



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2519

Appeal PA-050094-1

Loyalist College of Applied Arts and Technology



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NATURE OF THE APPEAL:

Under the *Freedom of Information and Protection of Privacy Act* (the *Act*) the Loyalist College of Applied Arts and Sciences (the College) received a request for information regarding a former senior employee of the College. In particular, the requester sought:

1. The total retirement benefit that the senior employee received for 2004.
2. The total gratuity gained from the pay out of unused sick leave and holiday pay.
3. The total amount of future employee benefits that the affected party will receive that are not covered by the preceding two requests.
4. The total amount of gratuity still owing to the affected party for the year 2005.

The College identified two records that it viewed as responsive to the request. After obtaining the position of the affected party on disclosure under section 28 of the *Act*, the College decided to release the records, in their entirety.

The affected party (now the appellant) appealed the College's decision.

At mediation, the appellant advised that he did not object to releasing the information set out at paragraphs 2, 3, 5 and 8 of the responsive records, but relying on section 21(1) of the *Act* (personal privacy), objects to the release of the remainder. In accordance with this position, the College forwarded a copy of the two records to the requester with paragraphs 1, 4, 6, 7 and 9 blacked out.

Mediation did not resolve all the issues in the appeal and the matter moved to the adjudication stage of the process.

I sent a Notice of Inquiry to the College and the appellant, initially. In the Notice of Inquiry, I asked for the parties' positions on the application of section 65(6) of the *Act* (which can result in the *Act* not being applicable to a record in issue). Both of them provided representations in response. The College asked that portions of its representations be withheld due to confidentiality concerns. A Notice of Inquiry, along with the non-confidential portions of the College's representations and the complete representations of the appellant, were sent to the original requester. The requester provided representations in response. As the requester's representations raised issues to which I determined the College and the appellant should be given an opportunity to reply, I sent the requester's representations (with name, address and telephone number removed) to them, inviting their reply representations. Both of them filed reply representations.

I have considered both the confidential and non-confidential representations of the parties in making my determinations in this appeal.

RECORDS:

Remaining at issue are paragraphs 1, 4, 6, 7 and 9 of the following records entitled:

1. "Retirement Arrangements" dated November 11, 2004 (described by the College as a draft agreement).
2. "Retirement Arrangements, Amended", dated December 16, 2004 (described by the College as a final agreement).

DISCUSSION:

LABOUR RELATIONS AND EMPLOYMENT RECORDS

Section 65(6) states:

Subject to subsection (7), this *Act* does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.

If section 65(6) applies to the records, and none of the exceptions found in section 65(7) applies, the records are excluded from the scope of the *Act*.

The term "in relation to" in section 65(6) means "for the purpose of, as a result of, or substantially connected to" [Order P-1223].

The term "employment of a person" refers to the relationship between an employer and an employee. The term "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship [Order PO-2157].

If section 65(6) applied at the time the record was collected, prepared, maintained or used, it does not cease to apply at a later date [*Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507].

Section 65(6)2: Negotiations

For section 65(6)2 to apply, it must be established that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;
2. this collection, preparation, maintenance or usage was in relation to negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution; and
3. these negotiations or anticipated negotiations took place or were to take place between the institution and a person, bargaining agent or party to a proceeding or anticipated proceeding.

[Orders M-861, PO-1648]

Part 1: collected, prepared, maintained or used by the College or on its behalf

Based on my review of the contents of the records at issue, I am satisfied that they were prepared or used by the College or on its behalf. The first part of the test under section 65(6)2 has, accordingly, been met with respect to the records.

Part 2: negotiations relating to employment

The records are a draft and a finalized agreement. Both were created in the context of a negotiation of the terms of the conclusion of the appellant's employment with the College. Accordingly, since the preparation and/or use of the records was in relation to negotiations relating to the employment of a person by the College, I find that the second part of the test under section 65(6)2 has also been met.

Part 3: between an institution and a person

The negotiations at issue in this appeal took place between a person and the College. I find that the third part of the test under section 65(6)2 has been met with respect to the records.

Accordingly, I find that all of the elements required for the application of section 65(6)2 have been satisfied.

Section 65(7)

Even if the dispositions in section 65(6)2 (or for that matter, 65(6)1 or 3) apply, if the records fall within any of the exceptions in section 65(7), the *Act* still applies to them.

Section 65(7) states:

This *Act* applies to the following records:

1. An agreement between an institution and a trade union.
2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.
3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.
4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment.

In Order MO-1622, Adjudicator Donald Hale made certain findings with respect to the application of the municipal equivalent of section 65(7)3 to severance agreements involving former employees of the City of London. He found that:

In my view, the fully executed Agreements and Release which form part of Record 1 and all of Record 13 represent “agreements between an institution and one or more employees”. The records reflect the fact that the information contained in these documents was arrived at following negotiations between the individuals involved and the City. In addition, I have found above that the agreements and the negotiations which gave rise to them were “about employment-related matters between the institution and the employees”. In my view, the Agreements which comprise part of Record 1 and all of Record 13 fall within the ambit of the exception in section 52(4)3.

I find support for this view in the decision in Order M-797 where Assistant Commissioner Tom Mitchinson found as follows:

Sections 52(3) and (4) are record-specific and fact-specific. If a record which would otherwise qualify under any of the listed paragraphs of section 52(3) falls within one of the exceptions enumerated in section 52(4), then the record remains within the Commissioner's jurisdiction and the access rights and procedures contained in Part 1 of the *Act* apply.

The Board's representations state:

Although this document constitutes a communication made in the course of negotiations relating to [the Superintendent's] employment, it also constitutes the final agreement between the school Board and [the Superintendent] resulting from those negotiations. The document requested by the appellant would appear to fall within the ambit of paragraph 52(4)3 of the *Act*, and is therefore subject to the application of the *Act*.

Having reviewed the records and the Board's representations, I agree. In my view, the two records at issue in this appeal, considered together, constitute the agreement between the Board and the Superintendent with respect to his early retirement. This agreement resulted from negotiations about a matter which clearly relates to the Superintendent's employment with the Board. I find that the records fall within the scope of the exception to the section 52(3) exclusion found in paragraph 3 of section 52(4), and are therefore subject to the *Act*. Accordingly, I have jurisdiction to consider the issue of denial of access by the Board, and I will now determine whether these records qualify for exemption under section 14(1) as claimed by the Board.

I adopt the reasoning expressed by the Assistant Commissioner in Order M-797 for the purposes of this appeal. I find, therefore, that the Agreements which comprise part of Record 1 and all of Record 13 fall within the exception in section 52(4)3 and that I have jurisdiction to determine whether these records are properly exempt under the *Act*. I will, accordingly, order the City to issue a decision letter to the appellant with respect to access to the Agreements.

I agree with the preceding analysis and find nothing material to distinguish the record in the present appeal entitled "Retirement Arrangements, Amended" dated December 16, 2004, from the records under consideration in Order MO-1622. Therefore I find that the record entitled "Retirement Arrangements, Amended", dated December 16, 2004, falls within the scope of an "agreement" as discussed in the exception in section 65(7)3, and that the *Act* applies to it.

The record entitled "Retirement Arrangements" dated November 11, 2004, does not fall within this exception. This is because it is a draft of the final agreement, which, the College says, never came into effect. In my view, therefore, it represents merely a step in the negotiation process that ultimately led to the creation of the final agreement entitled "Retirement Arrangements, Amended", dated December 16, 2004. As a result, the record entitled "Retirement Arrangements" dated November 11, 2004, does not fall within the scope of an "agreement" for the purposes of the exception in section 65(7)3, nor does it otherwise fall within any other part of section 65(7). Therefore, the *Act* does not apply to the record entitled "Retirement Arrangements", dated November 11, 2004.

As I have found that the *Act* applies to the record entitled "Retirement Arrangements, Amended", dated December 16, 2004, I must now consider whether paragraphs 1, 4, 6, 7 and 9 of this record contains personal information and if so, whether the section 21(1) exemption applies.

PERSONAL INFORMATION

Under section 2(1) of the *Act*, the term "personal information" is defined as recorded information about an identifiable individual, including information relating to the employment history of the individual or information relating to financial transactions in which the individual has been involved (paragraph (b) of the definition), and the individual's name if 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) of the definition).

Previous orders of this office have considered the contents of various types of agreements, such as employment contracts or settlement and/or employment severance agreements (Orders MO-1184, MO-1332, MO-1405, MO-1749, MO-1941 and P-1348). These orders have consistently held that information about the individuals named in such agreements relate to these individuals in their personal capacity and thus qualifies as personal information. I am satisfied that the same considerations apply in the circumstances of this appeal, and that the record entitled "Retirement Arrangements, Amended", dated December 16, 2004, contains the personal information of the appellant, who was a former senior employee of the College.

The record entitled "Retirement Arrangements, Amended", dated December 16, 2004, does not contain the requester's personal information.

INVASION OF PRIVACY

Where a requester seeks the 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. The appellant has opposed the release of his personal information contained in paragraphs 1, 4, 6, 7 and 9 of the record entitled "Retirement Arrangements, Amended", dated December 16, 2004. In my view, the only exception to the section 21(1) mandatory exemption which has potential application in the circumstances of this appeal is section 21(1)(f), which reads:

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

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

Because section 21(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 21(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of the affected party's personal privacy.

In applying section 21(1)(f), 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 the personal privacy of the individual to whom the information relates. The specific provisions of these sections that are relevant in the circumstances of this appeal provide, as follows:

- (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,
 - (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
 - ...
 - (f) the personal information is highly sensitive; and
 - ...
 - (h) the personal information has been supplied by the person to whom the information relates in confidence.
- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
 - (d) relates to employment or educational history; and
 - ...
 - (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

- (4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,
 - (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution or a member of the staff of a minister;

...

Section 21(2) provides some criteria for institutions to consider in making a determination as to 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(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 whose disclosure does not constitute an unjustified invasion of personal privacy.

If none of the presumptions in section 21(3) applies, the institution must consider the application of the factors listed in section 21(2), as well as all other relevant circumstances.

The Divisional Court has ruled that once a presumption against disclosure has been established under section 21(3), it cannot be rebutted by one or more factors or circumstances under section 21(2). A section 21(3) presumption can be overcome, however, if the personal information at issue is caught by section 21(4) or if the “compelling public interest” override at section 23 applies (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

Section 21(4)(a)

Under section 21(4)(a), quoted above, disclosure of the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution does not constitute an unjustified invasion of personal privacy.

The College submits that paragraph 7 contains information that qualifies as “benefits” under section 21(4)(a) because they were provided to the appellant during employment and continue post-employment. The College submits that disclosure of this information would not constitute an unjustified invasion of personal privacy and should be disclosed. None of the other parties made specific representations on the application of this section of the *Act*.

The Commissioner’s office has interpreted “benefits” to include entitlements, in addition to base salary, that an employee receives as a result of being employed by the institution (Order M-23). Order M-23 lists the following as examples of “benefits”:

- insurance-related benefits
- sick leave, vacation
- leaves of absence
- termination allowance
- death and pension benefits
- right to reimbursement for moving expenses

In subsequent orders, adjudicators have found that “benefits” can include:

- incentives and assistance given as inducements to enter into a contract of employment [Order PO-1885]
- all entitlements provided as part of employment or upon conclusion of employment [Order P-1212]

These principles and this reasoning have been applied in previous orders issued by this office including MO-1749 and MO-1796.

It has also been held, however, that section 21(4)(a) does not apply to entitlements that have been *negotiated* as part of a retirement or termination package (see for example Orders M-173, M-204, M-797 and MO-1332) except where it can be found that the information reflects benefits to which the individual was entitled as a result of being employed (Orders MO-1749 and PO-2050). As explained by Adjudicator Catherine Corban in Order MO-1970, the common thread in these orders appears to be that section 21(4)(a) applies to benefits negotiated as part of a retirement or termination agreement so long as they are benefits the individual received while employed and are continuing post-employment.

I accept the interpretation of “benefits” established by these previous orders. Having considered these principles in light of the record before me, I find that the information in a portion of the second sentence and all of the third sentence in paragraph 1, a portion of paragraph 4 and the first sentence of paragraph 7 of the record entitled “Retirement Arrangements, Amended” dated December 16, 2004, pertains to benefits that the appellant was entitled to at retirement, or the negotiated continuation of specific benefits he received during employment and that continued. I find that this information is clearly about “benefits” within the meaning of section 21(4)(a) of the *Act*. Because I have found that this information falls under section 21(4)(a), I need not consider whether it could also fall within the section 21(3) presumption (unlike in Order MO-1796, where the adjudicator concluded that vacation and sick leave entitlement, in the circumstances of that appeal, did not fall within section 21(4)(a)).

Disclosure of a portion of the second sentence and all of the third sentence in paragraph 1, a portion of paragraph 4 and the first sentence of paragraph 7 of the record entitled “Retirement Arrangements, Amended” dated December 16, 2004, will not therefore result in an unjustified invasion of privacy and it is not exempt under section 21(1). Since no other exemption has been claimed to apply to this information, I will order that it be disclosed to the requester.

I do not find that section 21(4)(a) applies to any of the other information in paragraphs 1, 4, 6, 7 and 9 of the record entitled "Retirement Arrangements, Amended", dated December 16, 2004. I will now consider whether the disclosure of the remaining information in those paragraphs, which does not fall under section 21(4)(a), is presumed to be an unjustified invasion of privacy under section 21(3).

The Presumptions in section 21(3) of the Act

The appellant submits that disclosure of the remaining information in paragraphs 1, 4, 6, 7 and 9 of the record entitled "Retirement Arrangements, Amended", dated December 16, 2004, constitutes a presumed invasion of his privacy because it relates directly to his employment history with the College.

The College submits that the information in the first and second sentence of paragraph 1 falls within the section 21(3)(d) presumption because this presumption has been found by this office to cover "the last day worked" and "information in a severance agreement that sets out the period during which the salary of the individual will continue to be paid" as well as the "start and finish dates of a salary continuation agreement".

In support of its position that the information in paragraph 4 should not be disclosed the College submits that previous Orders of this office have denied access to "sick leave entitlements" based on the section 21(3)(d) presumption. The College references Order MO-1796 in support of this submission.

Finally, the College submits that the information in paragraph 6 falls within the section 21(3)(f) presumption. The College again cites Order MO-1796 in support of its position.

In Order PO-2050, Adjudicator Laurel Cropley examined the application of the presumptions at section 21(3)(d) and (f) to similar information, finding:

Generally, previous orders have found that although one-time or lump sum payments or entitlements do not fall under the presumption found at sections 21(3)(f) or (d) (Orders M-173, MO-1184 and MO-1469), information such as start and finish dates of a salary continuation agreement fall within the presumption in section 21(3)(d) and references to the specific salary to be paid to an individual over that period of time fall within the presumption in section 21(3)(f) (Order P-1348).

In addition, information which reveals the dates on which former employees are eligible for early retirement, the start and end dates of employment, the number of years of service, the last day worked, the dates upon which the period of notice commenced and terminated, the date of earliest retirement, entitlement to and the number of sick leave and annual leave days used and restrictive covenants in which individuals agree not to engage in certain work for a specified duration has

been found to fall within the section 21(3)(d) presumption (Orders M-173, P-1348, MO-1332, and PO-1885). Contributions to a pension plan have been found to fall within the presumption in section 21(3)(f) (Orders M-173 and P-1348).

Previous orders have found, however, that the address of an affected party, releases, agreements about the potential availability of early retirement, payment of independent legal fees and continued use of equipment, for example, do not fall within any of the presumptions in section 21(3) (Orders MO-1184 and MO-1332). In Order M-173, former Assistant Commissioner Irwin Glasberg found that much of the information in these types of agreements did not pertain to the "employment history" of the individuals for the purposes of section 14(3)(d) (of the municipal *Act*), but could more accurately be described as relating to arrangements put in place to end the employment connection.

I agree with the reasoning in these orders and find that the termination date in clause 1(i), references to the benefits the affected person was entitled to as an employee and which were to be continued or not upon termination in clause 2(iii) and clause 3(iii) which makes references to the affected person's obligations arising from his previous employment fall within the presumption in section 21(3)(d). In addition, a portion of clause 2(iii) also makes reference to the affected person's actual salary and thus describing his income, falls within the presumption in section 21(3)(f).

[Adjudicator Cropley finds later in her order that despite the application of the presumption in section 21(3), the benefits in clause 2(iii) fall under the exception in 21(4)(a) and accordingly, that disclosure of that information did not constitute an unjustified invasion of privacy.]

I find that none of the presumptions in section 21(3) apply to the remaining information in this record, including information describing lump sum or one time payments relating to the affected person's termination and in relation to legal fees (in clauses 2(i), (ii) and (viii)).

I adopt the approach taken by Adjudicator Cropley.

In my view, in accordance with the authorities noted above, the information that sets out the nature of the arrangement that is reflected in the first sentence of paragraph 1 falls within the presumption in section 21(3)(d). This is because, in my view, it is akin to the start and finish dates of a salary continuation agreement and thereby relates to the affected party's employment history.

Furthermore, and in light of that fact that the information in paragraph 3 of the record has already been provided, I find that the balance of the information in paragraph 4 and all of the information in paragraph 6 (except the subject heading), fall within the presumptions in sections 21(3)(d)

and/or (f). This is because this information qualifies as “sick leave entitlements” or sets out the specific amount that the appellant is to be paid for the time period set out in the first sentence in paragraph 1.

In my view, the information contained in the rest of the second sentence of paragraph 1 and the second sentence of paragraph 7 falls within the section 21(3)(f) presumption. This is because it describes financial planning considerations and the manner of payment for continuing benefits, and thereby describes the individual’s finances.

I find that the content of paragraph 9 does not fall within sections 21(3)(d) or (f). In my view, it falls within the ambit of continued use of equipment, which, as set out in the excerpt quoted above, does not fall within the section 21(3) presumption.

All the relevant circumstances in section 21(2)

I must now consider whether section 21(2) applies to the information in paragraph 9 of the record entitled “Retirement Arrangements, Amended”, dated December 16, 2004.

The appellant submits that the arrangements made in the record entitled “Retirement Arrangements, Amended”, dated December 16, 2004, were meant to remain private. He recounts in his submission various reasons why people entering into retirement packages with the College would want to maintain the confidentiality of the arrangements. Although no specific representations were made that the information in paragraph 9 of the record before me was to be kept confidential, there is a notation in the upper right hand corner of the record that it is “strictly confidential”.

The requester submits that the information in the record “is identified as ‘public knowledge’ on the College Compensation and Appointments Council for the College (the Council)” website. The requester submits that the appellant’s objection to disclosure of the information “suggests that his retirement allowance was not in keeping with the Council’s retirement allowance provision”. The requester submits that:

It is the restriction on [a] retirement allowance by the Council that should allow me to see [the appellant’s] retirement package to verify that it is in keeping with college presidents[?] employment contracts.

In its Reply representations the College submits that a document it describes as a “Model Contract of Employment [for] College Presidents” is found on the Council’s website but that it is simply a resource. The College further submits that this document does “not necessarily reflect the actual agreement entered into” between the College and the appellant.

Analysis and Findings

Notwithstanding the confidentiality notation on the record entitled "Retirement Arrangements, Amended", dated December 16, 2004, I find that section 21(2)(h) does not apply to the information in paragraph 9, or for that matter any of the information in the record. This is because I find that the appellant did not "supply" this information to the College. On the contrary, rather than having been "supplied", this record sets out negotiated terms of the agreement, agreed to by both the College and the appellant. Nevertheless, in the circumstances of this appeal and in light of the notation, the appellant would have a reasonable expectation that the specific terms of the arrangement, including the information in paragraph 9, would be kept confidential. The appellant's expectation of confidentiality vis-à-vis this information, while not specifically listed in section 21(2), is a relevant and important consideration that carries some weight in determining whether disclosure would constitute an unjustified invasion of personal privacy.

In his representations, the appellant gave certain examples of the reasons why a person would want potentially sensitive terms of a retirement package to remain confidential. That said, he provided no explanation of how the terms of the record before me, including paragraph 9, qualify as "highly sensitive" under section 21(2)(f). Given the limited information provided to me on this subject, I would accord this factor no weight in balancing the privacy interests of the appellant against the requester's right of access.

The requester's submissions point to disclosure of the information being desirable for the purpose of subjecting the activities of the College to scrutiny. The submissions also raise another circumstance which is not listed in the section but is often considered in balancing access and privacy interests under section 21(2) in matters of this nature, i.e. that "the disclosure of the personal information could be desirable for ensuring public confidence in the integrity of the institution".

In Order MO-1469, Adjudicator Hale stated:

It has been well-established in a number of previous decisions that the contents of agreements entered into between institutions and senior employees represent the sort of records for which a high degree of public scrutiny is warranted (Order M-173, M-953). Based on this, and the appellant's desire to scrutinize how the Municipality compensated a senior management employee upon his termination, I find that section 14(2)(a) is a relevant consideration in the circumstances of the present appeal. I further find that this is a significant factor favouring the disclosure of the information contained in the record.

Previous orders issued by the Commissioner's office have identified another circumstance which should be considered in balancing access and privacy interests under section 14(2). This consideration is that "the disclosure of the personal information could be desirable for ensuring public confidence in the

integrity of the institution". (Orders 99, P-237, M-129, M-173, P-1348 and M-953).

The severance agreement which forms the record at issue involved a significant expenditure of public funds on behalf of a senior employee. Further, the climate of spending restraints in which these agreements were negotiated placed an obligation on the Municipality's officials to ensure that tax dollars were spent wisely. On this basis, I conclude that the public confidence consideration also applies in the present circumstances.

I adopt the approach outlined above from Order MO-1469 for the purposes of the present appeal. I find that section 21(2)(a), which favours disclosure, is a relevant factor and has significant weight. I base this conclusion, in part, on the circumstance that the appellant occupied a senior position with the College. I also find that the "public confidence in the integrity of the institution" consideration applies, but carries moderate weight in respect of information pertaining to the appellant's continued use of equipment.

To summarize, I have found that the appellant's expectation of confidentiality is a factor favouring privacy protection that carries some weight. I have also found that the factor favouring disclosure at section 21(2)(a), relating to the desirability of subjecting the activities of the institution to public scrutiny, and the consideration relating to "public confidence in the integrity of the institution" both apply, and carry significant and moderate weight, respectively.

Balancing these factors is a delicate task. In my view, however, the transparency purposes of the *Act*, (as reflected in section 21(2)(a) and the "public confidence in the integrity of the institution" consideration) are substantial and pressing objectives, and in the circumstances of this appeal, I find they outweigh the factor favouring privacy protection for the information in paragraph 9 of the record entitled "Retirement Arrangements, Amended", dated December 16, 2004. I therefore find that disclosure of paragraph 9 would not result in an unjustified invasion of personal privacy, and as such falls within the section 21(1)(f) exception. It is, therefore, not exempt under section 21(1) and I will order it disclosed.

No specific representations were made with respect to the application of the "public interest override" in section 23 of the *Act*. However, even if the representations of the requester could be interpreted as asserting the application of section 23, based on the materials before me, I am not satisfied on the facts of this case that a compelling public interest exists in the disclosure of the information found to be subject to the section 21(3) presumptions which clearly outweighs the purpose of the section 21(1) exemption.

ORDER:

1. I find that the *Act* does not apply to the record entitled "Retirement Arrangements" dated November 11, 2004.

2. I allow the appellant's appeal with respect to the highlighted information in paragraphs 1, 4, 6 and 7 of the record entitled "Retirement Arrangements, Amended", dated December 16, 2004. The highlighted information is **not** to be disclosed.
3. I do not uphold the appellant's appeal with respect to the balance of the information in paragraphs 1, 4, 6, 7 and 9 in the record entitled "Retirement Arrangements, Amended", dated December 16, 2004. Accordingly, I order the College to provide the requester with access to that information by providing the requester with those portions of this record by December 8, 2006, but not before December 4, 2006.
4. In order to verify compliance with the terms of this Order, I reserve the right to require the College to provide me with a copy of the record entitled "Retirement Arrangements, Amended", dated December 16, 2004, as disclosed to the requester, upon request.

Original signed by: _____
Steven Faughnan
Adjudicator

_____ November 2, 2006