



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

# ORDER 209

Appeal 900606

Stadium Corporation of Ontario Limited



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December 12, 1990

**VIA PRIORITY POST**

Appellant

Dear Appellant:

**Re: Order 209  
Appeal Number 900606  
Stadium Corporation of Ontario Limited**

This letter constitutes my Final Order disposing of all outstanding issues as referred to in Interim Order 203, dated November 5, 1990.

As you will recall, in my Interim Order 203 I ordered the head to provide me with representations concerning the exercise of his discretion under subsection 18(1) of the Freedom of Information and Protection of Privacy Act, 1987, as amended (the "Act"), with respect to the records at issue in the appeal. I also stated that, following my review of the head's exercise of discretion, I would consider the application of the public interest override.

I have received the representations of the head and have carefully considered them. In the circumstances of this appeal, I am satisfied that the head has exercised his discretion in accordance with established legal principles. Therefore, it is my view that the head's decision should not be disturbed on appeal.

Section 23 of the Act addresses the issue of the public interest override. It reads as follows:

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.

In your letter of appeal, you assert that "the public has a large stake in The Corporation and deserves answers". You have not submitted any further representations on this issue.

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 a particular record in question.

The Act is silent as to who bears the burden of proof in respect to section 23. However, it is the 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 you. As noted, you did raise the issue of public interest; however, you provided few details to support the position that section 23 applies to the records. I am aware that the lack of detail may be due, in part, to you not having seen the records. Having had an opportunity to review the records, in my view, the override provisions of section 23 are not applicable in the circumstances of this appeal.

In conclusion, I uphold the decision of the head.

Yours truly,

Tom A. Wright  
Assistant Commissioner

cc: Stadium Corporation of Ontario Limited