information at issue is of a commercial nature. Rather, the names of the Applicant's subcontractors and their activity reports merely show that the Applicant sought to trade services for payment with the Government of Canada. The Respondent further maintains that the information was not treated as confidential because some of the Applicant's subcontractors have public profiles and the Applicant did not indicate in the Contract that any of its information was proprietary or confidential. Ultimately, the Respondent's position is that exempting the information from disclosure would undermine the public's confidence in the procurement system.

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[25] In my view, the information in dispute within the Task Authorizations, timesheets, and invoices showing the subcontractors' rates of pay are exempt from disclosure pursuant to paragraph 20(1)(b) of the ATIA. I do not find that all of the Applicant's subcontractors' information or any of the activity reports benefit from this exemption.

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(1) The Subcontractors' Names, but not their Activity Reports, are Commercial Information

[26] The Respondent concedes that the Applicant's pricing information is financial information. Thus, the only issue under the first prong of the test for an exemption under paragraph 20(1)(b) is whether the remaining information is commercial.

[27] In *Merck Frosst Canada Ltd v Canada (Health)*, 2012 SCC 3 ("*Merck Frosst*"), the Supreme Court of Canada endorsed "dictionary meanings" as the "best guide" for interpreting whether a record is categorized as financial, commercial, scientific or technical information (at para 139, citing *Air Atonabee* at 198). This Court has warned against broadening the definition of commercial information, which the legislation itself states should be interpreted as limited and specific (*Samsung Electronics Canada Inc v Canada (Health)*, 2020 FC 1103 ("*Samsung*") at para 88; ATIA, s 2(2)). Considering the dictionary definition along with this Court's previous decisions show that "commercial" refers to information that is at the "bedrock of running a commercial enterprise", including costs, profits, pricing strategies, manufacturing processes, and business operations or methods (*Samsung* at para 74). The context in which the information is gathered further assists in characterizing the information (*Samsung* at paras 75, 88).

[28] The Respondent submits that the names of the Applicant's subcontractors indirectly performing work for the Government of Canada must be subject to disclosure in order to align with the ATIA's definition of personal information. This definition allows information about contractors directly working for the Government of Canada to be disclosed (ATIA, s 19(2)(c); *Privacy Act*, RSC 1985, c P-21, s 3(k) ("*Privacy Act*")).

[29] I do not agree with the Respondent's interpretation. Paragraph 20(1)(b) of the ATIA is explicitly separate from other exemptions linked to the definition of personal information in the *Privacy Act*. This supports that the intent of the legislature is that the definition of "commercial" does not depend on the *Privacy Act*.

[30] Relying on *Brainhunter (Ottawa) Inc v Canada (Attorney General)*, 2009 FC 1172 ("*Brainhunter*"), the Respondent further submits that the disputed information shows only the Applicant's actions under the Contract, not information about the Applicant's business operations. In *Brainhunter*, this Court found that a technology staffing and recruiting company's information about fulfilling the required criteria in a request for proposals was not commercial information under paragraph 20(1)(b) of the ATIA (at para 24). Providing this information in the context of a commercial contract was insufficient to characterize it as commercial.

[31] In my view, *Brainhunter* is largely distinguishable from this case. I agree with the Applicant that the subcontractors' detailed experiences and connection to the Applicant show the actual business operations of the Applicant as a consulting and professional services company. The Applicant has provided evidence showing that, in a procurement process for consulting

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services, the subcontractors and the price are the two most important components. I agree with this contention.

[32] This view aligns with *Cache Computer Consulting Corp v Canada (Public Services and Procurement)*, 2025 FC 1515 ("*Cache*"), which both parties discussed extensively at the hearing. In that case, Justice Fuhrer found that the names of the consultants for a company with a similar business model as the Applicant were commercial information subject to the ATIA exemption. The evidence showed that the consultants' names were the basis of the applicant's competitive advantage and weighed heavily in its procurement strategy (*Cache* at paras 33-35). Indeed, the subcontractors of the consulting company were considered assets, and the applicant was highly protective of their roster of subcontractors (*Cache* at para 41-43). I note that the Applicant in the case before me has also provided evidence showing that it invests time and effort into its subcontractors to boost its technical score, which weighs heavily in its procurement strategy. Accordingly, the subcontractors' association with the Applicant is an aspect of the Applicant's business operations and is therefore commercial information.

[33] Nevertheless, I do not find that the activity reports from the Applicant's subcontractors are commercial because they relate solely to how the Applicant fulfills public tasks authorized by the Contract and Task Authorizations. The underlying Contract requires the Applicant to provide certain deliverables, including monthly progress and activity reports, presentations, and work plans. The activity reports do not show anything beyond what is stipulated in the Contract; they merely check the boxes of the To-Do list specified in the Contract and the Task Authorizations. As discussed further in the analysis below, any technical information gleamed through these reports could be equally understood from the Task Authorizations themselves. To

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the extent that these reports identify risks, these risks do not relate to the Applicant's business operations or strategies, rather they relate to work paid for and specified by the Government of Canada. Like in *Brainhunter*, the fact that the Applicant provided this information in the context of a procurement contract is insufficient to render the entire record commercial. Because I find that this information is not commercial, it is unnecessary to address whether it fulfills the other criteria to be exempt from disclosure pursuant to paragraph 20(1)(b).

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(2) The Financial Information in Dispute, but not the Subcontractors' Identities, is Confidential and Treated as Such

[34] For an exemption under paragraph 20(1)(b) of the ATIA, the invoking party must show, on a balance of probabilities that the impugned information is objectively confidential (*Merck Frosst* at para 162; *Ottawa Football Club v Canada (Minister of Fitness and Amateur Sports)*, 1989 CanLII 9491 at 487 (FC)). In this sense, the second and fourth step for this exemption require the information to both be confidential and for the Applicant to consistently treat it as confidential. *Air Atonabee* sets out the test for confidentiality as follows (at 202):

> (1) the content of the record be such that the information it contains is not available from sources otherwise accessible by the public or that could not be obtained by observation or independent study by a member of the public acting [alone],
>
> (2) that the information originate and be communicated in a reasonable expectation of confidence that it will not be disclosed, and
>
> (3) that the information be communicated, whether required by law or supplied gratuitously, in a relationship between government and the party supplying it that is either a fiduciary relationship or one that is not contrary to the public interest, and which relationship will be fostered for public benefit by confidential communication.

[35] I find that the financial information in dispute contained in the Task Authorizations, timesheets, and invoices is confidential information. While I accept the statement from the Applicant's affiant that the Applicant subjectively considers its subcontractors and their profiles as confidential, I am not persuaded that the Applicant's subcontractors and their profiles are objectively treated as confidential information for the purpose of paragraph 20(1)(b).

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(a) *Whether the Disputed Information is Available through Independent Study*

[36] The Applicant's financial information, including its pricing references, is not publicly available. The Applicant's confidentiality agreements with its subcontractors and extensive internal protocols limit the transmission of its per diem rates. The Respondent has not cross-examined the Applicant's affiant and this evidence remains uncontroverted.

[37] Nevertheless, I agree in part with the Respondent that the public profiles of the Applicant's subcontractors and their work under the specified Task Authorizations is not treated as confidential information.

[38] At the hearing, the Applicant relied on *Cache* to submit that the subcontractors' public profiles disclose information only in general terms and thus the connection between these subcontractors, the Applicant, and this Contract cannot be considered public. In *Cache*, the respondent had submitted that the profiles of the applicant's subcontractors were publicly accessible through GEDS, a public directory of government employees and contractors. Nevertheless, Justice Fuhrer found that the respondent failed to provide evidence on how the general, publicly available information would lead the public to connect the subcontractor to the

applicant (at para 40). The Applicant submitted that, like in *Cache*, the Respondent did not provide an explanation for how the public profiles of its subcontractors could reveal their connection to the Application.

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[39] But I must emphasize that the onus remains on the Applicant to show that its connection to these subcontractors is not available publicly on a balance of probabilities (*Merck Frosst* at paras 92, 94). I note that the type of evidence required to dislodge this burden depends on the inferences the Applicant seeks to draw (*Merck Frosst* at para 94). Though I agree with this Court's decision in *Cache* that a party seeking an exemption is not obliged to prove a negative: that none of the names of its subcontractors are associated with the application on any public platform; the party seeking an exemption must still show that it is more likely than not that its information is outside the public domain in light of the evidence presented by the opposing party. In this case, the Applicant would need to provide sufficient evidence to counter the Respondent's submission of detailed public profiles of the Applicant's subcontractors.

[40] In *Cache*, the applicant's burden was met through an affidavit from its the administrative coordinator analyzing the information available on GEDS. This analysis revealed that only 25% of the applicant's subcontractors who were on the record were available on GEDS. Of those on GEDS, only eight were listed as "contractor" or "consultant" and many had missing phone numbers or email addresses or were listed as working for the incorrect department and none mentioned a connection to the applicant. Based on the generality of the publicly available information, Justice Fuhrer concluded that the connection between the applicant and its subcontractors was not available publicly (*Cache* at paras 47-50).

[41] The record before me lacks the type of evidence that Cache's administrative coordinator provided. The Applicant in this case has not conducted an analysis showing the lack of connection between the public profiles and the Applicant's business. Because of this lack of analysis, I find it necessary to examine the extent of information revealed in the public profiles the Respondent provided in this case.

[42] Examining these profiles, I agree with the Applicant that some of them cannot be specifically connected to the Contract. For example, the Government of Canada directory profiles for two of the Applicant's subcontractors do not show the date the subcontractors worked for the government, their job titles, or that they were contract workers. The social media profile and the resume of one of the subcontractors vaguely references work for the Government of Canada without indicating the date, department or job title the subcontractor held. This is similar to the information that was available publicly in *Cache* and supported Justice Fuhrer's determination that the connection between the subcontractors and the applicant in that case was not publicly discernable (*Cache* at para 44).

[43] However, the other public profiles of the Applicant's subcontractors are more specific about their work than the information available in *Cache*. A number of the profiles provided by the Respondent about the Applicant's subcontractors show that they completed work for a relevant department as a contractor and show a similar title to their job description in the Task Authorizations. These profiles include the following information:

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A. [redacted]

B. [redacted]

C. [redacted]

D. [redacted]

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[44] Moreover, a couple of the profiles provide even more specific connections between the subcontractor and the Contract. For example, [redacted] Similarly, [redacted] These profiles provide evidently similar information to the publicly disclosed Task Authorizations, including references to the departments and the timeframes specified in the Task Authorizations and often including descriptions reflecting those seen in the Task Authorizations. The similarities between the

allegedly private information pertaining to the subcontractors' identities, and the publicly available information in the Task Authorizations, distinguishes these public profiles from those that were described in *Cache*.

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[45] In addition to this highly specific information, the Applicant also described the limited number of subcontractors in a given field, often restricting the pool of possible subcontractors to only one or two in each sector. Along with this factor, the Applicant described its competitors as sophisticated, with only select companies being qualified to compete for higher value contracts and investing considerable effort into recruiting qualified candidates. In my view, these factors increase the likelihood that the public could connect the subcontractors with detailed public profiles to the Applicant and its work under the Contract.

[46] The similarities between the publicly available information about many of Applicant's subcontractors and the publicly available description of the work completed under the Task Authorizations strongly suggest that the Applicant's reliance on these individuals as subcontractors is publicly discernable. The Applicant has not put forward any evidence to displace this. Given the strong evidence the Respondent has provided through these detailed profiles, some or which virtually replicate provisions of the Task Authorizations, the Applicant has failed to prove on a balance of probabilities that its connection to its subcontractors with detailed public profiles remains outside the public domain (*Cache* at para 44; *Merck Frosst* at paras 146-148).

(b) *Whether there is a Reasonable Expectation of Confidentiality and the Information is Treated as Confidential*

[47] For information to be confidential, it must originate in and be communicated with a reasonable expectation of confidentiality. While I find that the Applicant's pricing references meet these requirements, the Applicant has not taken measures to protect the names of its subcontractors or their connection to the Applicant.

[48] The financial information at issue originates in the context of the Applicant's internal protocols that limit its transmission. It was also communicated in confidence; expectations for confidentiality are carefully balanced within the Contract. The General Conditions applicable to the Contract explicitly note that the Government of Canada will not release or disclose the information regarding the Contract except in accordance with the ATIA (*Clowater v Canada (Industry)*, 2024 FC 916 ("*Clowater*") at para 47). Although the Applicant did not have a specific confidentiality agreement with PSPC, I find that the context, including the Applicant's internal procedures and the contractual provisions, shows a reasonable expectation of confidentiality of the information that is consistently treated as confidential.

[49] But considering the Applicant's treatment of its subcontractors' identity, the expectations for confidentiality differ.

[50] The Applicant's affiant asserted that the identities of its subcontractors are held in strict confidence and shared only on a need-to-know basis. To support this conclusion, the Applicant provided its confidentiality clause in its standard subcontractor agreement. In *Cache*, Justice Fuhrer found that the applicant's reliance on its subcontractors was confidential, in part, because of the standard confidentiality clause in contracts between the applicant and other service providers with whom the applicant responded to requests for proposal. This confidentiality

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clause stipulated that only the applicant could provide subcontractors to the Government of Canada under a given procurement contract (*Cache* at para 43).

[51] However, I do not find that the confidentiality clause in this case restricts the disclosure of the Applicant's subcontractors in the same way as *Cache*. Neither the confidentiality clause nor the non-solicitation clause in standard contract between the Applicant and its subcontractors limits the subcontractors' ability to publicize their work for the Applicant, which some have elected to do in their public profiles. In my view, the public profiles of the Applicant's subcontractors both prevent me from considering these specific individuals' names as confidential information and illustrate that the Applicant does not treat the information as confidential. As the Applicant admitted at the hearing, [redacted] I therefore do not find that the Applicant's standard form subcontractor contract is evidence that the Applicant treats its relationship to its subcontractors as confidential.

[52] Further relying on *Cache*, the Applicant also submits that its expectation of confidentiality for its subcontractors and their profiles is bolstered by the redactions in its previous access to information requests it submitted about its competitors. In support of its submission, the Applicant provided two redacted records for its access to information requests about its competitors' proposals for different procurement contracts. It further referenced that there were other requests for access to information not contained in the record.

[53] In my view, these requests for information fail to bolster the Applicant's expectation for confidentiality. As the Respondent stated at the hearing, the access to information requests in

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Cache related to the applicant's own information, not that of its competitors (*Cache* at paras 51-52). Moreover, the information at issue in this case pertains to an awarded contract rather than the information about proposals which was redacted in the Applicant's previous access to information requests. While the Applicant submitted at the hearing that there may have been more access to information requests that might have addressed the Applicant's own information in the contractual phase, hypotheticals cannot support a reasonable expectation of confidentiality.

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[54] As such, considering the absence of any protocol protecting the names of the Applicant's subcontractors from disclosure, I cannot require PSPC to take steps to treat this information as confidential when the Applicant itself has failed to take such measures.

(c) *Whether Confidentiality Fosters the Public Interest*

[55] The Applicant submits that disclosing the information in dispute would discourage innovation and research in the procurement process.

[56] Citing *Société Gamma Inc v Canada (Department of the Secretary of State)*, 1994 CanLII 19529 (FC) ("*Société Gamma*"), the Respondent submits that those who contract with government entities cannot expect their privacy concerns to outweigh the government's accountability obligations.

[57] I agree with the Applicant that exempting its pricing references from disclosure helps maintain a competitive procurement system. While I agree that disclosing the allocation of public funds is important, I do not find it necessary to disclose information that would allow the

public or competitors to approximate the Applicant's per diem rate in order to fulfill this obligation.

[58] Accordingly, I do not find *Société Gamma* to be determinative in this case. The information at issue in *Société Gamma* pertained only to general corporate information about the nature and quality of the applicant's work. Indeed, the respondent in that case had agreed to redact per-unit pricing information (*Société Gamma* at 62). In this case, the Applicant has already agreed to release total pricing for the Contract but disputes the release of information leading to an approximate per diem rate, which the Applicant has carefully calculated based on its own time and effort.

[59] In my view, the interest at stake in this proceeding is not solely the Applicant's financial success, but also the viability of the Canadian procurement system. I agree with the Applicant that regularly disclosing business strategies, including specific pricing, to competitors may lead companies to hesitate before competing for contracts in Canada. This is the type of overly broad disclosure the Supreme Court of Canada warned about in *Merck Frosst* that would discourage research and innovation (at para 2).

(3) The Financial Information in Dispute was Supplied by the Applicant

[60] Finally, an exemption under paragraph 20(1)(b) requires the information to have been supplied by the Applicant (*Merck Frosst* at para 157).

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[61] The Respondent relies on *Canada Post Corp v National Capital Commission*, 2002 FCT 700 ("*Canada Post*"), to submit that the Applicant's pricing references derive from negotiated contractual terms and thus were not supplied by a third party.

[62] However, I agree with the Applicant's submission at the hearing that *Canada Post* is distinguishable from the pricing references at issue here. *Canada Post* excluded contract terms from section 20(1)(b) of the ATIA because the contract itself was a sponsorship agreement and the amount obtained from that sponsorship was a term directly negotiated between the parties. The pricing references in this case did not come solely from a negotiation between the parties but were developed by the Applicant's own analysis and proposal in the bidding process. I therefore find that the financial information in dispute was supplied by the Applicant.

B. *The Information in Dispute is Partially Exempt under Paragraph 20(1)(c) of the ATIA*

[63] The exemption under paragraph 20(1)(c) of the ATIA requires the Applicant to show considerably more than a mere possibility that, if the disputed information were disclosed, it would reasonably be expected to prejudice its competitive position or cause financial losses (*Merck Frosst* at paras 196, 203; *Equifax Canada Co v Canada (Human Resources and Skills Development)*, 2014 FC 487 ("*Equifax*") at paras 25-26). This Court has previously used a list of non-exhaustive factors that to support an analysis of whether there is a reasonable expectation of probable harm. The factors relevant to this case include:

> An assumption that the disclosed information will be used;
>
> Whether the information is available from other sources or could be obtained by observation or independent study;

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> The period of time between the date of the confidential record and its disclosure;
>
> The individual and cumulative effect of each record proposed for release, and;
>
> Whether the information can be severed reasonably from the rest of the record under section 25 of the ATIA
>
> *Cache* at para 66; *Canada (Information Commissioner) v Canada (Prime Minister)*, 1992 CanLII 2414 at 444-445 (FC).

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[64] Citing *Equifax*, the Applicant submits that the pricing references at issue would allow its competitors to reverse engineer a range of per diem rates for each of its subcontractors and their activities. Emphasizing the competitive nature of the industry, the Applicant submits that any marginal advantage to its competitors could have an outsized impact on its financial losses.

[65] The Respondent submits that the Applicant has failed to provide the level of proof required in *Equifax* to show probable harm. Further distinguishing this case from *Equifax*, the Respondent maintains that competitors would not be advantaged by calculating a range of possible per diem prices because the winning proposal in a procurement process is decided based on extremely tight margins.

[66] In my view, disclosing the pricing information in dispute would prejudice the Applicant's ability to compete for procurement contracts. In *Equifax*, this Court found that the total contract price, when combined with information in the public domain, would allow competitors to calculate a benchmark for future bids with the government (at paras 29-30). In the same way, if the total costs within the Applicant's invoices and Task Authorizations were

released, there is a credible and reasonable inference that competitors would calculate a range of per diem rates by estimating the number of working days within a month or work term.

[67] Although the information in dispute would not provide a guaranteed or exact per diem price, I agree with the Applicant's submission at the hearing that disclosing a range of per diem rates would provide a "springboard" for the Applicant's future competitors to undercut their prices (*Equifax* at para 30). Like in *Equifax*, the Applicant has provided evidence of a highly competitive industry that bases key decisions on price. The range of per diem rates would give competitors a short-cut for calculating competitive rates. This is especially the case because competitors do not have to calculate the Applicant's exact per diem rate to win the bid. Instead, competitors would need only to undercut a reasonable estimate of the Applicant's per diem rate to have an advantage in securing a procurement contract.

[68] Regarding the Applicant's subcontractors, the Applicant cites *Cache* to submit that revealing the identities of its subcontractors would allow its competitors to target and contract with its subcontractors, making them unavailable for the Applicant's future bids.

[69] In this regard, I first note that it is only information not previously in the public domain that may lead to an expectation of probable harm (*Merck Frosst* at paras 219-220). As discussed above, several of the Applicant's subcontractors and their tasks completed under the Contract are already available publicly or discernable by the public.

[70] Nevertheless, I find that the release of the non-publicly disclosed profiles can be reasonably expected to cause probable harm. Some of the non-publicly disclosed profiles in the

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record contain a large amount of detailed information, revealing not only the Applicant's connection to these subcontractors, but also the extensive professional history of several subcontractors. These include the profiles of [redacted] Compared to the profiles that are public, I find that releasing these profiles would likely increase the risk of harm faced by the Applicant in a way that releasing the public profiles would not.

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[71] Further, there is evidence in the record that the Applicant's competitors would find these non-publicly disclosed profiles desirable. In *Cache*, this Court found that the applicant would be reasonably expected to face prejudice from releasing the non-public profiles of its subcontractors because the applicant's affiant described its subcontractors as the basis of its competitive advantage (at para 69). Similarly, the Applicant's affiant in this case describes the industry as "highly competitive" and states that both it and its competitors invest significant time and resources into recruiting and retaining skilled professionals. Although the Respondent rightly notes that the Applicant does not specifically discuss the competitiveness or quality of its own subcontractors, I find that it can be reasonably inferred that the Applicant's subcontractors have achieved some comparative advantage because the Applicant was awarded the Contract based, in part, on its subcontractors (*Cache* at para 71).

[72] Additionally, I note that, although several years have past since the Contract, the Applicant appears to still rely on many of the non-publicly disclosed subcontractors. The Applicant's affiant describes that it must ensure that its subcontractors, who were submitted in its

response to a request for proposal, remain available despite the work taking place many years after the request for proposal. This is consistent with Justice Fuhrer's finding in *Cache* that companies in the industry use the same roster of subcontractors for several years (*Cache* at para 73).

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[73] Moreover, the cumulative impact of disclosing all of the Applicant's subcontractors that performed work under the specified Task Authorizations in the Contract increases the risk of prejudice to the Applicant's competitive position. I acknowledge that, in this aspect, this case differs from *Cache*: where the record included virtually the applicant's entire roster of 122 subcontractors (*Cache* at para 74). Here, the record shows substantially fewer subcontractors and presumably only a small subset of the Applicant's full roster. Still, the evidence is that there are very few subcontractors in each specialized field. I find that releasing the additional non-publicly discernable profiles would mean that the subcontractors with skills relevant to the specified Task Authorizations would be nearly entirely disclosed. Thus, the cumulative impact of disclosing these additional profiles would further increase the prejudice to the Applicant's competitive position.

[74] Therefore, I agree that there is more than a mere possibility that the release of the non-publicly disclosed subcontractors would prejudice the Applicant's competitive position.

[75] However, I do not find that disclosing the activity reports of the Applicant's subcontractors would result in prejudice or any financial loss to the Applicant.

[76] The Applicant's affiant states that its subcontractors' activity reports can be used to increase its technical scores for future contracts. Accordingly, the Applicant submits that, if disclosed, the Applicant's competitors could use this information to increase their technical scores by identifying the types of tasks that a particular subcontractor category is able to accomplish.

[77] The Applicant's submissions regarding its subcontractor's activity reports are not supported by the redactions the Applicant requests. At the hearing, the Respondent compared the descriptions in the subcontractors' activity reports to the Task Authorizations and illustrated that the language and substance of these documents mirrored one another. On the Task Authorizations, the Applicant requests to redact the name of the subcontractor but does not request to redact the description of tasks completed under the Task Authorization or the category of the subcontractor. Therefore, if competitors were to attempt to ascertain which category of subcontractor could complete a certain set of tasks based on the record, they would already be able to do so based on the Task Authorizations. Given that the Applicant does not contest this information being disclosed in the Task Authorizations, I do not find that disclosing the same type of information in the activity reports could be reasonably expected to prejudice the Applicant or cause financial loss.

[78] I therefore find that disclosing the Applicant's pricing references throughout the record and its non-publicly discernable subcontractors would reasonably be expected to cause prejudice to the Applicant in future bidding processes, and they are consequently exempt from disclosure under paragraph 20(1)(c) of the ATIA. Nevertheless, paragraph 20(1)(c) of the ATIA does not

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exempt the publicly available identities of the Applicant's subcontractors or the description of their activities under the Contract or Task Authorizations.

C. *The Information in Dispute is Not Exempt under Paragraph 20(1)(d) of the ATIA*

[79] The Applicant submits that, if the information in dispute were disclosed, it could interfere with its ongoing negotiated relationship with its subcontractors. It further submits that the disclosure of the disputed information would interfere with probable negotiations with its customers (*Porter Airlines Inc v Canada (Attorney General)*, 2014 FC 392 ("*Porter Airlines*") at para 90). Relying on *Calian Ltd v Canada (Attorney General)*, 2015 FC 1392, aff'd 2017 FCA 135 ("*Calian FCA*"), the Applicant submits that disclosing the identity and the activities of its subcontractors along with their per diem rates would allow competitors to undercut their rates for securing subcontractors.

[80] The Respondent submits that the Applicant has provided insufficient evidence of actual, specific, or ongoing negotiations to invoke paragraph 20(1)(d) of the ATIA. The Respondent further maintains that disclosing the contested information would—at most—result in increasing competition for the Applicant.

[81] An exemption under paragraph 20(1)(d) of the ATIA requires the Applicant to show more than a mere possibility that disclosing the information in dispute would interfere with negotiations (*Clowater* at para 85; *Burnbrae Farms Limited v Canada (Canadian Food Inspection Agency)*, 2014 FC 957 ("*Burnbrae Farms*") at para 125). Evidence of heightened competition or hypothetical risk to business opportunities is insufficient (*Clowater* at para 85;

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Oceans Limited v Canada-Newfoundland and Labrador Offshore Petroleum Board, 2009 FC 974 ("*Oceans Limited*") at para 64; *Calian FCA* at para 47).

[82] In my view, paragraph 20(1)(d) of the ATIA first requires the existence of actual or ongoing negotiations. The Applicant is misguided in its attempt to broaden this exemption to include probable negotiations based on *Porter Airlines*. In that case, Justice Rennie mentions the lack of evidence of actual—or even probable—negotiations to refuse to exempt the information in dispute from disclosure under paragraph 20(1)(d) (*Porter Airlines* at para 90). The case does not support that this Court can consider probable negotiations, in themselves, to be sufficient to support an exemption under paragraph 20(1)(d).

[83] Indeed, the preponderance of the jurisprudence on this matter confirms that actual or ongoing negotiations are required as a starting point for an exemption under paragraph 20(1)(d) (*Clowater* at para 85; *Calian FCA* at paras 49-50; *A Inc v Canadian Museum for Human Rights*, 2022 FC 1115 at paras 99-100; *Concord Premium Meats Ltd v Canada (Food Inspection Agency)*, 2020 FC 1166 at paras 116-117; *Burnbrae Farms* at para 125; *Saint John Shipbuilding Ltd v Canada (Minister of Supply and Services)*, [1988] FCJ No 902, 1988 CarswellNat 213 at paras 20-21). This Court has found such a requirement necessary to distinguish between paragraphs 20(1)(c) and 20(1)(d) of the ATIA (*Oceans Limited* at para 64).

[84] Applying these principles, I note that the Applicant has not identified specific, actual negotiations. Rather, it refers broadly to negotiations with its subcontractors and potential customers. In my view, the ongoing negotiations with the Applicant's subcontractors, but not its

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potential negotiations with possible customers, are sufficient as a starting point for the analysis of an exemption under paragraph 20(1)(d).

[85] The Applicant submits that disclosing its subcontractors' pay rates may lead the subcontractors to negotiate for higher rates of pay. This assessment is not supported by the evidence on the record. Specifically, the Applicant's affiant discusses the tight margins the Applicant must maintain in its negotiations with its subcontractors to continue to win procurement bids and the potential for competitors to offer its subcontractors at lower rates in procurement bids in order to secure potential future contracts. There is not evidence showing that the Applicant's subcontractors may advocate or be successful in securing higher rates of pay if they were aware of the rates charged by the Applicant in the Contract. Instead, the Applicant's affiant states that the Applicant's competitors may seek to retain its subcontractors. This is evidence of increased competition, not evidence of any interference with the Applicant's ongoing negotiations with its subcontractors.

[86] I also do not find sufficient evidence to show that the disclosure of the Applicant's activity reports, or the publicly discernable identity of its subcontractors, would interfere with its negotiations with its subcontractors. As noted above, the publicly available profiles for the Applicant's subcontractors have not interfered with its negotiations previously and there is no evidence showing that releasing the identities of other subcontractors would interfere with the Applicant's ongoing negotiations with its subcontractors.

[87] I further do not see the connection between the activities completed by the Applicant's subcontractors and any impact on the Applicant's negotiating position with them. The

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Applicant's affiant states that disclosing the activity reports will allow the Applicant's competitors to achieve higher technical scores. The affidavit does not mention harm to the Applicant's negotiations with its subcontractors. Consequently, I conclude that any harm to the Applicant from disclosing its subcontractors' activity reports would not affect the Applicant's ongoing negotiations.

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D. *Summary of Information Exempt from Disclosure*

[88] Considering the foregoing analysis, I find that the information in dispute is partially exempt from disclosure under subsection 20(1) of the ATIA.

[89] In my view, the financial information within the Task Authorizations, timesheets and invoices showing monthly or task-specific prices are excluded from disclosure under paragraphs 20(1)(b) and (c) of the ATIA.

[90] The identities and profiles of the Applicant's subcontractors listed in paragraphs 43-44 of this Judgement are not exempt under subsection 20(1) of the ATIA. Their connection to the Applicant and the Contract is already publicly discernable. The Applicant has not demonstrated that the existence of these public profiles has resulted in any known harm to the Applicant or its ongoing negotiations. The remaining profiles are exempt under paragraph 20(1)(c) of the ATIA because their disclosure would prejudice the Applicant's competitive position in future procurement bidding processes.

[91] The activity reports of the Applicant's subcontractors are not exempt from disclosure because they are stipulated in the Contract and the Task Authorizations and there is no evidence that they would cause harm to the Applicant's competitive position or ongoing negotiations.

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V. Costs

[92] Both parties requested an order for costs. Costs are discretionary and will ordinarily follow the result in this type of proceeding under the ATIA (ATIA, s 53(1)).

[93] At the hearing, the Applicant submitted a proposal for costs in accordance with column III of the previous table in Tariff B of the *Federal Courts Rules*, SOR/98-106 (the "*Rules*"), claiming $5,288 in costs and $2,482 in disbursements. The Respondent contests this calculation, submitting that the Applicant should not be awarded costs for its second counsel or travel expenses as part of its costs or disbursements.

[94] I will not award the Applicant costs for its second counsel, which the Court did not request and without which the Respondent managed to make able submissions. Further, the Applicant will not be awarded costs or disbursements for its travel, as it chose to file its application in Toronto. Although I agree that costs should be calculated based on the centre column in the updated table in Tariff B, which was amended on December 21, 2025, I disagree with the Applicant's calculation.

[95] This judicial review is allowed, but only in part. Considering this context, I find that costs should be awarded on the lower end of the spectrum to reflect the outcome of the case

(*Rules*, s 400(3)). Accordingly, I award the Applicant $2,160 in costs under the applicable tariff. I do not award any disbursements.

VI. Conclusion

[96] Considering these reasons, this application for judicial review is allowed in part. I find that exempting the specified information from disclosure balances PSPC's obligations for accountability and the protection of third-party information (*Merck Frosst* at para 4).

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JUDGMENT in T-2710-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed in part, based on paragraphs 20(1)(b) and (c) of the ATIA.

2. The Respondent is ordered, under section 51 of the ATIA, to redact the pricing references and days of effort from the records proposed for release, in substantially the same form as in Exhibit "D" to the affidavit of Donald R. Powell sworn on February 29, 2024. The Respondent is also ordered to redact the names and profiles of the Applicant's subcontractors not listed in paragraphs 43 and 44 of this Judgement.

3. The Respondent shall provide the redacted records, within thirty (30) days of this Judgement, to the Applicant for review before their release. Upon receipt of the redacted records, the Applicant shall have twenty (20) days to submit to the Respondent comments regarding any omissions or incomplete redactions in accordance with paragraphs 88 to 91 of this Judgement.

4. Costs in the amount of $2,160 are awarded to the Applicant.

"Shirzad A."
Judge

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FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2710-23
STYLE OF CAUSE:	TPG TECHNOLOGY CONSULTING LTD. v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
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APPEARANCES:

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