

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
IBM Corporation,

Complainant

Report of Hearing Officer

against

Docket #FIC78-235

Labor Department of the State
of Connecticut; and Commis-
sioner of the Labor Depart-
ment of the State of
Connecticut,

March 27, 1979

Respondents

The above captioned matter was heard as a contested case on December 7, 1978, December 14, 1978 and again on January 4, 1979. All parties hereto appeared at such times and presented testimony, exhibits and argument on the complaint.

Prior to the commencement of oral testimony, the Univac Division of the Sperry Rand Corporation (hereinafter "Sperry") asked for authorization to participate in this contested case as a party. Such motion is hereby granted.

After consideration of the entire record, the following facts are found:

1. The respondents are public agencies as defined by §1-18a(a), G.S.

2. By letter filed with this Commission on November 24, 1978, the complainant alleged that on October 30, 1978 it requested certain records kept by the respondents. The complaint further alleged that the respondents had denied the requested documents in violation of its rights under the Freedom of Information law.

3. The records that are the subject of the instant request all stem from a negotiated procurement procedure that was initiated by the respondents in December, 1976. The respondents were contracting for data processing equipment.

4. As a part of the aforesaid procurement procedure the respondents solicited bids (hereinafter "proposals"). The proposals were solicited in writing. All such documents are referred to as a Request for Proposal (hereinafter "RFP").

5. Proposals were received by the respondents in response to their RFP. They received such proposals from numerous sources, including the complainant and Sperry, whereupon contract negotiations commenced. The proposals provided the basis for ensuing negotiations which culminated in a contract award in favor of Sperry.

6. The complainant sought nine categories of records, too many to be enumerated herein, in its October 30, 1978 letter of request, which letter is marked Commission Exhibit 1. Commission Exhibit 1 may be summarized as requesting the following:

a. the initial proposal received from Sperry in response to the respondents' RFP;

b. all records and correspondence pertaining to the negotiated procurement between the respondents and Sperry, including any such records which discuss modifications of the terms of the initial Sperry proposal;

c. all correspondence by and between state officials and by and between state and federal officials concerning the evaluation and approval of the Sperry proposal;

d. the contract that was awarded.

7. At hearing the complainant stated that the respondents had already provided it with a copy of the requested contract. The complainant further stated that it was not seeking that portion of the Sperry proposal that individually identified support personnel within Sperry, including any such individuals' professional resumes. Such records are therefore not an issue in this case.

8. Although the complainant's request includes benchmark results, it does not seek benchmark cards, tapes and the other underlying raw data relating to such results. All such material, with the exception of the benchmark results, are therefore not a matter in controversy in this case.

9. The respondents keep and maintain all of the remaining requested documents.

10. The respondents first contend that such records are exempt from compulsory disclosure as "records pertaining to strategy and negotiations with respect to pending claims and litigation" within the meaning of §1-19(b)(4), G.S.

11. The requested records do include a record of negotiations which culminated in a contract award in favor of Sperry. Such negotiations relate to government procurement which is qualitatively different from, and unrelated to, "pending claims and litigation" within the meaning of §1-19(b)(4), G.S.

12. It is therefore found that §1-19(b)(4), G.S. does not provide an exception to compulsory disclosure provided under §1-19(a), G.S.

13. The respondents and Sperry next contend that the requested records constitute "commercial or financial information given in confidence, not required by law" within the meaning of §1-19(b)(5), G.S.

14. In order for information to be protected from compulsory disclosure under §1-19(b)(5), G.S., it must first be "given in confidence."

15. Not a single representative of Sperry sought to secure the confidentiality of any of the information submitted in response to the respondents' procurement procedure, either prior to or at the time of such submission.

16. None of the documents so submitted by Sperry are marked with a restrictive legend designating any information as confidential.

17. Furthermore, as a matter of policy consonant with the Freedom of Information law "commercial or financial information" does not apply to documents which describe the goods and services received and the cost to government in a matter that is the subject of a public contract.

18. It is therefore found that the requested records do not constitute "commercial or financial information given in confidence" within the meaning of §1-19(b)(5), G.S.

19. A portion of the requested documents contain information relating to a certain kind of specialized applications software described as "a data base oriented job service matching system." Sperry testified that it spent millions of dollars developing such data base and that it is unique in the country.

20. It is found that such information is "unpatented, secret, commercially valuable plans," etc. within the meaning of trade secrets as defined in the first part of §1-19(b)(5), G.S.

21. Although there is general knowledge of the individual hardware parts of a data processing system, the interrelationship of hardware parts is considerably variable and not easily known. Such information may only be known by dismantling a data processing system or by access to the schematics of the system which detail the intricacies of the relationships of the hardware parts. The interrelationship of hardware parts is immediately related to the speed of performance of a given system.

22. Speed of performance was one of the factors used by the respondents in selecting the Sperry system over other systems.

23. Documents relating to the schematics of the Sperry system accompanied the Sperry proposal given to the respondents.

24. Such information is further found to constitute trade secrets as defined in the first portion of §1-19(b)(5), G.S. as "unpatented, secret, commercially valuable plans," etc.

25. Lastly, the delay in the respondents' response to the complainant's October 30, 1978 request was engendered only by their good faith effort in determining the applicability of §1-19(b), G.S. to the large number of subject documents held by them.

26. It is therefore found that the respondents' denial in this case was not wilful.

The following order by the Commission is hereby recommended on the basis of the record concerning the above captioned complaint:

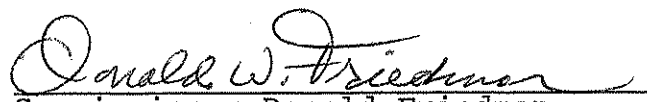
1. The respondents shall, within two weeks of issuance of Notice of Final Decision hereof, provide the complainant with all of the information requested in Commission Exhibit 1, except for the following:

- a. the contract that was awarded;
- b. any identified personnel of Sperry, including any such individual's professional resume;
- c. benchmark cards, tapes and other underlying raw data relating to the benchmark results;
- d. the data base oriented job service matching system;
- e. the schematics describing the interrelationship of the hardware parts of the contracted for data processing system.

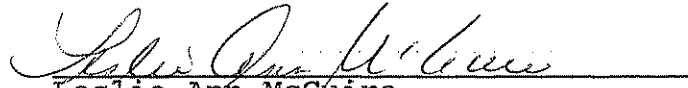
2. If entire documents are withheld as falling within subsections (b) through (e) of paragraph 1 of this Order, the respondents shall provide a written statement numbering the documents so withheld and characterizing the contents thereof in a manner that establishes the relationship of such information to the aforesaid subsections. Such written statement shall be provided at the time the respondents tender documents pursuant to paragraph 1 of this Order.

3. The respondents shall not withhold any document in its entirety if it only partially contains information described in subsections (b) through (e) of paragraph 1 of this Order.

4. The respondents may delete or conceal that portion of the information contained in any document which partially contains information related to the aforesaid subsections, provided that a written statement shall accompany such document describing the character of the non-disclosed information as related to subsections (b) through (e) of this Order.


Commissioner Donald Friedman
as Hearing Officer

Approved by order of the Freedom of Information Commission on
April 19, 1979.



Leslie Ann McGuire
Acting Clerk of the Commission