



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

ORDER P-351

Appeal P-910324

George Brown College



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ORDER

BACKGROUND:

George Brown College (the College) received a request for access under the Freedom of Information and Protection of Privacy Act (the Act) to all assignments, quizzes, exams and the grading evaluations for two courses taken by the requester as a student of the College.

The College identified 26 records as being responsive to the request, and released 20 of them to the requester in their entirety. The remaining six records were exempted by the College pursuant to section 18(1)(h) of the Act.

The requester appealed the College's decision, and also maintained that additional responsive records had not been located.

During the course of mediation, the appellant provided a list of records he felt were missing. In response, the College identified and released 11 additional records, but the appellant continued to believe that more responsive records existed.

Further mediation was not possible, and the matter proceeded to inquiry. Notice that an inquiry was being conducted to review the decision of the College was sent to the appellant and the College. Enclosed with each Notice of Inquiry was a report prepared by the Appeals Officer, intended to assist the parties in making their representations concerning the subject matter of the appeal. Written representations were received from the appellant and the College.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the discretionary exemption provided by section 18(1)(h) of the Act applies to any of the records.
- B. Whether the College's search for the requested records was reasonable in the circumstances.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the discretionary exemption provided by section 18(1)(h) of the Act applies to any of the records.

The six records which have been exempted by the College under section 18(1)(h) of the Act are described as follows:

Pathophysiology I

- Claims Management Workers' Compensation Pathology Term Test I (October 26, 1990)
- Term Test II

Workers' Compensation Adjudication Theory and Lab I

- Quiz #1 - History
- Quiz #2 - Legislative Process and Act Structure
- Workers' Compensation Adjudication Theory I - mid term exam (October 5, 1990)
- Workers' Compensation Adjudication Theory I - final exam

Section 18(1)(h) states:

A head may refuse to disclose a record that contains,

questions that are to be used in an examination or test for an educational purpose;

In its representations, the College submits that the questions contained in the records form part of a "test bank" that are used in current and future examinations for certain curriculum programs. The College also confirms that some of the questions contained in the records at issue in this appeal have been used in subsequent examinations and tests. In its original response to the appellant's request, the College offered the appellant the opportunity to view the six records, but refused to provide him with a copy.

The appellant submits that his individual test results should be released, and that "refusing to change exam format questions from year to year is a poor excuse for non-disclosure of personal intellectual information".

In my view, the College has failed to establish the requirements for exemption under section 18(1)(h). The records all consist of questions used in examinations which have already been completed, and contain the answers provided by the appellant and his scorings on individual questions. They are similar in nature to other records containing the appellant's test scores and answers which were disclosed by the College in response to the original request. The fact that the College may, at some point in the future, choose to re-use the same questions on a

subsequent examination is not, in my view, sufficient to satisfy the requirements of section 18(1)(h), and I find that the remaining six records do not qualify for exemption under this section of the Act.

ISSUE B: Whether the College's search for the requested records was reasonable in the circumstances.

The appellant has identified a number of additional records which he feels should exist. These records are all assignments or tests which the appellant contends were completed by him and submitted to the College for grading.

In its representations, the College outlines its record retention practices and the steps taken by officials to locate the records. The College points out that its policy is to return all tests and assignments to students as soon as they have been graded. As far as the records identified by the appellant are concerned, the affidavit submitted by the College outlines the searches conducted by the relevant course instructor, and concludes that the records were either provided to the appellant at the time the various assignments were returned to other students, or that no records exist because the appellant did not submit the assignments for grading.

The appellant's representations do not contain any evidence or explanation in support of his position that the additional records should exist.

I have carefully reviewed the representations of the College, including the sworn affidavit submitted in support of the College's position, and I am satisfied that the institution's search for responsive records was reasonable in the circumstances of this appeal.

ORDER:

1. I order the College to disclose the remaining six records to the appellant in their entirety within fifteen days from the date of this order.
2. The College is further ordered to advise me in writing within five days of the date on which disclosure was made. This notice should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.
3. In order to verify compliance with this order, I order the College to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1, only upon my request.

Original signed by: _____ September 16, 1992
Tom Mitchinson
Assistant Commissioner