



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

# **ORDER P-1087**

## **Appeal P-9500338**

### **George Brown College of Applied Arts and Technology**



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## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). George Brown College of Applied Arts and Technology (the College) received a request for access to two specific letters, dated June 2, 1993 and October 15, 1992.

The Ministry located the two letters, and provided access to the one dated October 15, 1992. Access was denied to the letter dated June 2, 1993 on the basis of the following exemptions under the Act:

- advice or recommendations - section 13
- solicitor-client privilege - section 19
- danger to safety or health - section 20
- discretion to refuse requester's own information - section 49(a).

The requester appealed the decision of the College.

A Notice of Inquiry was sent to the College and to the appellant. Representations were received from the College only. These representations include an affidavit sworn by legal counsel to the College (Counsel) in support of the College's position regarding section 19. The appellant indicates that he wishes to rely on his correspondence and communications with the Commissioner's office as his representations.

Prior to making this access request, the appellant made a privacy complaint against the College with the Commissioner's office. This complaint was investigated by this office's Compliance Department and Investigation Report I95-030P (the Report) was issued on December 6, 1995. The appellant asks that this Report be considered part of his representations in this matter.

In its representations, the College indicates that it is no longer relying on either of the danger to safety or health or advice or recommendations exemptions in sections 20 and 13 respectively of the Act. Accordingly, I will not consider these sections further.

## **RECORD:**

The record at issue is a two page letter from a Dean of the College to a staff psychiatrist at the Clarke Institute of Psychiatry requesting an assessment of the appellant.

## **DISCUSSION:**

I have reviewed the record together with the representations of the College, correspondence from the appellant and the Report. As I indicated above, the Report results from an investigation initiated as a result of a complaint concerning possible violations of the Act by the College. The discussion and recommendations in the Report concern the alleged breach by the College of certain sections under Part III of the Act (pertaining to the protection of individual privacy). In my view, the Report relates to the issues in the compliance investigation, which involve different considerations than the issues in this appeal. Therefore, the Report is not relevant to the issues in this appeal.

## **SOLICITOR-CLIENT PRIVILEGE/DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION**

Section 19 consists of two branches, which provide an institution with the discretion to refuse to disclose:

1. a record that is subject to the common law solicitor-client privilege (Branch 1);  
and
2. a record which was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

The College submits that the common-law solicitor-client privilege (Branch 1) applies to the record.

For a record to be subject to the common law solicitor-client privilege, the College must provide evidence that the record either:

- constitutes a written or oral communication of a confidential nature between a client and legal advisor which relates directly to seeking, formulating or giving legal advice; or
- was created or obtained especially for a lawyer's brief for existing or contemplated litigation.

The College indicates that the record at issue was created on the advice of Counsel for her brief for litigation between the College and the appellant. In her affidavit, Counsel details specific litigation, both ongoing and contemplated. Counsel's affidavit confirms that the record was prepared by College staff at her request especially for her brief for ongoing and contemplated litigation involving the College and the appellant.

I have reviewed the record and I accept the College's submissions. I find that the requirements of the second part of the Branch 1 test have been established. Accordingly, the June 2, 1993 letter qualifies for exemption under section 19 of the Act.

Upon review of the record, I also find that it contains recorded information relating to the appellant and therefore constitutes the personal information of the appellant under section 2(1) of the Act.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access, including section 49(a) which reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 15, 16, 17, 18, **19**, 20 or 22 would apply to the disclosure of that personal information. [emphasis added]

Section 49(a) of the Act provides the Ministry with the discretion to refuse to disclose an appellant's personal information where section 19 otherwise applies to the information. Since I have found the record qualifies for exemption under section 19, I find that it is exempt under section 49(a) of the Act.

**ORDER:**

I uphold the College's decision.

Original signed by: \_\_\_\_\_

Laurel Cropley

Inquiry Officer

\_\_\_\_\_ December 22, 1995