



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

# **ORDER P-605**

**Appeal P-9300151**

**Stadium Corporation of Ontario Limited**



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# ORDER

## BACKGROUND:

The Stadium Corporation of Ontario Limited (SkyDome) received two requests under the Freedom of Information and Protection of Privacy Act (the Act) for access to records containing "1990, 1991 statistics on accidents/fatalities at SkyDome and any attributable reasons", and for records containing "any warnings/penalties assessed 1990, 1991 for violations re fire safety, building code, building construction, occupational safety."

SkyDome denied access to the records under sections 13(1), 17(1), 18(1) and 19 of the Act. The requester appealed the denial of access.

The record which is responsive to the first part of the request consists of a one page memorandum dated January 14, 1992 which deals with first aid statistics for the years 1989, 1990, 1991 and 1992. Records responsive to the second part of the request consist of fifteen individual documents originating as a result of inspections undertaken by the Ontario Ministry of Labour, the Toronto Fire Department and the City of Toronto Building Department.

Mediation was not successful, and notice that an inquiry was being conducted to review SkyDome's decision was sent to SkyDome and the appellant. Representations were received only from SkyDome. In its representations, SkyDome made no reference to the application of section 19 of the Act to the records. Accordingly, as no submission was made in support of this section, I will not consider the application of section 19 to the records.

## ISSUES:

The issues arising in this appeal are:

- A. Whether the discretionary exemption provided by section 13(1) of the Act applies.
- B. Whether the mandatory exemptions provided by sections 17(1)(a), (b) and (c) of the Act apply.
- C. Whether the discretionary exemptions provided by sections 18(1)(a), (c) and (d) of the Act apply.

## SUBMISSIONS/CONCLUSIONS:

**ISSUE A: Whether the discretionary exemption provided by section 13(1) of the Act applies.**

Section 13(1) of the Act reads:

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.

SkyDome submits:

The information contained in all of the Records were compiled with the advice and recommendations of various persons employed by or a consultant retained by the Institution.

No further evidence of any kind to substantiate this position was provided. The records created as a result of inspections by the Ontario Ministry of Labour, the Toronto Fire Department and the City of Toronto Building Department do not fall within the exemption provided by section 13(1) of the Act as the authors of these records were not employed by or retained as consultants by SkyDome.

The January 14, 1992 memorandum does not contain "advice or recommendations" but merely recites certain statistical information. I am not satisfied that section 13(1) has any application to any of the records which are responsive to this request.

**ISSUE B: Whether the mandatory exemptions provided by sections 17(1)(a), (b) and (c) of the Act apply.**

Sections 17(1)(a), (b) and (c) of the Act state:

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;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency;

For a record to qualify for exemption under sections 17(1)(a), (b) or (c), SkyDome and/or the affected party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of subsection 17(1) will occur.

[Order 36]

SkyDome submits:

The Records constitute trade secrets, commercial and financial information. In ordinary business practice, this type of information is not disclosed to any third party. The parties to the contracts upon which the financial information of these Records is in part based have maintained them in confidence and have not, and do not, to the best of the Institution's knowledge, intend to release the terms to the public or to any person whereby they might be obtained by competitors.

... to disclose the Records would result in a direct or indirect disclosure of the terms of such contracts, and thereby put these parties at a competitive disadvantage by permitting others to negotiate with them for other contracts on the same or a more beneficial basis by relying on previously established contractual terms.

The records do not contain any information pertaining to the contractual relationship between SkyDome and any other parties. There are no trade secrets, commercial or financial information contained in the records. SkyDome has failed to meet the first part of the section 17(1) test which is outlined above. Accordingly, I find that section 17(1) of the Act does not apply.

**ISSUE C: Whether the discretionary exemptions provided by sections 18(1)(a), (c) and (d) of the Act apply.**

Sections 18(1)(a), (c) and (d) of the Act read:

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;
- (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;

**Section 18(1)(a)**

In order to qualify for exemption under section 18(1)(a), SkyDome must establish that the information:

1. is a trade secret, or financial, commercial, scientific or technical information; **and**
2. belongs to the Government of Ontario or an institution; **and**
3. has monetary value or potential monetary value.

[Order 87]

In my discussion of Issue B, I found that the information contained in the records at issue cannot be characterized as either a trade secret or financial or commercial information. Accordingly, as the first part of the section 18(1)(a) test has not been met, the records cannot qualify for exemption under section 18(1)(a).

**Section 18(1)(c)**

SkyDome submits:

As described above, disclosure of the information contained in the Records can reasonably be expected to prejudice the economic interests and competitive position of the Institution in the manner described above including:

1. its economic interests in efficiently and inexpensively administering its present business affairs;
2. its economic interests in and competitive position with regards to presently ongoing negotiations to complete more specific terms of the arrangements revealed by the Records;
3. its economic interests and competitive position in obtaining similar information for use in the course [of] present and future negotiations with the same or other parties in the same or other business arrangements; and
4. its economic interests and competitive position with regard to negotiating favourable financial terms in present and future negotiations.

Again, specific reference is lacking to the documents which comprise the records in this appeal. SkyDome has failed to provide any detailed and convincing evidence to demonstrate how the disclosure of the information contained in the records could reasonably be expected to prejudice its economic interests or competitive position. As a result, I am unable to find that the exemption provided by section 18(1)(c) of the Act has any application to the records.

#### **Section 18(1)(d)**

In its representations on the application of section 18(1)(d) of the Act, SkyDome has not provided me with any evidence to substantiate its position that disclosure of the records would be injurious to it and, therefore, also injurious to the interests of the Government of Ontario. It has merely reiterated its submission that it is reasonable to expect that financial detriment could follow from the disclosure of the records.

Without the benefit of evidence as to why this expectation of harm is reasonably to be expected, I am unable to agree with the position taken by SkyDome as to the application of section 18(1)(d) of the Act to the records.

#### **ORDER:**

1. I order SkyDome to disclose to the appellant the records described above within 15 days of the date of this order.

2. In order to verify compliance with this order, I order SkyDome to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1, **only** upon request.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ January 12, 1994