



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

# ORDER 163

Appeal 880262

Stadium Corporation of Ontario Limited



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I N T E R I M   O R D E R

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987 (the "Act") which gives a person who has made a request for access to a record under subsection 24(1) a right to appeal any decision of a head under the Act to the Information and Privacy Commissioner.

The facts of this case and the procedures employed in making this Interim Order are as follows:

1. By letter dated June 25, 1988, the requester wrote to the Stadium Corporation of Ontario (the "institution") to request the following records:

[1]..complete Board Meeting minutes held after...April 12/88..., up to and including June 25, 1988. 2. any updated 1988 briefing notes/binders, 3. any financial summaries of the effects of construction delays, including rearranged financing, 4. any memos/records prepared on my two previous FOI requests of Nov. 20/88 (sic) and May/88, and 5. any technical assessments done on the unique roof design/construction since 1985 until the present or any contemplated.

2. By letter dated July 22, 1988, the institution responded by saying:

Other than our 1987 Financial Statements, no additional briefing binders or notes have been prepared since you were giving (sic) access to our records during the week of May 16\_20, 1988.

We are enclosing a copy of Stadium Corporation of Ontario Limited Financial Statements of December 31, 1987. There is no charge for our 1987 Financial Statements.

In regards to your request for any financial summaries of the effects of construction delays, a review is currently underway. We will be considering your request when the review has been completed and the reports have been prepared.

Access to the records or parts of the records was refused under the following provisions:

- A. \_ Complete Minutes of Board Meetings denied under subsections 13(1), 17(1(a), (b), (c) and 18(1)(a), (c), (e), (f) and (g).
  
  - B. \_ memos prepared on the requester's two previous requests for access to information under the Freedom of Information and Protection of Privacy Act were denied under subsection 13(1) and section 19.
  
  - C. \_ technical assessment on the unique roof design was denied under subsections 18(1)(a) and (c).
3. On July 28, 1988, the requester wrote to me appealing the head's decision to refuse access to records responsive to parts 1, 4 and 5 of his request. I gave notice of the appeal to the institution and third parties (the "affected parties") already notified of the request by the institution.

4. Mediation efforts by members of my staff resulted in the disclosure of additional information from the records on September 30, 1988 and January 5, 1989; however, final settlement of the appeal was not effected.
  
5. On July 13, 1989, notice that I was conducting an inquiry to review the decision of the head was sent to the institution, the appellant and four affected parties. Enclosed with the notice was a copy of a report prepared by the Appeals

Officer, intended to assist the parties in making their representations concerning the subject matter of the appeal. The Appeals Officer's Report outlines the facts of the appeal and sets out questions which paraphrase those sections of the Act which appeared to the Appeals Officer, or any of the parties, to be relevant to the appeal. The Appeals Officer's Report indicates that the parties, in making representations to the Commissioner, need not limit themselves to the questions set out in the report. The report is sent to all parties affected by the subject matter of the appeal.

6. Representations were received from the institution, two affected parties, and the appellant. I have considered them in making this Interim Order.

The records at issue in this appeal consist of Minutes for Board of Directors Meetings, the Technical Assessment of the Unique Roof Design/Construction, and Memos and Letters prepared by employees of the institution or its lawyers regarding the

appellant's previous request for access to information under the Act.

The issues arising in this appeal are as follows:

- A. Whether the head properly applied the discretionary exemption provided by subsections 18(1)(a), (c), (e) and (g) of the Act in exempting a record or part of a record.
- B. Whether the head properly applied the discretionary exemption provided by section 19 of the Act in exempting a record or part of a record.
- C. Whether the head properly applied the discretionary exemption provided by section 13 of the Act in exempting a record or part of a record.
- D. Whether the head properly applied the mandatory exemption provided by section 17 of the Act in exempting a record or part of a record.
- E. If the answer to either Issue A, B or C is in the affirmative, whether the head properly exercised his discretion when denying access to a record or part of a record.
- F. Whether there is a compelling public interest in the disclosure of the records or parts of the records which clearly outweighs the purpose of the exemptions claimed under sections 13, 17 and 18.

In its representations, the institution advised that certain records or parts of records could now be released, thereby reducing the number of records at issue in this appeal.

Appendix "A" to this Interim Order is a list of all records or parts of records disclosed by the institution, in whole or in part, in response to the appellant's request and additional records, or parts of records, which the institution says in its representations can now be released. Appendix "B" to this

Interim Order numbers and describes each of the records, or parts of records, which are still at issue in this appeal together with the corresponding sections of the Act claimed as exemptions by the institution in its representations.

It is important to note at the outset the purposes of the Act as outlined in subsection 1(a) and (b). Subsection 1(a) provides a right of access to information under the control of institutions in accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific. Subsection 1(b) sets out the counter\_balancing privacy protection purpose of the Act. This subsection provides that the Act should protect the privacy of individuals with respect to personal information about themselves held by institutions and should provide individuals with a right of access to their own personal information.

Furthermore, section 53 of the Act provides that the burden of proof that a record, or a part thereof, falls within one of the specified exemptions in the Act lies with the head of the institution. Affected parties who rely on the exemption provided by section 17 of the Act share with the institution the onus of proving that this exemption applies to the record or parts of the record.

**ISSUE A: Whether the head properly applied the discretionary exemption provided by subsections 18(1)(a)(c)(e) and (g) of the Act in exempting a record or part of a record.**

The relevant subsections of section 18 read as follows:

18.\_\_(1) A head may refuse to disclose a record that contains,

(a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;

...

(c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

...

(e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;

...

(g) information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person.

Broadly speaking, section 18 was drafted to protect certain interests, economic and otherwise, of the Government of Ontario and/or institutions. Subsections 18(1)(c) and (g) both take

into consideration the consequences which could reasonably be expected to result from disclosure of a record. Subsections 18(1)(a) and (e) are both largely concerned with the content of a record, rather than the consequences of disclosure.

In its representations, the institution submitted a theoretical framework and argument in support of its position:

This institution acknowledges the spirit and purpose of that Act as set out in Section 1(a) and wants to make every effort to ensure the purpose of the Act is fulfilled. However, certain anomalies exist in its application to this Institution. Unlike every other institution to which this Act applies, this Institution must compete openly and directly in the private marketplace. The fact that this Institution does not operate in a monopoly environment should be considered by the Commission in the application of the Act to this Institution. This Institution has direct competitors in the marketplace, such as the CNE, Maple Leaf Gardens, Varsity Stadium, and other facilities in Toronto, as well as similar facilities across the continent. Any particular party, group, organization or franchise will only deal with this Institution if it can offer the most attractive and competitive facility of its kind. It is qualitatively different from other government agencies which operate in the private sector. Even an agency such as Ontario Hydro does not compete in the marketplace in a way equivalent to the Institution. A group wishing to deal with a sports/entertainment multi-purpose facility has many options. Such a group can, and will, seek out the most appealing of the alternatives. The SkyDome, being just one such alternative, cannot afford, in a business sense, to have its competition gain an upper hand in the market place. Such a situation would result from competitors, suppliers, advertisers, etc., gaining specific information on the internal operation of this Institution.

Having explained its unique situation the institution then went on to state:

Many, if not all, of the exemptions sought by the Institution in the present appeal arise from such considerations. For the purpose of this appeal, the Institution has applied certain policies consistent with the above\_mentioned considerations. Most of the



exemptions sought in this appeal fall under one or more of three principles. Firstly, we submit the Institution should not release specific details of financial, commercial or business arrangements with other parties. Disclosure of this type of information would give competitors of the Institution an unfair bargaining advantage in the competition for business. Secondly, we submit the Institution should not release records which disclose long term operating, capital or income forecasts. Knowledge of such information would give third parties dealing, or competing, with the Institution an unfair advantage in the marketplace. Thirdly, we submit the Institution should not disclose the names of companies or groups that have failed to successfully negotiate an arrangement with the Institution. Further, the details of such negotiations should not be released. The companies justifiably fear negative public relations and the release of such information would prevent full and open negotiations in the future.

The institution also provided me with two schedules by which it documented its current financial projections and future financial projections should there arise a minimal drop\_off in revenue of 10% due to a deterioration in the institution's competitive position. These schedules purport to document the economic consequences flowing to the institution if release of the records at issue in this appeal would result in a drop\_off in revenue of 10%.

As noted above, subsection 18(1)(a) exempts classes or types of records based on their content, as opposed to the adverse consequences to the institution or the Government of Ontario which could result from disclosure of the records.

Subsection 18(1)(a) was cited by the institution to withhold the Technical Assessment of Unique Roof Design/Construction (Record #26 in Appendix "B"). This record consists of computer

simulations, assessment and analysis of SkyDome's roof design and construction by the institution's consultants. I have reviewed this record and the representations of the institution, and, in my view, the record contains technical

information which belongs to the institution and has monetary value. Therefore, I find that Record #26 qualifies for exemption under subsection 18(1)(a).

Subsection 18(1)(e) was cited to withhold records or parts of records numbered and described in Appendix "B" as 2 to 6 inclusive, 9 to 16 inclusive, 22, 23 and 25. These records or parts of records are minutes of meetings of the Board of Directors of the institution held on April 21, May 4 and June 15, 1988.

As I stated in Order 87 (Appeal Number 880082), dated August 24, 1989, the test for exemption under subsection 18(1)(e) is as follows:

1. the record contains positions, plans, procedures, criteria or instructions; and
2. this record is intended to be applied to negotiations; and
3. these negotiations are being carried on or will be carried on in the future; and
4. these negotiations are being conducted by or on behalf of an institution or the Government of Ontario.

Because subsection 18(1)(e) contemplates ongoing or future events, a record containing information about a past event such

as a "failed negotiation" could not possibly qualify for exemption under this provision.

I have reviewed the severances made to the records and the representations of the institution and I find that only severances made to the records numbered and described in Appendix "B" as #6, 9 to 16 inclusive and 23 qualify for exemption under subsection 18(1)(e). In my view, the other records do not contain the type of information referred to in

subsection 18(1)(e), or the information is about completed negotiations, plans or projects.

I turn now to consider the application of subsections 18(1)(c) and (g) of the Act. These subsections were cited in combination to withhold records #3 to 6 and 9 to 18 inclusive, as numbered and described in Appendix "B". Subsection 18(1)(c) alone was cited in relation to records #1, 2, 7, 19, 20, 21 and 24, whereas subsection 18(1)(g) alone was claimed for records #8, 23 and 25. As I have already found that records #6, 9 to 16 inclusive and 23 qualify for exemption under subsection 18(1)(e), the following discussion will apply only to the balance of the records.

The institution has cited subsection 18(1)(c) in support of its decision to sever information which it claims reveals "failed negotiations". The head submitted that subsection 18(1)(c) applies to this type of information. He states:

...if parties who fail in their negotiations with an institution are faced with the prospect of public disclosure of such failure, such parties from the start would be more hesitant to engage in negotiations. In addition, undue pressure would be

put upon the institution and any parties negotiating with an institution to successfully conclude agreements, as any failed negotiations which come to light would reflect badly on the parties involved. Negotiations of that nature in private enterprise are usually held in the strictest of confidence. Third parties would be more wary of negotiating with the institution if any and/or all details of such negotiations, whether failed or successful were to become public knowledge. This in itself may make all negotiations conducted on behalf of the institution far more difficult. This is especially true when one considers the fact that any party wishing to make use of a sports/entertainment facility has other private and public options to it in the Toronto area and beyond.

To qualify for exemption under subsection 18(1)(c), the record in question must contain information the disclosure of which could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution. In considering the evidence required to support a claim of reasonable expectation of harm or loss under section 17, I have indicated in Orders 36 and 70 (Appeal Nos. 880030 and 880264), dated December 28, 1988 and June 29, 1989 respectively, that the evidence must be "detailed and convincing". In my view, the standard of proof is no less stringent under section 18.

A review of the records exempted under subsection 18(1)(c) supports the institution's statement that the records contain:

- (a) details of financial, commercial or business arrangements with other parties,
- (b) long term financial forecasts, and/or
- (c) names of companies or groups that have failed to successfully negotiate an arrangement or a contract with the institution.

With regard to (a), the institution asserted that disclosure of the information would give competitors of the institution an unfair bargaining advantage in the competition for business, and with regard to (b), that knowledge of long term financial forecast(s) would give third parties dealing or competing with the institution an unfair advantage in the marketplace. With regard to (c), the institution's contention was that if failed negotiations were to be revealed, the companies involved in these negotiations would justifiably fear negative public relations and the release of such information would then prevent full and open negotiations with the institution in the future.

The difficulty with the institution's general argument alone is that even if I were to find that the severances in question contained the types of information noted in the principles cited by the institution (i.e., "specific details of financial, commercial or business arrangements", "long term operating, capital or income forecasts", or details of failed negotiations), there must still be evidence that disclosure of this kind of information could reasonably be expected to result in the harms contemplated by subsections 18(1)(c) and (g) of the Act. Whereas I have been provided with schedules which forecast the institution's competitive position over a period of time if it suffered a 10% drop\_off in revenue, I have not been provided with evidence to suggest that such a 10% drop\_off "could reasonably be expected" to result if the information in question were released. The representations in support of the specific severances did not bridge the evidentiary gap in the institution's general or theoretical argument.

I have carefully reviewed the records exempted under subsection 18(1)(c) and I find that none of the records for which subsection 18(1)(c) was cited contain information the disclosure

of which could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution under subsection 18(1)(c).

With regard to the records withheld under subsection 18(1)(g), I find that while some of the records contain proposed plans or projects of the institution, I have not been provided with "detailed and convincing" evidence that disclosure of any of the records could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person.

In summary, I find that record #26 listed in Appendix "B" contains information that qualifies for exemption under subsection 18(1)(a). Further, I find that records #6, 9 to 16 inclusive and 23 in Appendix "B" contain information that qualifies for exemption under subsection 18(1)(e). In all other instances, I find that the institution has not discharged the burden of proof imposed by section 53 of the Act and the records cited as being exempt under the various other subsections of section 18 are not properly exempt by virtue of those subsections.

**ISSUE B: Whether the head properly applied the discretionary exemption provided by section 19 of the Act in exempting a record or part of a record.**

Section 19 of the Act reads as follows:

A head may refuse to disclose a record that is subject to solicitor\_client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

The records that have been withheld from disclosure under this section are #27 to 35 inclusive, as numbered and described in Appendix "B". The records are memos and letters prepared by employees of the institution or its lawyers regarding the appellant's previous request for access to information under the Act.

Section 19 provides an institution with a discretionary exemption covering two possible situations: (1) a head may refuse to disclose a record that is subject to the common law solicitor\_client privilege; or (2) a head may refuse disclosure if a record was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation. A record can be exempt under the second part of section 19 regardless of whether the common law criteria relating to the first part of the exemption are satisfied.

I will first consider the application of the common law solicitor\_client privilege. As I indicated in Order 49 (Appeal Numbers 880017 and 880048), dated April 10, 1989, there are two branches to the solicitor\_client privilege under common law and they are:

1. All communications, verbal or written, of a confidential character between a client and a legal advisor directly related to the seeking, formulating or giving of legal advice or legal assistance (including the legal advisor's working papers directly related thereto) are privileged; and
2. Papers and materials created or obtained especially for the lawyer's brief for litigation, whether existing or contemplated are privileged.

To be exempt under the first branch of the common law solicitor\_client privilege, a record must satisfy the following four\_part test:

1. There must be a written or oral communication;
2. The communication must be of a confidential nature;
3. The communication must be between a client (or his agent) and a legal advisor;
4. The communication must be directly related to seeking, formulating or giving legal advice.

Having reviewed the records or parts of records at issue and the representations of the parties, I find that records #27, 28, 29, 30, 31, 34 and 35, as numbered and described in Appendix "B", qualify for exemption under the first part of the exemption provided by section 19. Records #32 and 33 in Appendix "B" are letters and attachments, respectively, sent to the appellant by the institution. As the appellant has received copies of these two records, the contents cannot be considered confidential, and therefore I find that the section 19 exemption does not apply to them.

**ISSUE C: Whether the head properly applied the discretionary exemption provided by section 13 of the Act in exempting a record or part of a record.**

Subsection 13(1) reads as follows:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a



public servant, any other person employed in the service of an institution or a consultant retained by an institution.

The head has cited subsection 13(1) as the basis for the refusal to release records #1, 9 to 16 inclusive, 23, 26 to 35 inclusive, as numbered and described in Appendix "B". As I have found that subsection 18(1)(a) applies to record #26, subsection 18(1)(e) applies to #9 to 16 inclusive and 23, and section 19 applies to #27, 28, 29, 30, 31, 34 and 35 I am not going to deal further with the applicability of subsection 13(1) to these records. As I noted in my discussion under Issue B, records #32 and 33 are letters, with attachments, which were previously sent by the institution to the appellant. The discussion under this issue is therefore limited to the application of the exemption to record #1 listed in Appendix "B".

In Order 94 (Appeal Number 890137), dated September 22, 1989, I indicated that the general purpose of the exemption contained in subsection 13(1) of the Act was "to protect the free flow of advice and recommendations within the deliberative process of government decision\_making and policy\_making." In Order 118 (Appeal Number 890172), dated November 15, 1989, I also noted that "advice" must contain more than mere information. In that Order I stated "advice pertains to the submission of a suggested course of action, which will ultimately be accepted or rejected by its recipient during a deliberative process."

It is the institution's position that subsection 13(1) of the Act would apply to exempt record #1 as it reveals advice given or recommendations made by Committees, Consultants or Directors, to the institution.

Having carefully reviewed record #1 and the representations of the parties, I find that the record contains information only, none of which can be said to be advice or recommendations relating to the deliberative processes of the institution and it is not properly exempted by subsection 13(1) of the Act.

**ISSUE D: Whether the head properly applied the mandatory exemption provided by section 17 of the Act in exempting a record or part of a record.**

Subsection 17(1) of the Act reads as follows:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied; or
- c) result in undue loss or gain to any person, group, committee or financial institution or agency.
- d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer, or other person appointed to resolve a labour relations dispute.

The records for which this exemption was cited are #1, 3, 7, 9 to 16 inclusive, 19, 22, 23 and 26 as numbered and described in Appendix "B".

All of the records or parts of records for which the institution has claimed the section 17 exemption were also claimed to be exempted under either, or both, sections 13 or 18. I have already discussed the applicability of those exemptions and have found that subsection 18(1)(a) applied to exempt record #26 and subsection 18(1)(e) applied to exempt records #9 to 16 inclusive and 23. Therefore, the records or parts of records at issue with respect to the applicability of section 17 are #1, 3, 7, 19 and 22 as numbered and described in Appendix "B".

Except in the case of record #26, the institution did not notify third parties of the appellant's original request, did not provide them with a copy of the records at issue and did not elicit their views as to disclosure of information contained in the records severed or withheld under section 17. Although I have decided that records #1, 3, 7, 19 and 22 do not qualify for exemption under either or both sections 13 or 18, I feel that it would be inappropriate for a decision to be made on the application of section 17 to the records in issue in the absence of representations from the third parties.

As I have determined that neither sections 13 or 18 apply to the records in issue, the institution can now disclose the relevant records or parts of records to the third parties so that their views as to disclosure may be expressed.

Therefore, I Order the institution to notify the third parties in accordance with the instructions contained in the summary of this Interim Order.

With regard to record #26 (The Technical Assessment of Unique Roof Design/Construction), even though I have found that it qualifies for exemption under the discretionary exemption in subsection 18(1)(a), it is necessary to decide whether the mandatory exemption under section 17 also applies.

At the time the original request was received, the institution notified certain third parties who the institution felt might be affected by disclosure of record #26. I have received the representations of these parties and after reviewing the record and considering the representations, I find that the requirements of section 17 have been satisfied with respect to record #26. The record reveals technical and commercial information which was supplied to the institution, implicitly, in confidence. I am persuaded that the disclosure of this information could reasonably be expected to result in undue loss or gain to third parties, as required by subsection 17(1)(c). I therefore uphold the head's decision to withhold this record from disclosure.

**ISSUE E: If the answer to either Issue A, B or C is in the affirmative, whether the head properly exercised his discretion when denying access to a record or part of a record.**

I have found that records or parts of records numbered and described in Appendix "B" as #27, 28, 29, 30, 31, 34 and 35 qualify for exemption under the discretionary provision of section 19. I have also found that the discretionary exemption provided by subsection 18(1)(e) applies to exempt the records or

parts of records numbered and described in Appendix "B" as #6, 9 to 16 inclusive and 23.

The discretionary exemption provided by section 18 was also claimed for records or parts of records numbered and described in Appendix "B" as 1, 3, 7, 19 and 22 and, although I found that that exemption did not apply to exempt those records, the applicability of section 17 has yet to be determined and, therefore, an examination of the head's exercise of discretion with respect to those records is not necessary. As well, the record numbered and described as record #26 in Appendix "B" was found to be exempt by the discretionary subsection 18(1)(a) but was also found to be exempt pursuant to the mandatory section 17 exemption. Therefore, no examination of the head's exercise of discretion with respect to that record is required.

Despite a request to do so, the institution has not provided any representations outlining the factors which were considered by the head when exercising his discretion in favour of non\_disclosure of the information exempted under either section 19 or section 18 (i.e., records 6, 9 to 16 inclusive, 23, 27 to 31 inclusive, 34 and 35 as listed in Appendix "B").

As it is the responsibility of the Commissioner to ensure that the head has properly exercised his discretion under the Act, the final determination of Issue E will be deferred until representations have been received from the head regarding the exercise of his discretion. Therefore, I order the head to exercise his discretion under sections 18 and 19 of the Act with respect to records #6, 9 \_ 16, 23, 27 to 31 inclusive, 34 and 35 as listed in Appendix B.

I further order the head to exercise his discretion within twenty (20) days of the date of this Interim Order, and to provide my office with written notification of his decision regarding the exercise of discretion. If the head should decide to exercise his discretion in favour of non\_disclosure, I order the head to provide his reasons for so doing.

**ISSUE F: Whether there is a compelling public interest in the disclosure of the records or parts of the records which clearly outweighs the purpose of the exemptions claimed under sections 13, 17 and 18.**

Section 23 provides that:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

I have found that records or parts of records #6, 9 to 16 inclusive, 23 and 26, as numbered and described in Appendix "B", qualify for exemption under section 18 and, in the case of record #26, both sections 18 and 17. The head has been ordered to exercise his discretion with respect to these records, with the exception of record #26. Therefore, this issue will be deferred relative to records #6, 9 to 16 inclusive and 23, as listed in Appendix "B", until representations have been received from the head regarding the exercise of discretion. I will deal with record #26 only at this time.

Two requirements contained in section 23 must be satisfied in order to invoke the application of the so-called "public interest override": there must be a compelling public interest in disclosure; and this compelling public interest must clearly

outweigh the purpose of the exemption, as distinct from the value of disclosure of the particular record in question.

The Act is silent as to who bears the burden of proof in respect of section 23. However, it is a general principle that a party asserting a right or a duty has the onus of proving its case and, therefore, the burden of establishing that section 23 applies falls on the appellant. The appellant did raise the issue of public safety and, in particular, any details on safety of the roof.

The appellant has provided very few details in his submission to support the position that section 23 should apply to the severed record. I am aware that the lack of detail in the appellant's submission may be due, in part, to his not having seen the record. I should add, therefore, that, having had the opportunity to review the record, in my view, the severed information could not trigger the override provisions of section 23.

In summary, the Interim Order is as follows:

1. disclose to the appellant the records listed in Appendix "C" within twenty (20) days of the date of this Interim Order and advise this office in writing within five (5) days of the date of disclosure of the records, of the date on which disclosure was made. (Appendix "C" lists records that have not been found to be exempt and for which section 17 was not claimed as an exemption, as well as records which the

institution, during the inquiry, agreed to release to the appellant.);

2. provide representations, if the head should exercise his discretion in favour of non\_disclosure, within twenty (20) days of the date of this Interim Order, as to the exercise of discretion under sections 18 and 19 in respect of records #6, 9 to 16 inclusive, 23, 27 to 31 inclusive, 34 and 35 as numbered and described in Appendix "B". The head is required to include in his representations the reasons for the exercise of discretion as well as the facts and circumstances that were taken into account; and
3. notify the third parties to whom the records or parts of records listed in Appendix "D" relate, providing them with copies of the records in question. The head is required to notify the affected parties within twenty (20) days of receipt of this Order and copies of the notices are to be sent to this office within five (5) days of the date on which they are provided to the third parties. The third parties will then be contacted directly to elicit representations from them as to the application of section 17 of the Act to the records at issue.

Original signed by: \_\_\_\_\_  
Sidney B. Linden  
Commissioner

April 24, 1990  
Date



**APPENDIX A**

Appeal Number 880262

**RECORDS RELEASED IN THEIR ENTIRETY:**

1. Stadium Corporation of Ontario Limited  
Financial Statements of December 31, 1987

**RECORDS RELEASED IN PART:**

2. Minutes \_ April 21, 1988
3. Minutes \_ May 4, 1988
4. Minutes \_ June 15, 1988

**ADDITIONAL RECORDS WHICH CAN NOW BE RELEASED ACCORDING TO THE  
INSTITUTION'S REPRESENTATIONS:**

5. Minutes \_ April 21, 1988  
page 4, paragraph 7
6. Minutes \_ April 21, 1988  
page 7, paragraph 1
7. Minutes \_ April 21, 1988  
page 7, paragraph 5
8. Minutes \_ April 21, 1988  
page 11, paragraph 1
9. Minutes \_ May 4, 1988  
page 6, paragraph 1
10. Minutes \_ June 15, 1988  
page 8, paragraph 5

**APPENDIX B**

Appeal Number 880262

**LIST OF RECORDS OR PARTS OF RECORDS WITHHELD AND STILL AT ISSUE**  
(Sections cited are those cited in the institution's representations)

**WITHHELD IN PART:**

Board of Directors Minutes, dated \_

April 21, 1988

1. page 6 second sentence paragraph 9 (ss. 18(1)(c) & 17(1))
2. page 8 paragraph 1 (ss. 13(1), 18(1)(e)(g))
3. page 8 paragraph 2 (ss. 17(1), 18(1)(c)(e)(g))
4. page 8 1st word second sentence paragraph 4 (ss. 18(1)(c)(e)(g))
5. page 8 4th & 5th words sentence 1 paragraph 5 (ss. 18(1)(c)(e)(g))
6. page 8 paragraph 6 (ss. 18(1)(c)(e)(g))
7. page 9 paragraph 2 (ss. 18(1)(c) & 17))

May 4, 1988

8. page 3 paragraph 3 (ss. 18(1)(e) & (g))
9. page 3 paragraph 5 (ss. 13(1), 17(1) 18(1)(c)(e)(g))
10. page 3 paragraph 6 (ss. 13(1), 17(1) & 18(1)(c)(e)(g))
11. page 3 paragraph 7 (ss. 13(1), 17(1) & 18(1)(c)(e)(g))
12. page 4 paragraph 1 (ss. 13(1), 17(1), 18(1)(c)(e)(g))
13. page 4 paragraph 2 (ss. 13(1), 17(1), 18(1)(c)(e)(g))
14. page 4 paragraph 3 (ss. 13(1), 17(1), 18(1)(c)(e)(g))

15. page 4 paragraph 4 (ss. 13(1), 17(1), 18(1)(c)(e)(g))
16. page 4 paragraph 5 (ss. 13(1), 17(1), 18(1)(c)(e)(g))
17. page 4 paragraph 10 (ss. 18(1)(c)(g))
18. page 4 paragraph 11 (ss. 18(1)(c)(g))
19. page 5 paragraph 3 (ss. 18(1)(c) & 17))

June 15, 1988

20. page 2 1st & 2 sentences paragraph 5 (ss. 18(1)(c))
21. page 7 2nd sentence paragraph 5 (ss. 18(1)(c))
22. page 8 paragraph 7 (ss. 17 & 18(1)(e))
23. page 8 paragraph 8 (ss. 13, 17 & 18(1)(e) & (g))
24. page 9 paragraph 3 (ss. 18(1)(c))
25. page 10 paragraph 5 (ss. 18(1)(e) & (g))

**WITHHELD IN TOTAL:**

26. Technical Assessment of Unique Roof Design/Construction  
13(1), (18(1)(a) and (c), 17(1)(a), (b) and (c)
27. Letter dated January 12, 1988 (ss. 13 & 19)
28. Telecopy Cover Sheet & Requisition (ss. 13 & 19)
29. Draft Letter dated January 15, 1988 to appellant (ss. 13 &  
19)
30. Letter dated April 13, 1988 (ss. 13 & 19)
31. Letter dated April 12, 1988 (ss. 13 & 19)
32. Letter dated March 31, 1988 (ss. 13 & 19)
33. Cost Estimate of Duplication (ss. 13 & 19)  
Selected SkyDome Documents

APPENDIX B

\_ 3 \_

34. Letter dated May 25, 1988 (ss. 13 & 19)

35. Memorandum to File (ss. 13 & 19)

\_ 4 \_  
APPENDIX C

Appeal Number 880262

**RECORDS ORDERED RELEASED BY THIS INTERIM ORDER**  
(including those records listed in Appendix "A")

Board of Director's Minutes \_ April 21, 1988

1. page 4, paragraph 7
2. page 7, paragraph 1
3. page 7, paragraph 5
4. page 8, paragraph 1
5. page 8, 1st word second sentence paragraph 4
6. page 8, 4th and 5th words sentence 1, paragraph 5
7. page 11, paragraph 1

Board of Director's Minutes \_ May 4, 1988

9. page 3, paragraph 3
10. page 4, paragraph 10
11. page 4, paragraph 11
12. page 6, paragraph 1

Board of Director's Minutes \_ June 15, 1988

13. page 2, 1st and 2nd sentences paragraph 5
14. page 7, second sentence paragraph 5
15. page 8, paragraph 5
16. page 9, paragraph 3
17. page 10, paragraph 5
  
18. Letter dated March 31, 1988.
19. Cost Estimate of Duplication \_ selected SkyDome documents.

**APPENDIX D**

Appeal Number 880262

**RECORDS FOR WHICH THE INSTITUTION HAS CLAIMED SECTION 17  
(THE INSTITUTION IS ORDERED TO NOTIFY THIRD PARTIES)**

Board of Director's Minutes \_ April 21, 1988

1. page 6, second sentence paragraph 9
2. page 8, paragraph 2
3. page 9, paragraph 2

Board of Director's Minutes \_ May 4, 1988

4. page 5, paragraph 3

Board of Director's Minutes \_ June 15, 1988

5. page 8, paragraph 7