



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-1967-F**

**Appeal PA-000033-2 & PA-000084-1**

**Ministry of Training, Colleges and Universities**



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## **NATURE OF THE APPEAL:**

The Ministry of Training, Colleges and Universities (the Ministry) received two requests for access to information under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The appellant sought records relating to Trent University's application for infrastructure funding pursuant to the Ontario government's SuperBuild Growth Fund program. The first request was for records up to the date of the request (December 9, 1999) while the second request was for records between the date of the first request and the date of the second request (December 22, 1999).

The Ministry identified eight records responsive to the first request, and advised the appellant that it was granting partial access to these records. The appellant appealed the Ministry's decision respecting his first request to this office (Appeal Number PA-000084-1). The appellant stated that he was appealing the decision to withhold records or portions of records. The appellant also indicated that he believed the Ministry had not conducted an adequate search for all of the records responsive to his request.

In response to the second request, the Ministry identified 19 records and advised the appellant that it was granting partial access to them. The Ministry indicated that it was relying on the exemptions at sections 12 (Cabinet records), 13 (advice to government) and 21 (personal privacy) of the *Act* to withhold portions of the records. The appellant appealed this decision (PA-000033-2). At issue in the second appeal are whether the exemptions cited by the Ministry apply, whether the section 23 "public interest override" applies, whether the Ministry's fee decision should be upheld and whether the Ministry has conducted a reasonable search for responsive records.

By Interim Order PO-1871-I, I disposed of all of the issues in the first appeal, except for the reasonable search issue. In that order, I stated:

The appellant takes issue with the Ministry's position that no further records exist in response to his request, beyond the eight records already identified. In a subsequent request and appeal (PA-000033-2) regarding records relating to the same subject matter, the appellant has also taken issue with the reasonableness of the Ministry's search. The appellant has relied on statements of the Ministry in the second appeal to support his position in this appeal. In the circumstances, I have decided that it would be appropriate to address these issues together, in the second appeal, which is now pending. As a result, I will not make a finding on the reasonable search issue in this order.

I sent a Notice of Inquiry setting out the issues in the appeals initially to the Ministry, which provided representations in response. I then sent the Notice of Inquiry, together with the non-confidential representations of the Ministry to the appellant, who provided representations in response.

This order disposes of the remaining reasonable search issue in the first appeal, and all of the issues in the second appeal.

## **RECORDS:**

The 13 records containing the information at issue are described as follows:

- Record 2      Handwritten note on hotel stationery, undated
- Record 3      “Draft Summary of SBGF Proposal Applications Submitted by Postsecondary Institutions – Category 1”, undated
- Record 4      “Analysis of SBGF Awards and Basis for Negotiations”, undated
- Record 5      “Ministry of Finance Staff Comments - Deputies Meeting on Post Secondary Capital” dated July 13, 1999
- Record 7      Letter from three individuals to the Ministry dated November 23, 1999, with attachments
- Record 8      “Release” entitled “Trent Downtown Campus Supporters Present Case to Ministry dated November 23, 1999
- Record 9      “Draft SuperBuild Growth Fund for Postsecondary Education Support: Universities and Colleges” dated November 26, 1999
- Record 11     Ministry memorandum dated December 2, 1999
- Record 12     Ministry email dated December 4, 1999
- Record 13     Three Ministry emails
- Record 14     Ministry email
- Record 18     Assessment of SuperBuild Category 2 Proposals: Preliminary Report”, with covering email dated December 16, 1999
- Record 19     “Sir Sandford Fleming/Trent University – Co-operative Ventures: Infrastructure”, dated December 30, 1999

## **DISCUSSION:**

### **REASONABLE SEARCH**

The appellant believes that more records should exist which are responsive to both requests.

The issue to be decided is whether the Ministry has conducted a reasonable search for responsive records in its custody or under its control as required by section 24 of the *Act*. If I am satisfied

that the Ministry's search for such records was reasonable in the circumstances, I will uphold the Ministry's decision. If I am not satisfied, I may order further searches.

The Ministry relies on affidavit evidence submitted in the context of the first appeal, as well as in a third appeal (PA-000262-2) involving the appellant and a request for related records. In the first and third appeals, the Ministry submitted two similar affidavits, both sworn by the individual it states was responsible for the search, its Coordinator of the Postsecondary Capital Unit. In the first affidavit the Coordinator states:

As Coordinator, I am responsible for all aspects of the SuperBuild program including its design, development and implementation. I am responsible for the public accounting of funds and for managing the transfer of payments to institutions. I have been working in the area of postsecondary capital since March 6, 1989 and have held the position of Coordinator since November 1, 1999.

In addition to my duties as Coordinator, I am also the senior staff member responsible for all university sector capital related matters, including the Facilities Renewal Program, the University Student Residence Program and other special purpose grants. I also oversee the public accounting of these program funds and manage the transfer of payments to the institutions. I act as the regular liaison with officials and staff of the 17 publicly funded Ontario universities and their affiliates and the Ministry's other stakeholders, such as the Council of Ontario Universities.

. . . . .

At the time the request that is the subject of this appeal was made, very little information had been collected from the institutions. The program was not yet running at full capacity. The competitive process was not made public until October 15, 1999. It was at this time that the Minister invited the institutions to submit proposals. Single institution applications were to be submitted to the Ministry by November 15th, 1999. Applications for joint/collaborative project proposals were to be submitted by December 15th, 1999.

The intent of asking institutions to submit their proposals in a prescribed format with word limits was to reduce the volume of documents to those that directly addressed the evaluation criteria and to allow ministry staff to focus on analysing each application against those criteria.

As the request that is the subject of this appeal was dated December 9, 1999, I had only recently received the single institution applications. Contact between the institutions and myself was extremely limited as the deadline for joint submissions had not even taken place.

As of December 9, 1999, there were no emails, memoranda or correspondence regarding the review of applications between myself, Trent University and any

other institution. Any contact between myself and the institutions was limited to general questions about the process and procedures of the SuperBuild program.

It was my duty to ensure that a rigorous and full examination of the records for any and all responsive documents was undertaken.

I took personal responsibility for conducting the search for responsive records which involved every member of my staff. In fact, during a time of extraordinary workload, I asked that an extension be sought so that a proper search for responsive records in my care and control could be conducted.

To ensure that any responsive records outside my care and control were also captured, I took the time to raise the issue during Divisional meetings, at Branch meetings, and at Unit meetings to ensure every employee could make a reasonable search for responsive records.

Every employee in the postsecondary division was canvassed for records via email.

I personally canvassed every employee of the Finance Unit, the area closest to the SuperBuild program delivery, to ensure that all responsive records had been disclosed.

I was told and I believe it to be true that a search of the Assistant Deputy Minister's Office for records was conducted by his Executive Assistant at my request.

The SuperBuild program time-lines were quite constrained and did not provide for consultation with stakeholder groups or the institutions. The review and evaluation of applications began immediately upon receipt of applications and continued virtually up to the point of announcements. From the closing of the last proposal call on December 15, 1999 to the award announcements that began on February 22, 2000 there was barely a two month timeline. In this period, I had to secure Cabinet approval for public spending in excess of \$742 million. This is the largest single investment in postsecondary infrastructure in more than 30 years.

My four person unit was consumed with an extraordinary corporate workload during this period. The efforts of myself and my staff were entirely focussed toward meeting Cabinet requirements and the successful implementation of a critical policy objective. Very little contact was made with any institution during this period of time.

I take Freedom of Information requests very seriously and do my utmost to comply to any and all requests pursuant to the *Act*. I believe that I have

conducted a reasonable search for the responsive records and have retrieved the responsive records.

The affidavit submitted in the context of the third appeal is very similar in substance to the above.

The appellant provides lengthy and detailed submissions in response. To summarize, the appellant submits:

1. In the second appeal, the portions of Records 12, 13 and 14 (a series of emails) already disclosed to him indicate that documents were attached to those emails, none of which the Ministry has identified as responsive to any of his requests;
2. In the second appeal, Record 13 refers to three other emails that the Ministry has not identified as responsive;
3. The words “summary”, “analysis”, and “evaluation” appear in Records 3, 4 and 11 in the second appeal, which imply the existence of additional records.
4. In the first appeal, Record 4, correspondence between Trent and the Ministry, implies the existence of additional records;
5. The Ministry searched the Assistant Deputy Minister’s office, but not the offices of the Deputy Minister or Minister; and
6. The Coordinator’s “personal involvement in the SuperBuild program puts him in a difficult position for objectively identifying information reflecting adversely on the program. A new search needs to be conducted at arm’s length from the Ministry.”

Regarding point 1, as explained by the Ministry in its representations below, the attachments to Records 12, 13 and 14 have been identified as responsive records in this appeal.

On point 2, Record 13 is a single-page printout of four separate emails and, therefore, the “three other emails” referred to are incorporated into this record. With respect to point 3, I am not satisfied that the use of the words “summary”, “analysis”, and “evaluation” in Records 3, 4 and 11 itself implies that more records beyond those identified by the Ministry exist.

On point 4, the appellant appears to be referring to a statement from the Deputy Minister that she and the Assistant Deputy Minister “appreciated the opportunity to meet with . . .” the President of Trent University. The Ministry explains that this statement refers to informal meetings involving the Deputy Minister and Assistant Deputy Minister, which arose from the President being at Queen’s Park due to her involvement with the government on unrelated matters. The

Ministry also indicates that due to the informal nature of these meetings, no notes would have been taken or other records created. In the circumstances, I am satisfied with the Ministry's explanation on this point.

Regarding point 5, the Ministry advises that neither the Minister or the Deputy Minister would have been in possession of relevant records which the staff responsible for the project, including the Coordinator, would not have. The Ministry explains that being decision-makers on these matters, the Minister and Deputy would have relied solely on the material provided to them by Ministry staff, and would not have created their own records. Again, I am satisfied with this explanation.

Finally, I reject the appellant's point 6. I am not persuaded that because the Coordinator was heavily involved in the SuperBuild project, he is in a conflict position. There is no evidence before me to indicate that the Coordinator had a *personal*, as opposed to a professional, interest in the SuperBuild matter. Moreover, due to his role in the matter, the Coordinator clearly is in the best position to know where responsive records would be located. The appellant's argument is without foundation.

To conclude, I am satisfied that the Ministry conducted a reasonable search for records responsive to the appellant's two requests.

## **CABINET RECORDS**

The Ministry claims that the withheld portions of Records 3, 4, 5, 9, 12, 18 and 19 are exempt under section 12(1) of the *Act*, which reads:

A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,

- (a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;
- (b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;
- (c) a record that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;
- (d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;

- (e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy; and
- (f) draft legislation or regulations.

In Order 22, former Commissioner Sidney B. Linden stated:

In my opinion, the use of the word including in subsection 12(1) of the *Act* should be interpreted as providing an expanded definition of the types of records which are deemed to qualify as subject to the Cabinet records exemption, regardless of whether they meet the definition found in the introductory text of subsection 12(1). At the same time, the types of documents listed in subparagraphs (a) through (f) are not the only ones eligible for exemption; any record where disclosure would reveal the substance of deliberations of an Executive Council or its committees qualifies for exemption under subsection 12(1).

In Order P-331, Assistant Commissioner Tom Mitchinson stated:

. . . [I]n order for a record to qualify for exemption under section 12(1) it must “reveal the substance of deliberations of an Executive Council or its committees”. In my view, disclosure of a record would reveal the substance of deliberations if the disclosure of information contained in the record would permit the drawing of accurate inferences with respect to the actual deliberations (Order P-226).

The Ministry submits:

. . . [P]artial or full exemptions are permitted under section 12 of the Act for records indexed 3, 4, 5, 9, 12, 18, and 19. For records 18 and 19, the Ministry has specifically claimed section 12(1)(e).

. . . . .

Records 3, 4, and 9 at issue are printouts of the three electronic attachments to record 12, also at issue. Record 3 corresponds to the first attachment, “SBGF-negotiat...;” record 9 corresponds to the second attachment, “overview-slides-draft;” record 4 corresponds to the third attachment, “Postsecondary-basis for negoti...” The Ministry submits that this set of records qualifies for exemption, in entirety, under section 12(1)(b): “a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees.”

Record 12, an email to the Assistant Deputy Minister from the Ministry’s coordinator of the SuperBuild project, outlines the contents of a possible Cabinet presentation on the SuperBuild Growth Fund, with 3 draft attachments that form



the substance of the presentation. Record 3 is a "Draft for Discussion" comprising a summary of Category 1 SuperBuild proposal applications submitted by postsecondary institutions and proposed award distribution. Record 4, which complements record 3, is an analysis of projects and awards and the "basis for negotiation" for each one. Record 9 is a draft overview of the SuperBuild Growth Fund for slide presentation that includes criteria for proposal evaluation.

This package was prepared for briefing of the Minister in preparation for a subsequent presentation to a Cabinet committee on Category 1 proposals for Cabinet decisions.

Record 5 is a confidential fax to the Assistant Deputy Minister (MTCU) comprising Ministry of Finance staff responses to MCTU proposals for presentation to Cabinet. The record was exempted in its entirety under section 12.

. . . . .

With respect to records 18 and 19 at issue, the Ministry has specifically claimed subsection 12(1)(e) of the *Act* . . .

The records at issue were prepared for both purposes stated above in subsection 12(1)(e). Record 18 is a December 16, 1999, email whose response (hard copy attachment) of December 31 is exempted in its entirety under section 12. It is the same kind of report as was prepared by the Ministry for Category 1 proposals to brief the Minister in preparation for a subsequent presentation to a Cabinet committee, as to why certain projects were selected for awards (this time, Category 2 awards) and some were not. The competition for Category 2 proposals closed December 15, 1999.

Record 19, dated December 30, 1999, is an evaluation of the Sir Sandford Fleming/Trent University cooperative program proposal completed by a program officer employed by the [Ministry]. This record is also a supporting document for Cabinet submission since assessment of these proposals involved academic as well as financial criteria. Thus, not only did the information in this document contribute to ministerial briefing and Cabinet decision-making, the questions and scoring information contained therein would reveal the nature of any discussions based on them.

In addition, the Ministry indicated in its submission for appeal PA-000262-2, an appeal arising from the appellant's third request . . ., the high security required in the whole SuperBuild process militates against disclosure, which even at this time could compromise the integrity of the initiative should additional funding be available in the future . . .

The appellant makes no specific submissions on the application of section 12 to the records at issue.

Based both on the detailed representations of the Ministry, and on the face of the records themselves, I am satisfied that disclosure of the withheld portions of the records would either reveal the substance of deliberations of the Executive Council or one of its committees within the meaning of the introductory words of section 12(1) or, under section 12(1)(e), the records would qualify as records prepared to brief a minister in relation to matters before or to be brought before the Executive Council or one of its committees, all in relation to Cabinet decisions on the SuperBuild matter. Therefore, all of the withheld portions of Records 3, 4, 5, 9, 12, 18 and 19 qualify for exemption under section 12 of the *Act*.

### ADVICE OR RECOMMENDATIONS

The Ministry claims that the withheld portions of Records 11, 12, 18 and 19 qualify for exemption under section 13(1). Since I have already found Records 12, 18 and 19 to be exempt under section 12, I will consider the application of section 13 to Record 11 only. In addition, while it originally claimed that section 13(1) applied to Record 14, the Ministry now claims that the withheld portions of this record are not responsive to the request since they relate to other postsecondary institutions outside the scope of the appellant's request. Based on my review of Record 14, I uphold the Ministry's revised decision in this regard.

Section 13(1) reads:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

A number of previous orders have established that advice or recommendations for the purpose of section 13(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process [Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)*, Toronto Doc. 721/92 (Ont. Div. Ct.); Order P-883, upheld on judicial review in *Ontario (Minister of Consumer and Commercial Relations) v. Ontario (Information and Privacy Commissioner)* (December 21, 1995), Toronto Doc. 220/95 (Ont. Div. Ct.), leave to appeal refused [1996] O.J. No. 1838 (C.A.)]. Information that would permit the drawing of accurate inferences as to the nature of the actual advice or recommendation given also qualifies for exemption under section 13(1) of the *Act* (Order P-233).

In Order 94, former Commissioner Sidney B. Linden commented on the purpose and scope of this exemption. He stated that it ". . . purports to protect the free-flow of advice and recommendations within the deliberative process of government decision-making and policy-making." Put another way, the purpose of the exemption is to ensure that:

. . . persons employed in the public service are able to advise and make recommendations freely and frankly, and to preserve the head's ability to take

actions and make decisions without unfair pressure [Orders 24, P-1363 and P-1690].

The Ministry submits:

Record 11, severed in its entirety under section 13, is a December 2, 1999 memorandum from Assistant Deputy Minister, Capital Infrastructure Secretariat, Ministry of Finance, to the Assistant Deputy Minister, Postsecondary Division, Ministry of Training, Colleges and Universities, regarding the evaluation of postsecondary proposals for the SuperBuild Growth Fund. A covering note introduces the Ministry of Finance proposal for evaluating postsecondary proposals for SuperBuild funding and highlights its recommendation and suggestions for the awarding of points. This information, therefore, relates to a suggested course of action which will ultimately be accepted or rejected by the recipient during the deliberative process.

The appellant makes no specific submissions on the application of the section 13 exemption.

Based on my review of the record and the Ministry's representations, I am satisfied that disclosure of the withheld portions of this record would reveal suggested courses of action in the SuperBuild deliberative process and, therefore, Record 11 qualifies for exemption under section 13.

## **PERSONAL INFORMATION**

### **Introduction**

The Ministry claims that the withheld portions of Records 2, 7, 8 and 13 qualify for exemption under the personal privacy exemption at section 21.

The section 21 exemption applies only to information which qualifies as "personal information", as defined in section 2(1) of the *Act*. "Personal information" is defined, in part, to mean recorded information about an identifiable individual.

Previous decisions of this office have drawn a distinction between an individual's personal, and professional or official government capacity, and found that in some circumstances, information associated with a person in his or her professional or official government capacity will not be considered to be "about the individual" within the meaning of the section 2(1) definition [Orders P-257, P-427, P-1412, P-1621].

The Ministry submits:

. . . [T]he records at issue . . . contain information that qualifies as “personal information” under [section] 2(1). However, the Ministry has endeavoured to reach an appropriate balance between right of access and the protection of privacy in its severance. The Ministry has released as much information as possible while severing the least amount of information in order to protect the personal privacy of the individual(s) concerned. Although SuperBuild initiative is alluded to in the records, the communications constitute personal opinions and are communicated in personal rather than professional or official capacities.

The appellant makes no specific submissions on the application of the definition of “personal information”, or on the application of the section 21 exemption.

The Ministry withheld individuals’ names, titles, e-mail addresses and telephone numbers from Records 2, 7, 8 and 13. In the circumstances, I am satisfied that these names and other information appear in these individuals’ personal rather than professional capacities. Accordingly, this information qualifies as “personal information” under the definition of that term.

## **PERSONAL PRIVACY**

Where a requester seeks personal information of another individual, section 21(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 21(1) applies. In the circumstances, the only exception under section 21(1) which could apply is paragraph (f) which reads:

A head shall refuse to disclose personal information to any person other than the person to whom the information relates except:

if the disclosure does not constitute an unjustified invasion of personal privacy.

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].

A section 21(3) presumption can be overcome if the personal information at issue falls under section 21(4) of the *Act* or if a finding is made under section 23 of the *Act* that a compelling

public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 21 exemption.

In the circumstances, in the absence of representations on this specific point from the appellant, I am not satisfied that disclosure of the personal information in Records 2, 7, 8 and 13 would *not* constitute an unjustified invasion of personal privacy. Therefore, this information is exempt under section 21.

## **PUBLIC INTEREST OVERRIDE**

Section 23 of the *Act* states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

In the circumstances of this appeal, section 23 can apply only to the withheld portions of Record 11, which I found exempt under section 13, and Records 2, 7, 8 and 13, which I found exempt under section 21. Section 23 cannot apply to the records I found to be exempt under section 12.

In order for the section 23 “public interest override” to apply, two requirements must be met: there must be a compelling public interest in disclosure; and this compelling public interest must clearly outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.), reversing (1998), 107 O.A.C. 341 (Div. Ct.)].

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions which have been found to apply. Section 23 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information which has been requested. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption [Order P-1398, cited above].

On the public interest override issue, the appellant incorporates by reference his submissions in the first appeal, which I summarized in Order PO-1871-I as follows:

The appellant makes extensive submissions on the application of section 23. The appellant submits firstly that the SuperBuild program involves a very large amount of money, at a minimum \$742 million, which would represent \$118 for every Ontario household. The appellant submits that the program has a very large impact on all Ontario residents and, in particular, the residents of the local Peterborough community. The appellant also states that the Ministry has confirmed that this request and another of his requests are the only ones received by the Ministry concerning SuperBuild. The appellant goes on to state:

In the forced relocation of students and their consumption away from Peterborough downtown core, these expenditures will also bring hardship to many community businesses.

The appellant states that there is a high degree of media and public awareness, and controversy surrounding, the Trent SuperBuild applications “and proposed disposition of Trent’s downtown colleges . . .” The appellant cites a number of articles in two local newspapers and Trent’s student newspaper, as well as several stories on a Peterborough based television station. The appellant submits that much of the Trent SuperBuild controversy stems from “the lack of public disclosure surrounding Trent’s applications . . . . Concerned groups include the Peterborough community at large Trent students, alumni, faculty, founders, and local businesses.”

The appellant also submits that downtown Peterborough businesses “would be adversely affected by the closing of Trent’s downtown colleges.” The appellant refers to a petition made by a group of “downtown merchants, business owners and operators, and students” to the Mayor of Peterborough, asking the Mayor to convey to the University its “opposition to the university’s [SuperBuild] application . . .” The petition goes on to state “We believe that the closing of the downtown colleges will ultimately not offer any short or long term benefit to our community. Indeed, we predict our businesses and livelihoods may experience in some cases net profit losses of up to 25%.”

The appellant also included in support letters from the newspaper Peterborough This Week and the Trent Central Student Association.

In my Order PO-1871-I, I found that project cost projections, current replacement values and deferred maintenance figures for various buildings qualified for exemption under section 17, the third party commercial information exemption. I also found that the section 23 public interest override did not apply to this information for the following reasons:

In my view, the appellant, together with the Peterborough This Week and the Association have established that there is a strong public interest in the Peterborough community in the specific matter of the University’s proposal to dispose of downtown properties, particularly among students, faculty and businesses who may be most affected by the proposal.

On the other hand, as the Association suggests, there is also a public interest in protecting the financial position of the University and the College, two institutions which are largely publicly funded. As I found above, it is reasonable to expect that the schools would suffer undue loss by disclosure of this information, which in turn would affect the interest of the public financially. In my view, this public interest in *non*-disclosure is significant, and reduces the degree of public interest in disclosure substantially.

In addition, I have found much of the withheld information not to be exempt, in particular information about the condition of the buildings in question. The disclosure of this information will, in my view, go some way towards contributing to the public debate over the issue of the sale of downtown properties.

I also note that three members of the University faculty commenced judicial review proceedings in Divisional Court, seeking to quash the resolution of the University's Board of Governors approving the University's capital development plan. Although, as I understand, the application was dismissed, these proceedings would have addressed, at least to some degree, the public interest in scrutinizing the University's proposal.

Taking all of the above into account, I find that the public interest in disclosure of the withheld information does not meet the threshold of "compelling", and therefore section 23 cannot apply in the circumstances.

Here, the information at issue is quite different from that in the earlier appeal. Record 11 is a memorandum from the Ministry of Finance to the Ministry of Training, Colleges and Universities regarding the evaluation of SuperBuild proposals. The withheld portions of Records 2, 7, 8 and 13 are names, titles, telephone numbers and e-mail addresses of individuals. In my view, although there is a strong public interest in the Peterborough community in the specific matter of the University's proposal to dispose of downtown properties, the appellant has not established that disclosure of this particular information would further this public interest in any significant way. Therefore, section 23 cannot apply to override the application of section 13 to Record 11 and section 21 to Records 2, 7, 8 and 13.

#### **FEE**

The Ministry issued a fee estimate to the requester as follows:

Search Time:	4.0 hours @ \$30/hour	=	\$120.00
Record Preparation Time	0.5 hours @ \$30/hour	=	15.00
Photocopying	123 pages @ \$0.20/page	=	24.60
<b>Total</b>			<b>\$159.60</b>

The Ministry asked the appellant to pay a deposit of 50% of this amount. The appellant later paid the full fee.

The appellant submits that "a large volume of non-responsive material was supplied for which the institution was not entitled to charge a fee under the *Act*" and that accordingly "the search time and photocopying charges need to be recalculated for the actual quantity of responsive material supplied." The appellant does not indicate exactly which records he believes were not responsive to his request. Given the broad scope of the appellant's request, and based on my

review of the records identified by the Ministry as responsive, I am not satisfied that the Ministry unreasonably identified and provided access to records which were clearly outside the scope of the appellant's request. I am also satisfied that the Ministry's fee estimate was reasonable in the circumstances. Therefore, I uphold the Ministry's fee decision.

**ORDER:**

I uphold the Ministry's decisions.

Original Signed By: \_\_\_\_\_  
David Goodis  
Senior Adjudicator

\_\_\_\_\_ November 15, 2001