



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

ORDER P-1284

Appeal P-9600276

Humber College of Applied Arts and Technology



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NATURE OF THE APPEAL:

Humber College of Applied Arts and Technology (the College) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The requester sought access to copies of all tests, quizzes and examinations, along with the correct answers, for two courses offered by the College in its Winter 1996 session which ran from January to April 1996.

The College located records responsive to the request and denied access to them, in their entirety, claiming the application of the following exemption contained in the Act:

- examination questions - section 18(1)(h)

The requester (now the appellant) appealed the College's decision. During the mediation of the appeal, the College issued a new decision letter in which it indicated that it also intended to rely on the third party information exemption contained in section 17(1)(c) of the Act. A Notice of Inquiry was provided by this office to the appellant and the College. Representations were received from both parties.

DISCUSSION:

EXAMINATION QUESTIONS

The College submits that the responsive records are exempt from disclosure under section 18(1)(h), which 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 College argues that the content of the courses for which the examinations are requested do not change significantly from session to session and that new examinations are not necessarily created for each session. It submits that it would be extremely difficult and impractical to generate a whole new set of questions and answers for each session. The College also points out that the records at issue are not examinations or tests which the appellant has already seen or taken and that the previous orders of the Commissioner's office which are relied upon by the appellant (Orders P-351 and P-461) are distinguishable on that basis.

The appellant submits that he is not enrolled in the courses which relate to the examinations which he requested. This statement is refuted, however, by the student registration form provided by the College with its submissions which indicates that the appellant was enrolled in the summer 1996 session for one course and is presently registered for the fall 1996 session for the other course. I find that, contrary to the appellant's assertion, he is presently enrolled in one of the courses for which he is seeking examination materials.

The appellant also submits that the principles articulated by Assistant Commissioner Tom Mitchinson in Order P-351 are applicable in the circumstances of this appeal. In that order, it was held that:

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.

The appellant submits, therefore, that the fact that the examination questions may be used again by the College is not sufficient to bring the records within the ambit of the section 18(1)(h) exemption.

In Order P-1107, Assistant Commissioner Irwin Glasberg accepted that, in circumstances where the relevant information available for inclusion in the examination is limited, it is reasonable to expect that examination questions may be used again. Providing the questions are to be used for an educational purpose, it was held that in these circumstances the section 18(1)(h) exemption could apply to the questions.

In Order M-266, Assistant Commissioner Glasberg addressed the application of section 11(h) of the Municipal Freedom of Information and Protection of Privacy Act, which is the equivalent provision in the municipal Act to section 18(1)(h). In that case, the requester sought access to a set of high school examination questions which had been previously used and were incorporated into a pool of questions for use in future examinations. He found that without definitive evidence that the Board of Education intended to incorporate into future examination questions from the specific examinations requested, section 11(h) cannot apply.

On the basis of the submissions provided to me by the College, I am satisfied that it intends to incorporate some or all of the questions contained in the records into future examinations to be set for the two courses. In addition, I find that because of the subject matter of the courses, there is a limited amount of information available for inclusion in testing materials. As the examinations are clearly to be used for an educational purpose, I find that section 18(1)(h) applies to exempt them from disclosure.

Insofar as the answers to the questions are concerned, I find that the disclosure to the appellant of a series of unrelated numbers and letters, true and false and multiple choice answers would serve no useful purpose. I will **not**, therefore, require the College to make these records available to the appellant.

Because of the manner in which I have disposed of the records under section 18(1)(h), it is not necessary for me to address the application of section 17(1)(c) to them.

ORDER:

I uphold the College's decision.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ October 28, 1996