



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-422

Appeal P-9200785

Seneca College of Applied Arts and Technology



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ORDER

Seneca College of Applied Arts and Technology (the College) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to copies of the booklet of final examination questions used in a course taken at the College by the requester's client. The College denied access to the booklet (the record) pursuant to section 18(1)(h) of the Act. In its decision letter to the requester, the College stated:

Although copies of exam questions and solutions are not provided, the College does provide students with an opportunity to view questions and solutions to exams so that he/she may compare their exam results.

The requester appealed the College's decision.

During the course of this appeal, the appellant confirmed that his client had been provided with the correct answers, the marking scheme for the examination, and a written rationale from the course instructor. The College also confirmed that "it has and will continue to allow the requester to view the record and make notes if required".

Mediation was not successful, and notice that an inquiry was being conducted to review the decision of the College was sent to the appellant and the College. Written representations were received from both parties.

The sole issue arising in this appeal is whether the discretionary exemption provided by section 18(1)(h) of the Act applies to the record.

Section 18(1)(h) reads as follows:

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 states:

It is the College's position that there are two conditions where questions are to be used in an examination or test for educational purposes as stated under subsection 18(1)(h).

The first condition is where questions have been developed for a scheduled test or examination. Subsection 18(1)(h) provides an exemption to ensure students cannot gain access to questions prior to his/her scheduled examination or test.

The second condition is where questions are maintained in a 'test bank' so that the same questions can be used for future unscheduled examinations or tests. It is this second condition that forms the basis for the College's refusal to provide copies of the final examination questions.

The College also draws a distinction between situations where examination questions and answers are contained in the same booklet, and those where separate question and answer booklets are used. The College submits that the practice of separating the questions and answers (which was the process followed in the circumstances of this appeal) allows the College to accommodate student requests for access to their examination results without compromising the integrity of the bank of questions to be drawn on for future examinations.

The appellant submits the section 18(1)(h) exemption should be restricted to questions on examinations which have not yet been held. The appellant also points out that, because the College is prepared to allow students to view exam questions and make notes, presumably including a handwritten verbatim copy of the questions, the refusal to disclose a copy of the examination questions is inconsistent with any legitimate concern for the integrity of the "test bank".

I considered the interpretation of section 18(1)(h) in my decision in Order P-351. At page 2 of that order I state:

In its representations, [George Brown] 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.

...

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 ... 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.

In my view, the same reasoning applies in this appeal, and I find that the record does not qualify for exemption under section 18(1)(h) of the Act.

I also agree with the comments made by the appellant regarding the College's practice of providing students with an opportunity to view the questions and make any required notes. If the College is prepared to allow the appellant an opportunity to produce a handwritten version of the records, I do not accept the College's reasoning for refusing to provide a printed copy of the record which contains the same information.

ORDER:

1. I order the College to release the record to the appellant within fifteen (15) days from the date of this order.
2. In order to verify compliance with this order, I order the College to provide me with a copy of the record which is disclosed to the appellant in accordance with Provision 1, **only** upon my request.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ February 26, 1993