



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER PO-2905**

**Appeal PA09-446**

**Georgian College of Applied Arts and Technology**



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## **NATURE OF THE APPEAL:**

This order addresses the issues raised by a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to Georgian College (the College) for access to a copy of all receipts submitted for reimbursement by the College's president for political party fundraisers in the 2008 calendar year.

The College identified responsive records and denied access to them in full, claiming the personal privacy exemption at section 21(1) of the *Act*. In addition, the college claimed that the records were not subject to the *Act* under section 65(6) on the basis that they relate to labour and employment relations matters.

The requester, now the appellant, appealed the College's decision and an appeal file was opened. Mediation of this appeal was not successful and the file was transferred to adjudication.

During the inquiry into the appeal, I sought, and received, representations from the College and from the appellant, as well as reply representations from the College. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

In the College's representations, it advised that it is no longer relying on the exclusion found at section 65(6) of the *Act*. Therefore, I will not be addressing section 65(6) in this order. In his representations, the appellant raised the issue of the public interest override and I added it as an issue in this appeal.

## **RECORDS:**

Four pages of records are at issue, described as follows:

- record 1 is a form entitled *Statement of Travel & Employee Reimbursement*, completed by the College's president;
- record 2 is a duplicate cheque endorsed by the College's president and two receipts;
- record 3 is a cheque endorsed by the College's president; and
- record 4 is a letter from the College's acting controller to the president.

## **DISCUSSION:**

### **PRELIMINARY ISSUE: RESPONSIVENESS**

After reviewing the records, I find that there is non-responsive information contained on the expense reimbursement form, as well as the two receipts that form part of record 2. Record 1 contains information regarding expenses reimbursed to the president unrelated to the appellant's request. More specifically, this non-responsive information relates to expenses that have no connection to political party fundraisers. Similarly, the two receipts that form part of record 2

are also unrelated to the appellant's request. Accordingly, I am satisfied that this information is not responsive to the appellant's request. I will not order this information to be disclosed and will not refer to it again in this order. The remaining information is responsive to the request.

## **PERSONAL INFORMATION**

The College has claimed that the records contain the "personal information" of an identifiable individual, namely the College's president. In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates. That term is defined in section 2(1) of the *Act* as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) 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;

Section 2(3) of the *Act* also relates to the definition of personal information. This section states:

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual (Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225).

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual (Orders P-1409, R-980015, PO-2225 and MO-2344).

The College submits that the president attended a political fundraiser for which he was reimbursed by the College. Subsequently, the president determined that the reimbursement of the expense was made in error. The president then repaid the monies in full to the College. The College concludes that the cost of the president’s attendance at the fundraiser was not an employment related expense and is, therefore, his personal information. In particular, the College states that the information relates to “financial transactions in which the individual has been involved,” as set out in the definition of personal information in section 2(1) of the *Act*.

In addition, the College submits that the information contained in the records is about the president in his personal capacity. Although the financial transaction was originally treated as a business related expense, this was done in error. The College further submits that the transaction cannot be treated as a business related expense simply because it arose in the context of the president’s official capacity at the College, and that this is insufficient to turn a personal financial transaction into a business related one.

The appellant submits that the records do not contain personal information, as they relate to a transaction carried out by the president in his professional capacity. The appellant submits that, presumably, the president believed that the fundraiser was a suitable business expense, as he filed an expense claim. In addition, the appellant takes the position that the actions of the College indicate agreement with this analysis, as it originally reimbursed the president. The appellant states “[t]he fact that the [p]resident repaid the expense does not allow the [C]ollege to suddenly classify the records as personal information.”

In addition, the appellant submits that the records do not reveal any information of a personal nature, as the cost to the College and, eventually, the president, is already on the public record via Elections Ontario’s “*Real Time Disclosure of Contributions*” data, and an article in a local newspaper.

### ***Analysis and Findings***

Record 1 is a *Statement of Travel & Employee Reimbursement* completed by the College's president, which sets out the president's expenses that were submitted to the college for reimbursement over a particular period of time. The responsive portion of the record sets out the president's request for reimbursement of the cost of attending the fundraiser. In completing this form, in my view, it is clear that the president was seeking reimbursement from the College of an expense incurred in his professional capacity.

It has been established in a number of previous orders of this office that information provided by, or relating to, an individual in a professional capacity or in the execution of employment responsibilities, including charges incurred in the course of employment, is not "personal information" for purposes of the *Act*. Whether or not the president was in error when he submitted the expense to the College, and whether or not the College was in error when they reimbursed the expense is, in my view, not decisive. At the time the reimbursement claim was submitted and the cost of attending the fundraiser paid by the College to the president, it was the intention of both the College and the president to treat this cost as a business expense. As is specifically stated on record 1, "The above information accurately represents expenditures made while on college business." Therefore, the information contained in this record does not qualify as personal information for the purposes of the *Act*.

Because I have found that this record does not contain any personal information, disclosure of this information cannot constitute an unjustified invasion of privacy, and section 21(1) of the *Act* does not apply. As the College did not claim any other exemptions, I shall order the disclosure of the responsive portions of record 1.

Conversely, turning to records 2, 3 and 4, I find that these records do contain the president's personal information. These records reflect the president's determination to treat the cost of attending the fundraiser as a personal expense, rather than a business expense. The records demonstrate that the president personally reimbursed the College for the cost of attending the fundraiser. As a result, I am satisfied that these records relate to the president in his personal capacity. As such, they contain information set out in the definition of personal information under section 2(1) of the *Act*, including information relating to financial transactions in which he has been involved, his bank account number and his personal address and telephone number. In addition, record 2, which is a copy of the duplicate cheque, also contains the personal information of another individual, relating to the same type of information as described above.

Having determined that records 2, 3, and 4 contain the president's personal information, I shall now determine whether disclosure of that personal information would constitute an unjustified invasion of privacy.

### **PERSONAL PRIVACY**

Where a requester seeks the personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21. Of relevance to this appeal is section 21(1)(f), which states:

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

...

- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 21(1)(f).

Section 21(4) sets out the conditions where, if applicable, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 21.

Section 21(4) states:

(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;
- (b) discloses financial or other details of a contract for personal services between an individual and an institution; or
- (c) discloses details of a licence or permit or a similar discretionary financial benefit conferred on an individual by an institution or a head under circumstances where,
  - (i) the individual represents 1 per cent or more of all persons and organizations in Ontario receiving a similar benefit, and
  - (ii) the value of the benefit to the individual represents 1 per cent or more of the total value of similar benefits provided to other persons and organizations in Ontario.

- (d) discloses personal information about a deceased individual to a spouse or close relative of the deceased individual, and the disclosure is desirable for compassionate reasons.

The College submits that section 21(4) does not apply to the records at issue, and the appellant did not address this section in his representations. Having reviewed the records, I find that the records do not contain any of the information set out in section 21(4) and, therefore, it is not applicable in this appeal.

If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if the “public interest override” at section 23 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The College submits that section 21(3)(f) applies to the records at issue. Section 21(3)(f) states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

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

The College submits that the records disclose details of a personal financial transaction of the president and the level of detail disclosed on the face of the records meets the requirement that the records provide a “description.”

In addition, the College states:

The College submits that this information meets the criteria of reasonably accurate and specific, as outlined by the IPC in Order PO-2260 as an exact dollar value is provided in the records. The IPC has also stated that payments made to individuals fall within the definition of their “financial activities” under s. 21(3)(f) (Order PO-1834). The necessary corollary is that a personal payment made by an individual must also constitute their “financial activities.”

The appellant disputes the College’s position that disclosure of the records would be a presumed invasion of privacy. The appellant submits that filings with Elections Ontario, which are publicly available, show that the president made a donation, in his name, to a political party. The date of the donation was the date that the political fundraiser dinner was held. Local news reports also indicated that the president attended the fundraiser.

The appellant further submits that the only information that has not been made public is whether the president or the College paid for the donation.

In reply, the College states that, although certain information regarding the political fundraiser attended by the president has been disclosed to the media, the source of the payment has not been made public. Therefore, the appellant's argument that the information is already in the public domain has no application to the information he seeks, as this information is not in the public domain.

Further, the College submits that the IPC has stated in past orders that although particular personal information may have been disclosed at one time as part of a public process, it does not necessarily follow that this information should be freely and routinely available to anyone who asks. The College relies on Orders 180, 181, M-68, M-350, M-800, M-849, M-1053 and MO-2145 to support its position.

The College's argument is essentially that the repayment of the funds to the College by the president constitutes the president's "financial activity" and is, therefore, presumed to be an unjustified invasion of privacy, and that this information is not in the public domain. I am not persuaded by this argument.

In Order P-267, then Assistant Commissioner Tom Mitchinson found that section 21(3)(f) did not apply to a receipt issued to an individual by a political party to whom the individual had made a financial contribution. Assistant Commissioner Mitchinson based his finding on the fact that the record was publicly available through the Commission on Election Finances. I agree with and adopt Assistant Commissioner Mitchinson's approach in this appeal.

In addition, in my view, records 2, 3 and 4 relate to the same transaction, namely the contribution made by the president to a political party and subsequent repayment to the College by the president. This was initially a business expense for which the president sought, and received, reimbursement. In my view, the College cannot then characterize the repayment of this amount to rectify the mistake as describing the president's financial history or activities or assert that the details of the subsequent repayment to the College would be an unjustified invasion of the president's privacy.

In addition, I note that lump sum payments that are separate from an individual's salary have consistently been found not to fall within section 21(3)(f) (see Orders M-173, MO-1184, MO-1469, MO-2174 and MO-2318).

Consequently, I conclude that the presumption under section 21(3)(f) is not applicable to the records. As no other section 21(3) presumption applies, I will consider whether the disclosure of records 2, 3 and 4 would constitute an unjustified invasion of personal privacy having regard to the factors set out in section 21(2) of the *Act*.

The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2) (Order P-99).



Section 21(2) states:

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;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

The College submits that the factors set out in section 21(2) weigh in favour of finding that disclosure of the personal information would be an unjustified invasion of privacy.

***Factors weighing against disclosure***

The College has listed the following factors and argues that they weigh strongly against disclosure of the records:

- unfair harm to the president, causing considerable personal distress, as contemplated by sections 21(2)(e) and (f), on the basis that they deal with personal financial activities;

- the information was supplied by or received by the president implicitly in confidence and there is no useful employment related purpose to which this information may be put [s. 21(2)(h)]; and
- unfair damage to the president's reputation, as set out in section 21(2)(i). Although the records as a whole are technically accurate, there is a substantial and real risk that selective communication of the records could be used to misrepresent the complete character of the transaction between the College and the president.

The appellant submits that the records would not reveal sensitive information about the president that is not already known. In addition, the appellant does not agree that releasing the records would cause the president to be exposed unfairly to pecuniary harm, as the College has not provided any evidence to establish harm.

Turning to the factor set out at section 21(2)(e), this office has held that, although the disclosure of personal information may be uncomfortable for those involved, this does not mean that harm would result, or that any resulting harm would be unfair (Order PO-2230). The College submits that the disclosure of personal information would cause the president "considerable personal distress." However, the College has not provided any evidence that the president will be exposed unfairly to pecuniary or other harm, nor has the College established a sufficient causal connection between the release of the records and the types of harm envisaged. In fact, the College acknowledges that the president was initially reimbursed for the expense and later, on discovering that a mistake had been made, paid back the cost of the fundraiser. In addition, as noted by the appellant, the cost of the fundraiser is already a matter of public record. The amount can also be clearly discerned from record 1, which I will be ordering disclosed. In view of this, I am not satisfied that the disclosure of records documenting the series of transactions acknowledged by the College will unfairly expose the president to pecuniary or other harm. As a result, I find that section 21(2)(e) does not apply.

For personal information to be considered highly sensitive in the manner contemplated by section 21(2)(f), I must be satisfied that disclosure of the information could reasonably be expected to cause significant personal distress to the subject individual (Order PO-2518). As noted previously, the College acknowledges that the president was originally reimbursed for the fundraising expense but subsequently repaid the College. The fact that the president made a donation to a political party, and the amount of that donation, is on the public record. The records simply reflect the repayment to the College of the funds for which the president was initially reimbursed. In the absence of specific representations from the College as to why this disclosure would cause the president "considerable personal distress," and based on my independent review of the records, I find that section 21(2)(f) is not a circumstance which weighs in favour of protecting the privacy interests of the president.

The relevance of the factor found at section 21(2)(h) is determined by an evaluation of whether the personal information was supplied by the individual to whom the information relates in confidence. Any assurances of confidentiality given to the individual providing the information must also be considered. Although I have no specific evidence before me on this point, it would have been, in my view, reasonable to conclude from the circumstances that the president

expected some level of confidentiality or discretion regarding this series of transactions. I would, however, place low weight on this consideration given the specific circumstances regarding the donation, that is, that the president originally sought reimbursement from the College. Further, given the clear acknowledgement by the College that the president reimbursed the cost of his attendance at the fundraiser, I place low weight on any expectations of confidentiality in the records detailing this repayment. Finally, I note once again that the fact of the donation, and the amount, is a matter of public record, thus diminishing any expectation of confidentiality on the part of the president.

The question that must be asked to determine the applicability of section 21(2)(i) is whether the disclosure of the information would *unfairly* damage the reputation of the individual whose information it is. I have considered the records at issue in this light and, in my view, their disclosure would not give rise to the harm addressed by this factor. The College concedes that the records are “technically accurate.” However, the College states that there is a substantial risk that selective communication of the records can be used to misrepresent the complete character of the transaction between the College and the president. I am not persuaded by this argument. Although this position is not further explained by the College, any unfair damage to the president’s reputation would presumably result from the fact that he mistakenly claimed his attendance at the fundraiser as a business expense but subsequently reimbursed the College. However, as noted numerous times above, this has been acknowledged by the College. The records at issue simply document these facts. I am, therefore, unable to conclude that the disclosure of these records would unfairly damage the president’s reputation and give no weight to this factor.

### ***Factors weighing in favour of disclosure***

Although not specifically stated in his representations, the appellant presents arguments to support the application of the factor at section 21(2)(a) in favour of disclosure; that is, that disclosure of the records is desirable for the purpose of subjecting the activities of the government and its agencies to public scrutiny. The appellant states that the initial payment of the cost of the fundraiser by the College and subsequent repayment by the president raise serious questions of public policy, specifically, the use of public funds to attend political party fundraisers and the perceived need for leaders of public bodies to be represented at fundraisers in order to move their issue forward.

The College submits that the factors weighing in favour of disclosure are weak, and that this office has previously found that in order for section 21(2)(a) to apply, the appellant must provide evidence that the activities of the institution have been publicly called into question, and that disclosure of the information is necessary in order to subject the institution’s activities to public scrutiny. The College submits that this is not the case in the present circumstances.

The issue of whether the activities of the institution have been “publicly called into question” in relation to section 21(2)(a) arises from Order P-273. In that case, former Assistant Commissioner Tom Mitchinson was determining whether the factor favouring disclosure in section 21(2)(a) was strong enough to rebut a presumed unjustified invasion of privacy under section 21(3)(d), and he was setting out the kind of evidence that would be required in order to

do that. In *John Doe v. Ontario (Information and Privacy Commissioner)* (cited above), the Divisional Court ruled that a presumption in section 21(3) can never be rebutted by a factor or factors under section 21(2), and for this reason, the analysis I have just summarized from Order P-273 would not now occur.

Section 21(2)(a) serves the very important purpose of government transparency, one of the fundamental purposes of access-to-information laws, and its wording simply requires that “disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny.” An overly technical or narrow approach to this provision would defeat that purpose. Accordingly, it is not appropriate to *require* that the issues addressed in the records have been the subject of public debate; rather, this is a circumstance which, if present, would favour the application of section 21(2)(a).

In the circumstances of this appeal, I note that this expense was originally submitted by the president to the College, which reimbursed him in full. In my view, the repayment of the expense to the College is part of the same transaction.

In my view, disclosure of the president’s personal information in the records is clearly desirable for the purpose of subjecting the college’s activities to public scrutiny. Given that public funds were initially used to pay for the political donation, taxpayers should be able to review the records for themselves in order to assess whether the donation and subsequent repayment was an appropriate use of public funds. Only by examining the complete record of the transactions leading to the payment of the cost of the fundraiser will the public be able to perform an accurate assessment.

In Order P-256, former Assistant Commissioner Mitchinson made the following statement regarding the need for public knowledge respecting expenditures by government employees in the course of their duties:

In my view, the public has a right to expect that expenditures made by employees of government institutions during the course of performing their employment-related responsibilities are made in accordance with established policies and procedures. It has a further right to expect that these policies and procedures are carefully developed, in accordance with sound and responsible administrative principles; clearly communicated and understood by all employees, applied fairly and consistently, and that audit systems are in place to ensure that they are followed and adhered to by all employees. *In submitting expense claims for reimbursement, government employees should do so on the basis that they may be called upon to substantiate each and every expenditure, both internally to the management staff of the institution, and externally to the general public. As a general principle, I feel that this level of disclosure of expense account information is, as section 21(2)(a) states: "... desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny."* (emphasis added)

I adopt the approach taken by the former Assistant Commissioner in this appeal. The role of access to information legislation in promoting government accountability and transparency is more compelling when the information sought relates directly to government expenditure of taxpayer money. In this case, disclosure of the entire transaction record is necessary in order to bring the proper level of transparency to what was initially an expense paid for by a government organization.

I have carefully reviewed the representations of the parties and the records remaining at issue in this appeal. I am satisfied that section 21(2)(a) is a relevant factor weighing strongly in favour of disclosure of the records.

In addition to the factors that are set out in section 21(2), there is a related unlisted factor that weighs strongly in favour of disclosure, that being whether “the disclosure of the personal information could be desirable for ensuring public confidence in the integrity of the institution,” as stated in Orders 99, P-237, M-129, M-173 and M-278. The president of the College is a high ranking employee and the disclosure of the records relating to the repayment of an expense claim that was originally characterized as a business expense is desirable for ensuring public confidence in the integrity of the College. In other words, disclosure of the entire set of records relating to this transaction is necessary to tell the complete story of the payment of this expense and to satisfy the public that government funds were not spent inappropriately.

Taking all the representations into account and having carefully considered the records, I find that two factors weigh strongly in favour of disclosure of the responsive portions of records 2, 3 and 4: that the disclosure of the information is desirable for the purpose of subjecting the activities of the institution to public scrutiny (section 21(2)(a)) and for ensuring public confidence in the integrity of the institution (an unlisted factor).

In addition, I find one factor weighing against disclosure, namely, that the information was supplied to the college by the president in confidence. However, as previously discussed, I have given it little weight. Therefore, I find that the factors under section 21(2) favouring disclosure outweigh the factors against disclosure.

Having balanced the factors favouring disclosure against those favouring privacy protection, I find that releasing most of the information in the responsive portions of the remaining records at issue is not an unjustified invasion of personal privacy. As a result, I will order the disclosure of the responsive parts of records 2, 3 and 4, with the following minor exceptions.

Records 2 and 3 contain personal information such as the home telephone number, home address, bank account and branch number of the president and another individual. In my view, no factors favouring disclosure of this information have been identified. For example, the disclosure of this relatively small amount of personal information will not assist in subjecting the activities of the College to public scrutiny, nor will it assist in ensuring public confidence in the College’s integrity. For this reason, I find that this information is exempt under section 21(1) and I will not order its disclosure. I will highlight the portions of records 2 and 3 that should not be disclosed to the appellant.

Given that I will be ordering the disclosure of the responsive portions of the four records at issue in this appeal, it is not necessary for me to discuss the application of the public interest override found at section 23 of the *Act*.

**ORDER:**

1. I order the College to disclose records 1, 2 and 3 by **September 20, 2010** but not before **September 15, 2010**. I have enclosed a copy of the records and have highlighted the portions of the records that are not to be disclosed to the appellant.
2. I order the College to disclose record 4 in its entirety by **September 20, 2010** but not before **September 15, 2010**.
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 portions of the records disclosed to the appellant.

Original signed by: \_\_\_\_\_  
Brian Beamish  
Assistant Commissioner

\_\_\_\_\_ August 16, 2010