



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2159

Appeal PA-020214-1

Centennial College of Applied Arts and Technology



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NATURE OF THE APPEAL:

Centennial College of Applied Arts and Technology (the College) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

Details of the costs and value of [two named donors'] collection including

- a) Appraised value of the collection
- b) Insured value of the collection
- c) Amount of receipt for Charitable Tax deduction given by the college to the donors
- d) Cost of cataloguing the collection
- e) Cost of renovations to house the collection
- f) All costs associated with the advisory committee including salaries, honorariums, travel, accommodation, meals, etc.
- g) Value of all donations received by the college in support of the collection

The College identified four responsive records and denied access to all of them pursuant to section 21 (invasion of privacy) of the *Act*.

The requester, now the appellant, appealed the College's decision.

During mediation, the College clarified that the collection does not have a specified "insured value" because it is insured under the College's general insurance policy. The College stated that the insured value may be listed as the appraised value.

Mediation did not resolve the appeal so it was transferred to the adjudication stage of the appeal process. I sent a Notice of Inquiry to the College and the donors as affected persons, inviting submissions on the issues raised in the appeal. Both parties submitted representations.

In its representations, the College identified an additional responsive record and denied access to it pursuant to section 21. The College also identified the possible application of section 17 (third party information) to some of the records because they contain information about other donors and entities in support of the collection. The appellant subsequently confirmed that he does not require access to information about these third parties, so section 17 need not be considered in this inquiry.

I then sought and received representations from the appellant.

The sole issue to be determined in this appeal is whether disclosure of the records at issue constitutes an unjustified invasion of the donors' privacy.

RECORDS:

There are four records at issue in this appeal.

Record 1: A two-page "Agreement" between the donors and the College dated August 21, 2000.

Record 2: A one-page "Statement of Financial Position as at March 31, 2002".

Record 3: A one-page document entitled "Collection Value".

Record 4: A two-page record of tax receipts issued.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Personal Information

The section 21 personal privacy exemption applies only to information that qualifies as "personal information" under section 2(1) of the *Act*. "Personal information" is defined, in part, to mean recorded information about an identifiable individual, including information relating to financial transactions in which the individual has been involved [paragraph (b)].

Representations

The College submits:

[Record 1] sets out the details of the agreement under which the charitable donation was made by the affected parties to the College. The College submits that the entire content of the terms of the contract constitutes the personal information of the affected parties. The Commissioner has previously determined that information which evidences a financial contribution by an individual to an institution is the affected donor's personal information. (see Order 267 at page 5)

The College states that Record 2 "identifies the costs associated with the handling of the donor's asset including cataloguing, marketing, and transportation amongst other costs", and describes Record 3 as setting out the total value of the collection donated by the affected parties to the College. However, the College does not make any submissions on whether or how these records contain personal information.

The College simply states that Record 4, the tax receipt, "constitutes the personal information of the affected individuals."

Neither the appellant, nor the donors made any submissions on whether the records contain personal information.

Findings

In my view, Record 1, the donation agreement, can be distinguished from the records at issue in Order 267. Unlike those records, Record 1 does not evidence “a financial contribution by an individual to an institution”, but rather reflects a mutual agreement between the College and the donors for the donation of certain personal property. Nevertheless, despite the fact that the agreement does not provide for any direct monetary compensation for the donation, Record 1 does confirm that the donors received an indirect financial benefit from the transaction in the form of a tax receipt to be applied as tax credits on their personal income tax claims. In my view, the evidence of the donors having received an indirect financial benefit reveals that the agreement amounted to a financial transaction and, therefore, brings the information contained in the donation agreement within the scope of paragraph (b) of the definition of “personal information”.

Records 3 and 4, the statement of the value of the collection to the College and the tax receipts, contain information relating to the estimated value of the donors’ personal property and the impact of this valuation on their personal income taxes. In my view, this information relates to a financial transaction in which the donors have been involved and qualifies as their personal information.

Accordingly, I find that Records 1, 3, and 4 contain the donor’s “personal information” as defined by section 2(1) of the *Act*.

Record 2, the statement of the College’s financial position with respect to the collection, sets out the revenue obtained for the collection from monetary contributions by named third party donors, and all expenses incurred for the set up, promotion, and maintenance of the collection. Although this record contains what might consist of personal information of some third party donors, the appellant has removed names and individual contribution amounts of these donors from the scope of the appeal.

As far as the remaining portions of Record 2 are concerned, I find that they relate entirely to the operational costs incurred by the College in implementing the donation project, including consulting services provided by individuals in a professional capacity. I find that none of the portions of Record 2 that remain at issue in this appeal contain “personal information” as defined in section 2 of the *Act*. Therefore, Record 2, with the exception of the names of the third party donors and the amount of their individual donations, does not qualify for exemption under section 21(1) of the *Act* and should be disclosed to the appellant.

Invasion of Personal Privacy

General Principles

Once it has been determined that a record contains personal information, section 21(1) of the *Act* prohibits disclosure of this information to any person other than the individual to whom the information relates, except in certain circumstances. The only exception with potential application in this appeal is section 21(1)(f) which permits disclosure only if it would not constitute an unjustified invasion of personal privacy.

Sections 21(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of personal information whose disclosure 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]. However, 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. [See Order PO-1764]

The College relies on the presumption in section 21(3)(f) and the factors in sections 21(2)(f) and (h) to support its position that disclosure would constitute a presumed unjustified invasion of the donor's privacy. These sections read as follows:

21(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

21(2) 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,

- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

For information to be considered highly sensitive, its disclosure must reasonably be expected to cause excessive personal distress to the subject individual. [See Orders M-1053, P-1681 and PO-1736]

Representations

The donors' representations do not specifically address whether disclosing specific records would constitute an unjustified invasion of their privacy. They focus instead on the donation agreement itself and their view that, because that collection contains rare and scarce material that must be preserved and safeguarded, the terms of the donation agreement must be kept confidential and privileged. The donors submit that they always understood that the donation agreement was to be private in order to preserve the integrity of their estate, and that to divulge information respecting the gift would be a serious invasion of privacy.

In response to the donors' representations, the appellant submits that the donation of the collection to the College has been a very public event with promotional materials announcing the donation that provide an explanation of the donor's motivation, detail a number of important items in the collection, set out the College's plans and list the members of the advisory committee. The appellant also points out that the College maintains a website devoted to the collection, as well as a catalogue and an explanation of the security protocol that has been put in place to ensure the safety of the collection. In the appellant's view, maintaining that "confidentiality is essential because the collection contains rare material that must be preserved and safeguarded seems odd given the above as well as the nature of public institutions and their library collections".

Record 1

The College submits:

[i]t is apparent on the face of the negotiated agreement that the information in question was of a sensitive nature to [the donors] as set out in s. 21(2)(f) of the Act. Moreover, the information has obviously been related in confidence to the College in accordance with s. 21(2)(g) (sic). In support of this proposition the College relies on item C of the agreement which provides that the amount of the tax receipt will be kept in the strictest confidence.

Moreover, the provision provides that the value of the collection is to be defined in general terms only. The College submits that none of the traditional factors favouring disclosure set out in s.21(2) are present in this case.

It should be noted that the record contains numerous statements describing the asset of the donors. Section 21(3)(f) of the Act creates a mandatory exemption on access for information "describes" an individual's assets. The College submits that "description" refers to information beyond the monetary value of the asset and includes any description of the nature of the assets. On this additional basis the College submits that its decision to deny access should be upheld.

The appellant responds that, because the College states that the donation agreement defines the collection in “general terms only”, it is unlikely that those general terms would describe an individual’s assets as contemplated by section 21(3)(f). The appellant also submits that the “description” cannot be construed to go beyond the monetary value of the asset” and that “the College has already described the assets on their website seemingly waiving privilege”.

Records 3 and 4

The College submits that these two records constitute a description of the donors’ assets by revealing the value of the donation to the College. The College relies on Order MO-1227 to support its position that “records which describe the monetary value of an individual’s asset are exempt from access in accordance with s. 21(3)(f).”

In Order MO-1227, I dealt with records containing information about the value of a private donation made to the City of Toronto. The issue concerned section 14 of the *Municipal Freedom of Information and Protection of Privacy Act*, which is the municipal equivalent to section 21 at issue in this appeal. The records at issue in Order MO-1227 consisted of appraisal reports outlining the fair market value of a private collection of records donated to the City as well as records setting out the tax benefit provided to the donors in return for making the private donation. The City relied on the section 14(3)(f) presumption that disclosure would constitute a presumed unjustified invasion of privacy because it would reveal the donors’ finances, assets or financial activities. I accepted the City’s position and found that the section 14(3)(f) presumption applied, on the basis that the appraisal reports listing the fair market value of donated items and the tax benefit that the donors were to derive from the donation described their finances and assets.

The appellant argues that Order MO-1227 can be distinguished because Record 3 sets out the “value of the collection to the college”, which, in his view, “is different from the fair market value of a private collection as described in Order MO-1227.” The appellant states:

The “value” in Record [3] seems to be other than the fair market valuation required by the college’s Gift Acceptance Policy ... for gifts-in-kind. Without fair market value, there can be no description of an individual’s assets under [section] 21(3)(f).

The appellant does not make specific representations on the application of section 21(3)(f) to Record 4.

Findings

Record 1

I do not accept the College’s position that it is apparent on the face of Record 1 that the information in question is sensitive in nature. The agreement sets out in general terms information about the collection itself, the compensation that the donors are to receive, the

handling of initial press releases, the establishment of an Advisory Council, the housing of the collection and some of the tasks that the College undertakes to complete with respect to the set up and maintenance of the collection, none of which, in my view, is inherently sensitive. It is also my understanding that much of this information has been made known publicly. For these reasons, I find that none of the information in Record 1 is “highly sensitive”, and section 21(2)(f) is not a relevant consideration as it relates to this record.

While Record 1 does provide that the amount of the charitable tax receipt issued is to be kept in the strictest confidence, this amount does not appear in the agreement itself. Based on the representations provided by the College and the donors, I am not persuaded that the information contained in the donation agreement itself was to be treated confidentially, and for this reason I find that section 21(2)(h) is not a relevant consideration for Record 1.

I understand the donors’ position that the collection contains rare and scarce material that they believe must be safeguarded. However, I am not convinced that disclosing the donation agreement would jeopardize the collection in the manner suggested.

I accept that, generally speaking, the information contained in Record 1 relates to an asset belonging to the donors. However, in my view, the content of this record is too vague and generalized in order to qualify as a “description” of an individual’s assets, finances, financial history or activities, as required in order to gain the protection of the section 21(3)(f) presumption. Although this office has found that the description of an individual’s assets can refer to information beyond the monetary value of the asset (M-800, PO-1834, PO-2011), I do not accept the College’s submission that it is broad enough to include any description of the nature of the assets. Previous orders have found that to qualify under this section, the information must reveal, or reveal with additional and readily obtainable information, the monetary value of the financial activity or asset in question (PO-1834, PO-2011). In the circumstances of this appeal, I am not persuaded that providing the appellant with access to the donation agreement would reveal or allow him to determine the value of the collection to the affected parties. Accordingly, I find that section 21(3)(f) does not apply to Record 1.

For all of these reasons, I find that the disclosure of Record 1 would not constitute an unjustified invasion of the donors’ privacy under section 21(1) of the *Act*, and should be disclosed to the appellant.

Records 3 and 4

In my view, the information in Records 3 and 4 is substantially similar to that contained in the records at issue in Order MO-1277. While the “value of the collection to the College” may well involve a different valuation method from the “fair market value” that was sued in Order MO-1277, I do not accept the appellant’s argument that without fair market value there can be no description of an individual’s assets or financial activities. In both Order MO-1277 and the current appeal, the value attributed to the donation by the institution reflects the amount of the indirect financial benefit realized by the donor. As such I accept the College’s position, and find that disclosing Records 3 and 4 would constitute a presumed unjustified invasion of the donors’ privacy under section 21(3)(f) of the *Act*.

ORDER:

1. I uphold the College's decision to deny access to Records 3 and 4.
2. I order the College to disclose Records 1 and 2 to the appellant, with the exception of the names of the third party donors and the amount of their individual donations in Record 2. I have attached a highlighted version of Record 2 to the copy of this order provided to the College, which identifies those portions that should **not** be disclosed. The disclosure covered by this provision must be made by **August 12, 2003** but not before **August 7, 2003**.
3. In order to verify compliance with 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 pursuant to Provision 2, upon request.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

July 9, 2003