



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

# **ORDER P-1272**

**Appeal P-9600280**

**Sheridan College of Applied Arts and Technology**



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## **NATURE OF THE APPEAL:**

Sheridan College of Applied Arts and Technology (the College) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for a copy of the “special agreements” between Sheridan College, represented by its President, and two named individuals regarding the individuals’ continued employment at the College.

The College denied the requester access to the records identified as responsive to the request based on the following exemption contained in the Act:

- invasion of privacy - section 21(1)

The requester (now the appellant) appealed the College's decision.

There are two records, each consisting of a two-page agreement between the College and each of the named individuals (the affected persons). During the mediation of the appeal, the appellant agreed to the disclosure of her name to the affected persons.

A Notice of Inquiry was provided to the appellant, the College and the affected persons. Representations were received from all of the parties to the appeal.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the records at issue and find that they contain the personal information of the affected persons.

The records also make reference to the College’s President and, in one record, to the College’s Executive Director of Human Resources. In my view, these individuals are included in the records in the context of their professional capacities only and, as such, the information cannot be considered “personal information” within the meaning of section 2(1). This finding is consistent with many previous orders (157, P-326 and P-328).

### **INVASION OF PRIVACY**

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 21(1)(f), which permits disclosure if it “... does not constitute an unjustified invasion of personal privacy”.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 21(3) applies to the personal information found in a record, the only way such a presumption can be overcome is if the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions in section 21(3) apply, the College must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances which are relevant in the case.

### **Section 21(3)**

The College submits that disclosure of the records would result in a presumed unjustified invasion of the personal privacy of the affected persons under section 21(3)(d) of the Act, because the records:

outline the terms of employment including time spent on union activities, vacation provisions, an early retirement gratuity and benefits arrangements. The date of retirement is also indicated on both records.

The affected persons submit that each of the records describe their individual arrangements concerning the terms of their retirement. They argue that the details of each arrangement were determined by and premised upon each of their individual employment histories and for this reason, the information falls within the presumption in section 21(3)(d).

In addition, the affected persons submit that the records contain information which describes their finances, income, financial history or activities. As a result, they submit that the disclosure of the records is presumed to constitute an unjustified invasion of their personal privacy under section 21(3)(f).

The appellant submits that the information contained in the records does not deal with the employment history of the affected persons as it does not address past employment with the College but, rather, their present work assignments and "privately arranged benefits".

A number of previous orders of the Commissioner's office have addressed the question of access to retirement agreements entered into between institutions and their employees. In particular, the application of the presumptions contained in sections 21(3)(d) and (f), or their equivalent provisions in the municipal Act, were addressed in Orders M-173, M-204, M-273 and M-278.

In these appeals, information such as the name of the retiree, their start dates with the institution, their sick time entitlements, the start and finish dates of a salary continuation agreement and the start date of an unpaid leave, were found to fall within the presumption in section 14(3)(d), which is the equivalent to section 21(3)(d) in the provincial Act. In Order M-204, a portion of the retirement agreement was also found to contain information which falls within the section 14(3)(f) presumption, which is equivalent of section 21(3)(f) in the provincial Act.

I have reviewed the retirement agreements at issue in this appeal and find that those portions which describe the date upon which one of the affected person's teaching assignments will conclude, vacation dates, actual retirement dates, banked lieu time and current arrangements concerning a coordinator stipend fall within the ambit of the section 21(3)(d) presumption. I further find that those provisions contained in the agreements which pertain to RRSP contributions fall within the section 21(3)(f) presumption.

## **Section 21(2)**

The remainder of the records do not contain any information which falls within the presumptions in sections 21(3)(d) or (f). I will now weigh the factors listed in section 21(2), as well as any other relevant considerations, in order to determine whether the disclosure of the remaining portions of the records would result in an unjustified invasion of the personal privacy of the affected persons. As the records do not contain the personal information of the appellant, I must be satisfied that the disclosure of the records would not result in an unjustified invasion.

The appellant argues that the disclosure of the records will promote informed choice in the purchase of goods and services as described in section 21(2)(c), but fails to logically connect the disclosure of these records to any such scenario.

The affected persons and the College submit that all of the information contained in each record was supplied to it by the affected persons, in confidence, as evidenced by the heading "Strictly Private and Confidential" on each agreement. This is a factor weighing in favour of privacy protection and is listed in section 21(2)(h). I find, however, that agreements of this type are more typically the product of negotiation and it defies logic to assume that the information which they contain has been supplied by only one party. Accordingly, I find that this is not a consideration which is to be accorded any significant weight.

The affected persons also submit that the records contain information which is "highly sensitive" within the meaning of section 21(2)(f). They argue that these retirement agreements go to the core of their employment relationship with the College and provide significant information concerning the finances of these individuals. I agree that the unsevered version of the records contain information which could be properly characterized as "highly sensitive". However, I find that those portions which remain after the information which is subject to the presumptions has been removed, cannot be described as "highly sensitive" within the meaning of section 21(2)(f).

I have found above that none of the factors favouring the disclosure of the remaining portions of the records are applicable in the circumstances of this case. In addition, none of the considerations favouring privacy protection have been found to apply. However, balancing the privacy interests of the affected persons against the appellant's right of access to the agreements, I am not satisfied that the disclosure of the remaining information contained in the records would not constitute an unjustified invasion of the personal privacy of the affected persons.

## **Section 21(4)**

The appellant submits that the documents to which she seeks access contain information which is related to the employment responsibilities and benefits to be collected now or in the future by the affected persons and is, accordingly, subject to the exception to section 21(3) which is described in section 21(4)(a). This section states:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution or a member of the staff of a minister;

The College submits that in Order M-173, then-Assistant Commissioner Irwin Glasberg found that entitlements which were contained in a retirement agreement were negotiated in exchange for early retirement packages and did not derive from the employee's original contracts of employment. As such, Assistant Commissioner Glasberg found that the entitlements did not constitute "benefits" and that section 21(4)(a) did not apply to them.

I find that those portions of the records at issue which describe the employment responsibilities of the affected persons falls within the ambit of the section 21(4)(a) exception. This information should, accordingly, be disclosed to the appellant. The remaining portions of the records describe certain entitlements which will accrue to the affected persons following the execution of their retirement agreements. As was the case in Order M-173, I find that these entitlements do not derive from their original employment relationship with the College. Rather, these entitlements were negotiated in exchange for their acceptance of the early retirement agreements. Therefore, I find that the exception set out in section 21(4)(a) applies only to those portions of the records which describe the employment responsibilities of the affected persons. I have highlighted on the copy of the records which I have provided to the College's Freedom of Information and Protection of Privacy Co-ordinator those portions of the records which fall within the section 21(4)(a) exception.

## **PUBLIC INTEREST IN DISCLOSURE**

The appellant argues that there exists a public interest in the disclosure of the records under section 23 of the Act. Section 23 states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

The appellant submits that the affected persons are senior officials in the union to which she belongs and, as such, cannot be seen to have gained personally from an arrangement with the College. In a climate of fiscal restraint where a number of her colleagues have been recently laid off by the College, the appellant argues that this is a matter of public concern. In addition, she alleges that the affected persons are in a position of trust with respect to the Community Colleges Pension Plan and they must be seen not to have gained personally from any retirement arrangements which may have been struck with the College.

In Order P-1121, Inquiry Officer Holly Big Canoe made the following observations about the application of the "public interest override" contained in section 23:

There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called "public interest override": there

must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

“Compelling” is defined in the Oxford dictionary as “rousing strong interest or attention”. In order to find that there is a compelling public interest in disclosure, the information at issue must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has available to effectively express opinion or to make political choices.

If a compelling public interest is established, it must then be balanced against the purpose of the exemption which has been found to apply. In my view, this balancing involves weighing the relationship of the information against the Act's central purposes of shedding light on the operations of government and protecting the privacy of personal information held by government. Section 23 recognizes that each of the exemptions listed in the section, while serving to protect valid interests, must yield on occasion to the public interest in access to information held by government. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption.

I adopt the approach expressed in Order P-1121 for the purposes of this appeal. In my view, the interest in the disclosure of records at issue in the present appeal is neither compelling nor public. I find that the disclosure of the information at issue would not serve the purpose of informing the public about the activities of government, but rather, would only address the appellant's on-going personal concerns concerning the activities of the affected persons.

As such, I find that section 23 has no application in the circumstances of this appeal. Accordingly, with the exception of the highlighted portions of the records as indicated on the copy provided to the College's Freedom of Information and Protection of Privacy Co-ordinator, the records are exempt from disclosure under section 21.

## **ORDER:**

1. I uphold the College's decision to deny access to the records with the exception of those portions which I have highlighted on the copy provided with this order to the College's Freedom of Information and Protection of Privacy Co-ordinator.
2. I order the College to disclose a copy of the records to the appellant in accordance with the highlighted copy which I have provided to the College's Freedom of Information and Protection of Privacy Co-ordinator by **November 12, 1996** but not before **November 7, 1996**. Only the highlighted portions are to be disclosed to the appellant.
3. In order to verify compliance with the terms of this order, I reserve the right to require the College to provide me with a copy of the records which are disclosed to the appellant.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ October 9, 1996