



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-252

Appeal 900201

Ministry of Agriculture and Food



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

O R D E R

On July 8, 1991, the undersigned was appointed Assistant Commissioner and received a delegation of the power and duty to conduct inquiries and make orders under the Freedom of Information and Protection of Privacy Act, 1987 (the "Act").

On March 27, 1990, the Ministry of Agriculture and Food (the "institution") received a request for access to Annual Animal Usage Reports for the 1988 and 1989 calendar years for fourteen named colleges, universities and hospitals. Access to these records was denied by the institution, pursuant to sections 14(1)(e) and (i) and section 20 of the Act.

On May 9, 1990, the requester filed an appeal under section 50(1) of the Act. The facts of the case were acknowledged by the appellant and the institution to be similar to an earlier appeal involving the same appellant and institution, for which a final decision was pending. This other appeal was subsequently resolved by Order 169 (Appeal Number 890011), issued by Commissioner Tom Wright on May 25, 1990.

In Order 169, Commissioner Wright found that "... disclosure of the records at issue in this appeal could reasonably be expected to endanger the security of a building where animal research is being conducted ...", and upheld the head's decision to deny access pursuant to the exemption in subsection 14(1)(i) of the Act.

The appellant distinguished the facts in the present appeal from those in Appeal Number 890011 on the basis that the records in this case relate to colleges, universities and hospitals which

are "publicly funded" facilities, whereas those in the other appeal involved commercial facilities.

Both parties provided written representations in support of their positions, and also relied on the representations made in the previous appeal. I have considered all representations in reaching my decision.

The issues arising in this appeal are as follows:

- A. Whether the head properly applied the discretionary exemption provided by section 14(1) of the Act to the requested records.
- B. If the answer to issue A is "no", whether the head properly applied the discretionary exemption provided by section 20 of the Act to the requested records.

ISSUE A: Whether the head properly applied the discretionary exemption provided by section 14(1) to the requested records.

In her representations, the appellant argued that, because colleges, universities and hospitals are publicly funded, they are accountable to the public, and that this accountability should extend to the release of the requested records. She made reference to the "open accountability" and "sunshine laws" in the United States, and stated that "... publicly funded organizations have a moral and fiscal responsibility to respond to public input and demand ... that public access to the annual reports of animal use be granted." The appellant also argued that there is no evidence to suggest that access to the records would result in a security violation of a publicly funded institution, and that no security-related incidents occurred after she was provided with similar information in the past.

The institution, on the other hand, maintained that there is no valid distinction to be drawn between commercial research facilities and publicly funded facilities, and that the concerns regarding potential security violations apply to both. In the institution's view, colleges, universities and hospitals are more accessible to the public, and arguably face a higher security risk than commercial facilities which often have more controlled access. The institution also pointed out that aggregate information based on the annual animal usage reports received from all facilities is compiled in chart form, and provided to interested members of the public on request. The institution stated:

"This provides interested groups and individuals with the exact number of each species of animal used annually by research facilities in Ontario. However, disclosure of the number and type of animals used by individual facilities could put certain facilities at risk of attack from extremists associated with the animal rights movement."

The institution pointed out that damage resulting from vandalism at research facilities in the United States has necessitated the introduction of "break-in legislation" in order to protect the facilities.

I have carefully considered the submissions and representations made by both parties, and, in my view, no valid distinction can be drawn between publicly funded and commercial facilities, as it relates to the application of section 14(1)(i) of the Act. I find that the concerns for the security which were an important factor in Commissioner Wright's earlier decision (Order 169) remain valid

in the current situation, and that the records at issue in this appeal are properly exempt from disclosure under section 14(1)(i) of the Act.

In Order 169, Commissioner Wright stated:

would like to make it clear that my conclusion is not based upon the identity of the appellant's organization or the activities it undertakes to fulfil its mandate, but rather on the principle that disclosure of the record to the appellant's organization must be viewed as disclosure to the public generally."

I concur with Commissioner Wright's view, and feel that this comment warrants repeating in the present appeal.

I find nothing improper in the head's exercise of discretion in deciding not to release the records, and I also find that it would not be possible to sever any parts of the records, as required by section 10(2) of the Act, without disclosing the information which was properly exempt from disclosure.

Because I have found that the records are properly exempt under section 14(1)(i), it is not necessary for me to consider the application of sections 14(1)(e) and 20.

In summary, I uphold the head's decision not to disclose the records at issue in this appeal.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

November 18, 1991
Date