



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2387

Appeal PA-030412-1

Education Quality and Accountability Office



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Education Quality and Accountability Office (the EQAO) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of the requester's own literacy test and results. The requester is a secondary school student who took the October 2002 Ontario Secondary School Literacy Test (the Test). The Test consists of four booklets containing test questions, along with the requester's answers.

The EQAO responded to the request by providing the requester with a "detailed individual student report", but denied access to the Test and results on the basis that this information is exempt from disclosure under section 18(1)(h) (examination questions) of the *Act*.

The requester (now the appellant), through her representative, appealed the EQAO's decision.

Because the issues raised in this appeal paralleled the issues in other files with this office, this file was streamed directly to the adjudication stage of the process, and was placed on hold for a period of time. I then sent a Notice of Inquiry to the appellant, inviting her to provide representations on a number of issues including the possible impact a previous order (Order PO-2179) had on the issues, the application of section 49(a) to the appeal, and the possible application of section 23 (public interest override) to the records; as well as whether the records fall within the section 18(1)(h) exemption.

I received representations from the appellant, and sent the Notice of Inquiry, along with a copy of the appellant's representations, to the EQAO.

During that period of time, I also issued Interim Order PO-2366-I, in which I addressed a number of issues which are similar to the issues raised in this appeal. Accordingly, I attached a copy of Interim Order PO-2366-I to the Notice of Inquiry and invited the EQAO to address what impact, if any, the findings contained in that order have on the issues raised in this appeal.

The EQAO responded to the Notice of Inquiry by stating that it has implemented a number of changes to its procedures relating to the disclosure of information to students taking the tests, some of which relate to improvements to the provision of information to students for remediation and instructional improvements. It identified that one of the enhancements to this area is the release of "the common questions that all students attempt". The EQAO then states:

Common questions comprise approximately 80% of the test. The remainder of the test questions (Booklet 4 in this case) are related to field testing and equating and do not form any part of the student's pass or fail mark. These questions could be used at a future date.

These changes have implications for the Item Re-use Policy that was in place at the time of this request, as well as for the release of questions and answers under this appeal.

The EQAO then identifies that, based on the above, it decided to provide the appellant with access to the questions and answers in Booklets 1, 2 and 3 of the Test. It states:

The EQAO has re-exercised its discretion under sections 18(1)(h) and 49(a) of the *Act* and has decided to provide access to the appellant's October 2002 Ontario Secondary School Literacy Test (questions and answers contained in Booklets 1, 2 and 3).

The EQAO continues to reserve the right under section 18(1)(h) of the *Act*, not to disclose those questions used for field testing purposes (Booklet 4), so that they may be incorporated into future tests.

The EQAO attached to its representations a copy of the cover letter it sent to the appellant, in which it stated that it was disclosing Booklets 1, 2 and 3 to her.

Upon receipt of the EQAO's representations and the information relating to its re-exercise of discretion, I sent a copy of the EQAO's representations to the appellant, and invited the appellant to provide representations in reply. In particular, I invited the appellant to respond to the EQAO's representations on its re-exercise of discretion, and its decision to disclose Booklets 1, 2 and 3, and to not disclose Booklet 4, for the identified reasons. The appellant provided representations in reply.

RECORDS:

The record remaining at issue is Booklet 4 of the Ontario Secondary School Literacy Test completed by the appellant.

DISCUSSION:

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 the education of the individual (paragraph (b)), any identifying number assigned to the individual (paragraph (c)), and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual (paragraph (h)).

The appellant takes the position that the information requested in Booklet 4 qualifies as the "personal information" of the appellant.

In Interim Order PO-2366-I, which was shared with the parties, I determined that information similar to that at issue in this appeal qualified as the personal information of the student who wrote the test. I stated:

I am satisfied that the records contain the appellant's "personal information" as defined above. The appellant's responses to the questions clearly contain the appellant's personal information as defined in section 2(1), including paragraphs (b), (c) and (h) of that section. Furthermore, the request is for the exam booklets, which consist of both the questions and the appellant's answers. Accordingly, the records qualify as the appellant's personal information in the circumstances.

Clearly, if the request had simply been for the questions alone, the record would not contain the appellant's personal information.

Based on the above, I find that the information in Booklet 4 of the Test requested by the appellant qualifies as her personal information under section 2 of the *Act*.

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/EXAMINATION QUESTIONS

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.

Section 49(a) states:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

The EQAO relied on section 49(a) to exempt the records at issue from disclosure on the basis of the exemption contained in section 18(1)(h).

I will consider whether the records qualify for exemption under section 18(1)(h) as a preliminary step in determining if section 49(a) applies.

EXAMINATION QUESTIONS AND ANSWERS

The EQAO submits that, based on Orders PO-2179 and Interim Order PO-2366-I, the record is exempt from disclosure under the discretionary exemption in section 18(1)(h) of the *Act*, 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;

As identified above, I sent a copy of Orders PO-2179 and PO-2366-I to the parties in this appeal, and invited the parties to comment on the effect of those orders on the issues in this appeal.

In Order PO-2366-I, I reviewed the possible application of sections 18(1)(h) and 49(a) to the records at issue in that appeal, which similarly involved a request by a requester for a copy of his literacy test. I also reviewed Order PO-2179 in which Adjudicator Hale determined that questions of this nature qualified for exemption under the *Act*. In Order PO-2366-I, I stated:

Based on the extensive information provided by the EQAO in support of its contention that the test questions which appear on the record at issue will, in fact, be re-used on future tests, and based on Adjudicator Hale's finding in Order PO-2179, I am satisfied that the test questions in the record are to be used in an examination or test for the purpose of section 18(1)(h). I am also satisfied that the EQAO has provided me with sufficient evidence to establish that it intends to re-use the questions in future examinations. The description of the re-use protocol and the steps taken by the EQAO to ensure the integrity of the testing system demonstrate that the questions will be re-used.

In addition, and based on the reasoning of Order PO-2179, I find that the test questions in the record are to be used in an examination or test "for an educational purpose" within the meaning of section 18(1)(h). As identified in Order PO-2179, the mandate of the EQAO, described in the *Education Quality and Accountability Office Act*, includes an evaluation of the quality and effectiveness of elementary and secondary education. Part of that mandate, which clearly has an educational purpose, includes the development, administration and marking of testing materials completed by elementary and secondary students. The Test, which is the record at issue in this appeal, was created as part of that educational mandate.

In addition, I am satisfied that, with respect to questions which required a constructed response answer, the disclosure of the answers could lead to an accurate inference about both the questions and the content of the passage on which the questions were based. Similarly, the disclosure of some of the short answers could lead to an accurate inference about the nature of the questions.

As well, I accept the EQAO's position that the disclosure of the chosen multiple choice options would provide no useful information to the requester.

Accordingly, I am satisfied that the records at issue contain questions to be used in an examination or test for an educational purpose, and therefore qualify for exemption under section 18(1)(h) and, consequently, section 49(a).

I invited the appellant to provide representations on the issues, with reference to my decision in Interim Order 2366-I.

The appellant takes the position that section 18(1)(h) does not apply to Booklet 4. In support of her position, the appellant states:

In its [representations], the EQAO states that they have a “re-use policy which is currently under revision” and that “the remainder of the questions (Booklet 4) could be used at a future date”. The [EQAO] states that it “reserves the right to not disclose the test questions used in Booklet 4, so that they may be incorporated in future tests”.

The appellant submits that the EQAO’s submissions on the Item Re-use Policy does not indicate definitively that the test questions from Booklet 4 will in fact be used in the future. The [EQAO] states the questions *may* be used in the future and not *will* be used in future tests. The appellant submits that Booklet 4 does not contain questions that are to be used in an examination or test for an educational purpose in the future.

Findings

I do not accept the appellant’s position that the EQAO’s qualified statement about whether it will use the questions in Booklet 4 on tests in the future means that the exemption in section 18(1)(h) does not apply

In Order PO-2179, Adjudicator Hale reviewed the EQAO’s representations in support of its position that section 18(1)(h) applied to the literacy test questions in that appeal. He referred to the EQAO’s representations, which stated:

Ideally, test items and even whole tests could be re-used from year-to-year, a practice not uncommon in high schools and university examinations. However, since a student who fails has two opportunities to retake the OSSLT before graduating, items cannot be re-used until at least the third year after their most recent use (in practice it will often be four years). New forms will consist of an equal number of newly developed and re-used items. Rarely, *an item can be dropped if the subject matter by its nature becomes stale-dated or irrelevant (items of this type are no longer being developed), or if an item for some reason does not 'play well' during the live administration or is found to be defective or flawed.* As indicated previously, some items are made public in order to develop field supports and are never re-used.

The re-use protocol has been endorsed at several management levels at EQAO, and is pending approval by Senior Management Committee. The principal components of the protocol are as follows:

Items and not test forms are re-used, new test forms consisting in equal part of re-used items and newly field-tested items (the 50% re-use rule);

The reading component of each new test form shall consist of six re-used reading selections (three selections being re-used from each of two previous forms) and six newly field-tested reading selections;

The writing components of each new test form shall consist of two re-used writing prompts and two newly field-tested writing prompts;

Items cannot be re-used until at least the third year after their most recent use; and

Items may be dropped from the schedule only if they contain material that is no longer current or relevant to students or if a defect or flaw is identified.

[emphasis added]

Adjudicator Hale reviewed the EQAO's representations, which described in detail the process of re-use of questions by the EQAO, and which also acknowledged that some questions may not be re-used, depending on whether the subject matter becomes stale-dated or if for some reason an item does not "play well" during the live administration. Notwithstanding the EQAO's acknowledgement that some questions may be "dropped" from future tests, Adjudicator Hale found that the questions qualified for exemption under section 18(1)(h) of the *Act*. He stated:

Based on the extensive information provided by the EQAO in support of its contention that the test questions which appear on the record at issue will, in fact, be re-used on future tests, I find that the questions in the record are to be used in an examination or test for the purpose of section 18(1)(h). I am satisfied that the EQAO has provided me with sufficient evidence to establish that it intends to re-use the questions in future examinations. The description of the re-use protocol and the steps taken by the EQAO to ensure the integrity of the testing system demonstrate that the questions will be re-used until such time as they are removed in accordance with the provisions set forth in the protocol.

Similarly, I have no difficulty in making a finding that the questions which form the record at issue are to be used in an examination or test "for an educational purpose" within the meaning of section 18(1)(h). The mandate of the EQAO described in section 3 of the *Education Quality and Accountability Office Act* includes an evaluation of the quality and effectiveness of elementary and secondary education. Part of that mandate, which clearly has an educational purpose, includes the development, administration and marking of testing materials completed by elementary and secondary students. The test which forms the subject matter of the request was created as part of that educational mandate.

Furthermore, in Interim Order PO-2366-I, I found that the questions and answers qualified for exemption under section 18(1)(h), notwithstanding that not all of the questions would find their way into future tests according to the EQAO's re-use protocol. I stated:

The EQAO adds that the questions which comprise the record at issue are not simply "dumped" into a test bank for possible, unscheduled future use. Rather, the re-use protocol sets out in detail exactly when and under what circumstances questions would be re-used. It submits that 50% of the test questions in the record will find their way into future tests according to the re-use scheme set out in the protocol.

Based on the reasoning in Orders PO-2179 and PO-2366-I, I am satisfied that the information in Booklet 4 qualifies for exemption under section 18(1)(h) of the *Act*. Although I accept the appellant's position that the EQAO's submissions do not state definitively that the test questions from Booklet 4 will be used in future tests, in my view this does not mean that they do not qualify for exemption under section 18(1)(h). It is clear from the representations of the EQAO that Booklet 4 is the portion of the Test that is used by the EQAO for "field testing purposes ... so that the questions may be incorporated into future tests." As I read the EQAO's representations, including the information referenced in the previous orders provided to the parties, these questions will be used unless "an item for some reason does not 'play well' during the live administration or is found to be defective or flawed". On that basis, Booklet 4 was apparently used to provide this opportunity to allow the "live administration" of the questions to determine whether the questions would "play well" in future tests. It appears that the sole purpose of the questions in Booklet 4 is to review the adequacy of those test questions for future use – as no part of Booklet 4 is used to form any part of the student's pass or fail mark.

In the circumstances, I am satisfied that Booklet 4 contains questions to be used in an examination or test for an educational purpose, and therefore qualifies for exemption under section 18(1)(h) and, consequently, section 49(a).

Having made this finding, however, it does not necessarily follow that the exemption in section 18(1)(h) or section 49(a) should be relied on by the EQAO in the circumstances of this appeal. Both of these exemptions are discretionary and, as I did in Order PO-2366-I, I will review the EQAO's exercise of its discretion in applying these exemptions.

EXERCISE OF DISCRETION

Introduction

The section 18(1)(h) and 49(a) exemptions are discretionary, and permit the EQAO to disclose information, despite the fact that it could be withheld. On appeal, this office may review the EQAO's decision to determine whether it exercised discretion and, if so, to determine whether it erred in doing so. However, this office may not substitute its own discretion for that of the institution [see section 54(2)]. This office may find that an institution erred in its exercise of discretion where, for example:

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

In that event, this office may send the matter back to the institution for a re-exercise of discretion, based on proper considerations [Order MO-1573].

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that:
 - information should be available to the public;
 - individuals should have a right of access to their own personal information;
 - exemptions from the right of access should be limited and specific;
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect;
- whether the requester is seeking their own personal information;
- whether the requester has a sympathetic or compelling need to receive the information;
- whether the requester is an individual or an organization;
- the relationship between the requester and any affected persons;
- whether disclosure will increase public confidence in the operation of the institution;
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person;
- the age of the information; and
- the historic practice of the institution with respect to similar information.

In Interim Order PO-2366-I I also identified a number of additional factors that the EQAO should consider when exercising its discretion under both section 18(1)(h) and section 49(a). At

that point, the EQAO had refused to disclose to a requester any portion of the literacy test taken by him. I ordered the EQAO to re-exercise its discretion, and I stated:

With respect to the factors which the EQAO should have taken into account in reviewing the exercise of its discretion under section 18(1)(h), in my view the EQAO failed to take into account a number of factors, including:

- the number of individuals who have seen, studied and answered the test questions. As identified by the appellant “the exam in question was given to over 125,000 students so these questions have had wide exposure. These questions are not a secret, the only secret is if or when they will appear on future tests”;
- the impact on any student who fails to pass the Test and rectify the situation in the future. As clearly set out by the EQAO in the Report provided to students who fail, the student will be required to retake the Test in order to meet the requirements of the Ontario Secondary School Diploma;
- whether disclosure will increase public confidence in the operation of the institution; and
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person.

In addition, it is my view that in exercising of its discretion under section 49(a), the EQAO failed to take into account a number of factors, including:

- one of the primary purposes of the *Act*, that individuals should have a right of access to their own personal information;
- one of the stated purposes of the Test, to identify areas of weakness for remediation purposes;
- the scarcity of “feedback” provided to the appellant in these circumstances;
- whether the requester is seeking his or her own personal information;
- whether the requester has a sympathetic or compelling need to receive the information;
- whether the requester is an individual or an organization;
- the impact of failure to pass the Test and rectify the situation in the future (inability to meet the requirements of the Ontario Secondary School Diploma);
- the options that may be available in terms of providing limited or restricted access to an individual’s own personal information (with restrictions/undertakings). (It should be noted that, although the

EQAO refers briefly in its representations to the possibility of allowing the appellant to inspect the records at the EQAO offices, it submits that access in this manner should also be denied); and

- the interplay between the interests of an individual accessing their own personal information, and the interests of the institution.

In addition to the above, one additional factor which, in my view, the EQAO should take into account in deciding to exercise its discretion is the very nature of the Test itself, and the position of the individuals who are most interested in obtaining their own test results. Individuals requesting their own test results are secondary students who are required to pass the literacy test in order to obtain their Secondary School diploma, a very significant matter for most secondary school students. The EQAO identifies for the students whether they have passed or failed, but denies these students access to their own test. It is likely that the students most interested in viewing their test results have failed the literacy test, placing them in either an actual or a perceived vulnerable position in relation to the EQAO, which administers the test. They may be in an actual position of vulnerability, as they have failed the literacy test (suggesting that their literacy skills require remediation), and pursuing access to information for remediation purposes may be a daunting process for them. They may be in a perceived position of vulnerability, as they are pursuing access to information from an agency which ultimately determines whether they pass or fail the test.

Accordingly, in my view, the EQAO should take into account the fact that significant rights and significant potential prejudice to individual students are at stake, and that the EQAO and a student requester are in positions of relative power and weakness respectively, in deciding whether to exercise its discretion to withhold this information.

Finally, it strikes me that the EQAO is in a unique position as a decision-making body in these circumstances. The EQAO administers the literacy test which all secondary students in Ontario must take. This may be the first significant direct exposure students have with the workings of an agency of the government of Ontario. In my view, this provides the EQAO with a unique opportunity to model the principles of openness, accountability, and the right of access to one's own personal information.

In response to Interim Order PO-2366-I, the EQAO re-exercised its discretion, and disclosed Booklets 1, 2 and 3 to the requester. It also chose not to disclose Booklet 4.

Representations

As set out above, the EQAO identifies that it has re-exercised its discretion in the circumstances of this appeal. It states:

The EQAO has re-exercised its discretion under sections 18(1)(h) and 49(a) of the *Act* and has decided to provide access to the appellant's October 2002 Ontario Secondary School Literacy Test (questions and answers contained in Booklets 1, 2 and 3).

The EQAO continues to reserve the right under section 18(1)(h) of the *Act*, not to disclose those questions used for field testing purposes (Booklet 4), so that they may be incorporated into future tests.

With respect to the difference between the first three Booklets and Booklet 4, the EQAO explained the reason why it chose to disclose the first three booklets, but not the fourth, as follows:

Common questions comprise approximately 80% of the test. The remainder of the test questions (Booklet 4 in this case) are related to field testing and equating and *do not form any part of the student's pass or fail mark*. These questions could be used at a future date. [emphasis added]

In response to the EQAO's representations, the appellant states:

The ... EQAO did not exercise its discretion appropriately by deciding to withhold Booklet 4. The appellant submits that individuals have the right of access to their own personal information.

The appellant also states that there is a compelling need to access this information in order to "remediate appropriately."

I have carefully reviewed the representations of the parties on the exercise of discretion. I have also considered the fact that the EQAO has re-exercised its discretion in the circumstances of this appeal, and has decided to disclose Booklets 1, 2 and 3 to the appellant. Furthermore, as identified by the EQAO, Booklets 1, 2 and 3 are the only test results considered in determining the appellant's mark. The EQAO has now chosen to disclose those Booklets, in full, to the appellant. The only Booklet the EQAO has exercised its discretion not to disclose is Booklet 4. Although this Booklet contains test questions and the appellant's answers to those questions, the EQAO has stated that the test questions in this Booklet "are related to field testing and equating and *do not form any part of the student's pass or fail mark*."

Based on the information provided by the EQAO, I am satisfied that it considered all of the relevant factors in deciding to exercise its discretion not disclose Booklet 4. Implicit in its decision to disclose Booklets 1, 2 and 3, which contain all of the information upon which the appellant's pass or fail mark is based, the EQAO necessarily considered a number of the factors which I referred to in my Interim Order PO-2366-I. Many of those factors relate to the need for students to be provided with meaningful feedback concerning their test result, their ability to

identify areas of weakness for remediation purposes, and particularly the significant impact that passing or failing the test has on them. In my view, these factors were considered by the EQAO in its decision to provide students with all information relating to their pass or fail mark, and not with information that does not form any part of that mark.

In the circumstances, I am satisfied that the EQAO exercised its discretion in deciding not to disclose Booklet 4, and that it did not err in doing so by taking into account irrelevant considerations or failing to take into account relevant considerations. Accordingly, I uphold the EQAO's decision to withhold Booklet 4.

PUBLIC INTEREST IN DISCLOSURE

The appellant takes the position that there is a compelling public interest in the disclosure of the records, and that section 23 of the *Act* applies to override the applicable exemption. Section 23 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.

The appellant states:

... there is a public interest in the disclosure, despite it being a request for personal information, because there needs to be accountability, transparency and confidence in government institutions.

Further, the appellant pursuant to section 7 of the *Charter of Rights and Freedoms*, has a right to security of the person which provides her with protection from public authorities and require them to act in accordance with the principles of fundamental justice.

In her earlier representations, when access to all of the questions and answers was denied, the appellant also referred to the public interest in the information, and section 7 of the *Charter* in support of the position that she should have access to information relating to "her academic and career futures."

Findings

For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption (see Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.), leave to appeal refused (January 20, 2000), Doc. 27191 (S.C.C.)). In Order P-1398, Senior Adjudicator John Higgins made the following statements regarding the application of section 23:

An analysis of section 23 reveals two requirements which must be satisfied in order for it to apply: (1) there must be a **compelling** public interest in disclosure, and (2) this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions that 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 that 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.

The existence of a compelling public interest is not sufficient to trigger disclosure under section 23. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

As identified above, the EQAO has now re-exercised its discretion and decided to disclose all of the portions of the Test upon which the student's pass or fail mark was based. Accordingly, in this appeal the only information remaining at issue is Booklet 4 of the Test, which contains questions relating to field testing and equating and does not form part of the student's pass or fail mark, and that is the only information for me to review in terms of whether section 23 applies in this appeal.

In the circumstances of this appeal, I have not been provided with sufficient evidence to satisfy me that there exists a compelling public interest in the disclosure of Booklet 4. Booklet 4 contains the test questions and answers that "are related to field testing and equating". The EQAO has identified that this Booklet does not contain any information that forms "any part of the student's pass or fail mark." The appellant's representations focus on the importance of students being able to focus their remediation efforts, and the need for accountability, transparency and confidence in government institutions. In the circumstances, I am not satisfied that there exists a compelling public interest in the further disclosure of Booklet 4 on that basis.

Furthermore, with respect to the appellant's position that section 7 of the *Charter* applies, in my view the appellant's argument, as framed, is insufficient and unpersuasive. Although the appellant refers to her right to security of person, she does not identify how this right relates to the information remaining at issue – namely – questions and answers in Booklet 4 which do not form any part of her pass or fail mark. The appellant does not explain how this right has been infringed by failure to disclose the information remaining at issue, and I find that it has no application.

ORDER:

I uphold the EQAO's decision not to disclose Booklet 4.

Original signed by: _____
Frank DeVries
Adjudicator

_____ April 27, 2005