



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-1859

Appeal PA-000177-1

Algonquin College of Applied Arts and Technology



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NATURE OF THE APPEAL:

The appellant submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to Algonquin College of Applied Arts and Technology (the College) for access to records relating to a particular incident involving an altercation between her and another student at the College. The incident resulted in the appellant being expelled from the College. The Ottawa-Carleton Police also investigated the matter, but did not lay any charges. The appellant has also made a request to the police for records pertaining to this incident; this request was the subject of a separate appeal to this office, which led to Order MO-1388.

The College located responsive records and decided to deny access to them in full, on the basis of sections 49(b) (personal privacy), 14 (law enforcement) and 20 (danger to safety or health) of the *Act*.

The appellant then appealed the College's decision to this office. The appellant's appeal letter contains detailed submissions on why the appellant believes the exemptions cited by the College do not apply.

During the mediation stage of the appeal, the College issued a revised decision letter, in which it disclosed eight records in full and two records in part, and advised the appellant that it was withholding the remaining six records in full.

The College later issued a "final" decision letter to the appellant, in which it disclosed an additional record.

Also during the mediation stage of the appeal, the College agreed to discontinue its reliance on the exemptions at sections 14 and 20 of the *Act*, and stated that it was relying on sections 49(b), 21(2)(f), 21(2)(h), and 21(3)(a) to withhold records or portions of records.

In addition, the College attempted to obtain the consent of three individuals named in the records for disclosure of their personal information. The College was not successful in obtaining these consents, since two individuals refused to do so, while the third could not be contacted.

I sent a Notice of Inquiry setting out the issues in the appeal to the College, which indicated that it would not be making representations in this matter. I then sent a Notice of Inquiry to the appellant, who provided representations in response.

RECORD:

The records at issue in this appeal consist of 9 pages, described as follows:

Record 9 (1 page)	Incident Report	Portions withheld on basis of sections 49(b), 21, 21(2)(f), 21(3)(b)
Record 10 (1 page)	Handwritten memo	Portions withheld on basis of sections 49(b), 21, 21(2)(f), 21(2)(h), 21(3)(a)

Record 11 (1 page)	Outline of incident	Withheld on basis of sections 49, 21, 21(2)(f)
Record 12 (1 page)	Incident Report	Withheld on basis of sections 49(b), 21, 21(2)(f), 21(3)(a)
Record 13 (2 pages)	Incident Report	Withheld on basis of sections 49(b), 21, 21(2)(f), 21(3)(a)
Record 14 (1 page)	Note to file	Withheld on basis of sections 49, 21, 21(2)(f)
Record 15 (1 page)	Witness statement	Withheld on basis of sections 49(b), 21, 21(2)(f), 21(3)(a)
Record 16 (1 page)	Victim release	Withheld on basis of sections 49(b), 21, 21(2)(f), 21(3)(a)

DISCUSSION:

PERSONAL PRIVACY

In order for section 49(b) in conjunction with section 21 to apply, the information in question must constitute “personal information”. Under section 2(1) of the *Act*, “personal information” is defined, in part, to mean recorded information about an identifiable individual.

The appellant submits:

The “personal information” I want to obtain and which is contained in records at issue is *all the information* i.e. the content that is said or written about me personally, including the identity (name) of their author.

However, I am not asking for *medical, psychiatric, psychological, criminal or employment history or information relating to financial transactions in which other individuals, have been involved, not their personal information such as their home address, telephone numbers, college identifier, date of birth, physical descriptions, educational history, and religious background.*

I strongly believe that a person who decides to express an opinion, a judgement, a comment about another individual has the basic responsibility to identify himself/ herself and take responsibility. Otherwise, anybody can make arbitrary accusations against a teacher or a student knowing that his/her identity is *protected*, i.e. hidden without having to prove anything . . . [appellant’s emphasis]

The information in the records relates to an incident involving both the appellant and other individuals. In my view, this information clearly qualifies as personal information of both the appellant and these other individuals, as that term is defined in section 2(1) of the *Act*. Whether or not the information about the other individuals ought to be disclosed is an issue to be determined in my discussion below.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/UNJUSTIFIED INVASION OF OTHER INDIVIDUALS' PRIVACY

Introduction

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.

Under section 49(b) of the *Act*, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 21(1) of the *Act* prohibits an institution from releasing this information.

In both these situations, sections 21(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the institution to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 21(2) *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

In this case, the College has claimed the application of the factors and presumptions at sections 21(2)(f), 21(2)(h), 21(3)(a) and 21(3)(b) of the *Act*. The appellant has raised the application of the factors at sections 21(2)(d) and (e).

Records 9 and 10

The College provided the appellant with most of the information in these records. The information withheld from both records consists of a description of the injuries allegedly suffered by an individual other than the appellant during the incident. In my view, this information qualifies as medical information for the purpose of the presumption at section 21(3)(a) of the *Act*. As a result, this information is exempt under section 21 in conjunction with section 49(b) of the *Act*.

Records 11, 12, 13, 14 and 15

These records contain personal information about the appellant and other individuals involved in the incident. The information relating to the appellant only is not exempt under section 21 or 49(b) and, therefore, must be disclosed to the appellant.

The remaining information relates to either the other individuals alone, or to the other individuals together with the appellant. In my view, this information, given the circumstances, can be characterized as “highly sensitive” under section 21(2)(f) of the *Act*. I am satisfied that disclosure of this information is likely to cause excessive personal distress to the two staff persons involved (Order PO-1736).

The appellant claim that the factor favouring disclosure at section 21(2)(d) applies. That section reads:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information is relevant to a fair determination of rights affecting the person who made the request;

In order for section 21(2)(d) to be regarded as a relevant consideration, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

[See Orders P-312 [upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.)] and PO-1764]

The appellant has failed to establish the existence of any current or contemplated proceeding to which the information in question would be relevant. Accordingly, I find that section 21(2)(d) cannot apply in the circumstances.

Finally, the appellant submits that the factor at section 21(2)(e) applies, which reads:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

The appellant argues that this factor weighs in favour of disclosure in these circumstances. In essence, the appellant takes the position that the failure of the College to provide more detailed information about the allegations against her has caused her “extreme distress”.

In my view, the section 21(2)(e) factor is intended to weigh *against* disclosure, in circumstances where disclosure of the information in question will expose an individual unfairly to pecuniary or other harm. As a result, I do not accept that this factor weighs in favour of disclosure of information to the appellant in the circumstances of this case.

Since the only factor I have found to be applicable to information relating to other individuals is section 21(2)(f), which weighs against disclosure, I find that disclosure of this information would constitute an unjustified invasion of personal privacy. Accordingly, this information is exempt under section 49(b). In addition, I am satisfied that the College properly exercised its discretion in withholding the information in question from the appellant.

Record 16

This record contains no personal information relating to the appellant. In my view, similar to my findings above, there are no factors which weigh in favour of disclosure of this record. Accordingly, it is exempt under section 21 of the *Act*.

ORDER:

1. I uphold the College’s decision to withhold the severed portions of Records 9 and 10, and Records 15 and 16 in their entirety.
2. I order the College to disclose Records 11, 12, 13 and 14 to the appellant, with the exception of the information highlighted on the College’s copy of the records included with its copy of this order, no later than **February 27, 2001**, but no earlier than **February 22, 2001**.
3. In order to verify compliance with provision 2, I reserve the right to require the College to provide me with a copy of the material disclosed to the appellant.

Original Signed By: _____ January 24, 2001

David Goodis
Senior Adjudicator