



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER 109**

**Appeal 890015**

**Seneca College of Applied Arts and Technology**



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October 31, 1989

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 109  
Appeal Number 890015  
Seneca College of Applied Arts and Technology

This letter constitutes my Order in your appeal from the decision of the head of Seneca College of Applied Arts and Technology (the "institution") regarding your request for information made under the Freedom of Information and Protection of Privacy Act, 1987 (the "Act").

On December 10, 1988, you wrote to the institution as follows:

I am requesting access, by way of receiving photocopies, of the documents (as they are made available) in which teachers and professors list or order the books which are required reading for their courses. These lists are held by your campus book store.

Specifically, I want access to the documents which will show me the course identification such as the course number, the name or teacher or professor who is giving the course, author and title and edition and publisher of the book, ISBN numbers of books, required or recommended status of the book, dates on which book ordered and when it will be first used and #no. students.

I am prepared to pay a reasonable fee for photocopying and or mailing.

On January 30, 1989, the Freedom of Information and Privacy

**[IPC Order 109/October 31, 1989]**

Co-ordinator for the institution replied to you as follows:  
As discussed with you, by telephone, on January 23, 1989  
the record as requested does not exist.

Your revised request for the forms received by the  
College bookstore from the Academic Divisions and/or  
individual faculty members that contain the information  
required to order books has been denied by  
W.R. McCutcheon, President.

The denial of access to these records relies upon the  
exemptions set forth under the Act, and specifically  
sections 18(1)(a) and (c). The college views the  
information requested as being commercial in nature and  
its release would prejudice the College's ability to  
provide expected level of service to its students.  
Further, we feel that the College would endanger our  
contractual commercial relationships with various  
suppliers.

On February 2, 1989, I received your letter appealing the decision  
of the institution, and I gave notice of the appeal to the  
institution on February 8, 1989. You pointed out in your letter to  
me that:

Reasons cited by both colleges are "information requested  
is commercial in nature and would prejudice the college's  
sibility (sic) to provide expected level of service to its  
students". The release of this information would not  
reduce the level of service to its students.  
Theoretically if another bookseller used this information  
to compete with the campus store in selling textbooks  
this in no way would reduce the capability of (sic)  
aforementioned campus store to provide continued good  
service. Other area of concern "would endanger our  
contractual commercial relationship with various  
suppliers". ...and Seneca could still order as many  
books as they deem fit for sale at their store. Book  
suppliers are obliged to sell their textbooks to any  
bookseller who orders them and offer the same discount.

As you know, as soon as your appeal was received by my office, an  
Appeals Officer was assigned to investigate the circumstances and  
attempt to mediate a settlement. The Appeals Officer obtained and  
reviewed samples of the records.

Settlement of the issues in this appeal was not achieved during  
mediation.

Accordingly, an Appeals Officer's Report was prepared and sent to you and the institution. By letter dated July 20, 1989, all parties were asked to make representations to me concerning the subject matter of the appeal. Representations were received from you and the institution. I have taken all representations into account in reaching my decision.

As indicated above, the institution has cited subsections 18(1)(a) and (c) as the basis for refusing to disclose the requested records. The subsection reads as follows:

A head may refuse to disclose a record that contains,

(a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;

...

(c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

...

To establish a valid exemption under subsection 18(1)(c), the institution must successfully demonstrate a reasonable expectation of prejudice to its economic interests or its competitive position arising from disclosure of the records.

In its representations, the institution submitted that it has an obligation to provide a full service to its students. The institution stated that a competitor with access to the record at issue could pick and choose which books to offer (i.e., those it is sure of selling) and would purchase only a limited quantity of books so that it would not be left with unsold inventory.

The institution went on to state:

...the College will not know which books [a competitor] will be offering to students and how many [the competitor] has purchased. The private sector is not subject to the Freedom of Information Act. The College will then be placed in a noncompetitive situation. For every book [a competitor] decides to sell, the College will be overstocked and will be faced with the associated

costs.

In support of the head's decision to refuse disclosure of the record at issue, the institution submitted a letter from one of its textbook publishers. The publisher stated that, over and above a certain percentage of net purchase returns from the previous calendar year, any returns in excess of that total would be subject to a 15% re-stocking charge. Also, the institution submitted evidence that in 1985, one of its bookstores "suffered considerable loss in volume and significant returns of texts from students" because a commercial mail-order operation gained access to the book lists for some subjects offered by the institution.

The reasons raised by you for disclosure of the records were that:

...the onus of proof being on the head I ask the representatives of... Seneca to give examples of where a campus store is forced to make available their booklists, and their ability to serve their students has been adversely affected. ...I do not believe that the release of this information would harm. . .Seneca College. ...Campus stores have the resources, experience, labor pool, etc. to continue to be viable whatever the circumstances.

I have considered the representations submitted by both you and the institution and reviewed samples of the records at issue. In my view, the requested records fall squarely within the parameters of subsection 18(1)(c) of the Act. Releasing the book lists could reasonably be expected to prejudice the institution's economic interests as well as its competitive position, as has been demonstrated by the institution in this case.

Because I have found that the exemption provided by subsection 18(1)(c) of the Act applies to the records at issue in this appeal, it is not necessary for me to consider the application of section 18(1)(a).

My order is, therefore, to uphold the decision of the head.

Yours truly,

Sidney B. Linden  
Commissioner

cc: Mr. W.R. McCutcheon, President

[IPC Order 109/October 31, 1989]

Mr. Keven Reay, FOI Co-ordinator