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

ORDER P-1107

Appeal P-9500466

Ministry of the Solicitor General and Correctional Services

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NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of the last two **old** versions of the final test (along with solutions) administered to those police officers who took the breath alcohol training course in order to become "Qualified Technicians".

The Ministry denied access to the record under the following exemptions found in the Act:

- law enforcement - section 14(1)(c)
- facilitate commission of an unlawful act - section 14(1)(l)
- valuable government information - section 18(1)(a)
- examination questions - section 18(1)(h)

A Notice of Inquiry was sent to the Ministry and the appellant and representations were received from both parties. Supplemental representations regarding the relevance of a decision of the Ontario Court (General Division) (Divisional Court) were also received from both parties.

DISCUSSION:

EXAMINATION QUESTIONS

Section 18(1)(h) of the Act reads:

> 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.

The record at issue is the final examination administered to police officers enrolled in the Centre for Forensic Sciences Breathalyser Technician course. The record includes both the examination questions and the correct answers. Successful completion of the course results in designation of the officer as a "qualified technician" as defined in section 254(1) of the Criminal Code.

The appellant submits that section 18(1)(h) cannot apply to the questions contained in the record, as the questions were used in examinations which have already been completed. The appellant argues that the fact that the Ministry may at some point in the future choose to re-use the same questions on a subsequent examination is not sufficient to satisfy the requirements of section 18(1)(h). The appellant cites two orders issued by this office in support of his arguments.

The Ministry submits that the content of the Breathalyser course does not change significantly with each session of the course, and a new exam is not generated for each session. The Ministry states that, while minor changes have been made, approximately 90 percent of the exam has remained the same for the last eight training sessions. The Ministry points out that the exam is very comprehensive and argues that it would be extremely difficult to generate a new exam for each course session because of the very limited amount of relevant information available or suitable for inclusion on the exam.

In my view, the records at issue and the circumstances of this appeal are very different from those present in the orders cited by the appellant, which both involved students seeking access to community college course exams. Given the limited amount of relevant information available for inclusion in the exam and the importance of a very comprehensive exam to the Ministry's Breath Test Program, I accept that the Ministry has definite plans to use the questions found in the record in an examination for an educational purpose, and I find that section 18(1)(h) applies, despite the fact that the questions have already been used in the past.

Having found that the record is one which qualifies for exemption under section 18(1)(h), section 10(2) of the Act requires the Ministry to "disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions" (Lincoln County Board of Education v. Information and Privacy Commissioner/Ontario et al. (5 July 1995), Toronto Doc. 289/93 (Ont. Div. Ct.)). This means that where disclosure of one of the answers found in the record would disclose the question (which I have found to be exempt), the answer could not be disclosed. The only information which can be severed and disclosed to the appellant would be those answers the disclosure of which would not disclose the question.

The key question raised by section 10(2) is one of reasonableness. It is not reasonable to require a head to sever information from a record if the end result is simply a series of disconnected words or phrases with no coherent meaning or value. A valid section 10(2) severance must provide the requester with information which is responsive to the request, while at the same time protecting the confidentiality of the portions of the record covered by the exemption (Order 24).

I have reviewed the exam to determine whether any part of it could be disclosed without disclosing the information which falls under section 18(1)(h), and whether the remaining information would have any coherent meaning or value. The examination itself is divided into three sections according to the type of question: fill in the blanks, true or false, and questions requiring written answers (including performing various mathematical calculations). In my view, disclosure of the majority of the answers to the fill in the blanks questions and all of the questions requiring written answers would reveal the questions which I have found to be exempt under section 18(1)(h) of the Act and, therefore, these answers cannot be disclosed to the appellant. What remains is a small number of words and a list of "T" and "F" answers which, in my view, have no coherent meaning or value on their own. Accordingly, I find that it would not be reasonable to require the Ministry to sever the record.

In view of my decision with respect to the application of section 18(1)(h), it is not necessary for me to consider the application of sections 14(1)(c), 14(1)(l) and 18(1)(a).

ORDER:

I uphold the Ministry's decision to deny access to the entire record under section 18(1)(h) of the Act.

Original signed by: January 24, 1996
Holly Big Canoe
Inquiry Officer