ORDER P-247

Appeal 900133

Stadium Corporation of Ontario Limited

O R D E R

<u>BACKGROUND</u>:

On July 8, 1991, the undersigned was appointed Assistant
Commissioner and received a delegation of the power and duty to
conduct inquiries and make orders under the <u>Freedom of
Information and Protection of Privacy Act, 1987</u> the ("<u>Act</u>").

On November 22, 1989, a request was made to Stadium Corporation
of Ontario Limited (the "institution") requesting access to:

> A list of the consultants hired by the crown
> corporation since October 1986. In addition, I'd
> appreciate a brief description of work performed by
> each consultant and how much money each was paid.

The institution notified thirty-three persons whose interests
the institution felt could be affected by the release of the
requested information. Of these thirty-three persons, twenty-
three consented to the release of the information relating to
them, and ten did not.

The record, created by the institution to respond to the
request, consists of two computer-generated records, "Schedule
A" and "Schedule B".

Schedule A lists the information of the persons who consented to
the release of their information. It contains the names of
consultants, a description of their work (i.e. "Computer
Systems", "Communications", "Engineering", etc.) and the total

payment provided to each within the period from October 1, 1986 to November 30, 1989.

Schedule B lists the information of the persons who did not consent to the release of their total payment amounts. It contains the names of consultants and a description of their work, but does not include the total payment provided to each consultant within the period from October 1, 1986 to November 30, 1989. The institution relied on section 17 of the <u>Freedom of Information and Protection of Privacy Act, 1987</u> (the "<u>Act</u>") to deny access to these amounts.

Both schedules as described above were released to the requester.

The requester appealed the institution's decision to deny access to the amounts paid to persons listed on Schedule B. Notice of the appeal was given to the institution and the appellant. A copy of the record was forwarded to the Appeals Officer by the institution.

The appellant informed the Appeals Officer that he was satisfied with the record format, and that the only issue in this appeal was the denial of access to the payment amounts not included in Schedule B.

During the course of mediation, seven of the ten persons listed in Schedule B consented to the release of their payment amounts. These amounts were compiled by the institution and released to the appellant, leaving only three payment amounts at issue.

Because further mediation was not possible, notice was sent to the appellant, the institution and the three persons who had not

consented to the release of the information at issue (the "affected parties"), advising that an inquiry was being conducted to review the institution's decision not to release the three payment amounts. An Appeals Officer's Report, which is intended to assist the parties in making representations concerning the subject matter of the appeal, accompanied the Notice of Inquiry.

Written representations were received from the institution and the three affected parties. The appellant did not submit representations. I have considered the representations in making this Order.

ISSUES:

One of the three affected parties raised a preliminary issue in its representations.

This party submitted that because the request was for, "A list of the consultants hired...since October 1986..." [emphasis added], and the party was hired in 1985, its information should not be included in Schedule B, because its information is not responsive to the request.

During the course of mediation, the appellant clarified his request as referring to all consultants working for the institution after October, 1986, regardless of the date of hiring.

It should also be noted that this party was included in the record found by the institution to be responsive to the request,

and was notified by the institution as a person whose interests could be affected by the release of the information requested.

In my opinion, this party's information is properly included as part of the record.

The sole issue remaining in this appeal is:

> Whether the head properly applied the mandatory exemption provided by section 17 of the Act to exempt the payment amounts at issue.

SUBMISSIONS/CONCLUSIONS:

Section 17(1) of the Act states:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

> > (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

> > (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

(c)   result in undue loss or gain to
      any person, group, committee or
      financial institution or agency;
      or

(d)   reveal information supplied to or
      the report of a conciliation
      officer,   mediator,   labour
      relations officer or other person
      appointed to resolve a labour
      relations dispute.

In Order 36, dated December 28, 1988, former Commissioner Sidney
B. Linden outlined the three-part test which must be satisfied
in order for a record to be exempt under the mandatory
provisions of section 17(1) of the Act:

1.   the record must reveal information that is a
     trade secret or scientific, technical,
     commercial, financial or labour relations
     information; and

2.   the information must have been supplied to
     the institution in confidence, either
     implicitly or explicitly; and

3.   the prospect of disclosure of the record
     must give rise to a reasonable expectation
     that one of the types of harms specified in
     (a), (b) or (c) of subsection 17(1) will
     occur.

Failure to satisfy the requirements of any part of
this test will render the subsection 17(1) exemption
claim invalid.

I concur with Commissioner Linden's view of the section 17(1) test, and adopt it for the purpose of this appeal.

The information at issue is brief, and is clearly financial information, thereby satisfying the first part of the section 17 test.

The second part of the section 17 test raises the question of whether the information was "supplied in confidence implicitly or explicitly".

The institution and two of the affected parties submitted that the information at issue was supplied to the institution in confidence. One of these two affected parties provided a general description of the process by which its fees were determined.

In my view, the information at issue was not "supplied" by a third party within the meaning of section 17(1) of the Act. The "Total Payment" amounts contained in the records are calculations made by

the institution, of the total amount paid to each affected party within a specific time period. These amounts were not supplied to the institution by the affected parties; they were created by the institution.

In Order 203, dated November 5, 1990, then - Assistant Commissioner Tom A. Wright, in discussing whether information was "supplied" in the context of section 17 wrote:

It should be noted that I would have found that the
information contained in the requested records was
"supplied" by the third parties, had I been satisfied
that its disclosure would permit the drawing of
accurate inferences with respect to the information
actually supplied to the institution.

In applying Commissioner Wright's interpretation to the facts in
the appeal, I find that the single payment amounts are not
broken down to reflect how fees were determined, calculated or
paid for specific functions. These figures do not indicate the
amounts paid by the affected parties for costs such as
subconsultants' fees, disbursements or administrative expenses.
Further, these figures do not necessarily reflect the total
amounts paid to the affected parties over the length of their
involvement in the SkyDome project; they simply reflect the
amounts paid within a specific period of time.

In my view, disclosure of the information at issue would not
permit the drawing of accurate inferences with respect to
information which may have been supplied to the institution by
the affected parties.
Therefore, the second part of the three-part test outlined above
has not been met.

As indicated above, failure to satisfy any one of the three
requirements renders section 17 inapplicable to the information
at issue. The burden of proof, which is jointly shared by the
institution and the affected parties, has not been satisfied.
Accordingly, I find that the three "Total Payment" amounts at
issue in this appeal do not qualify for exemption under section
17 of the Act.

ORDER:

1. I order the head to compile the "Total Payment" amounts relating to the three affected parties and disclose them to the appellant, in the same manner as was done for the thirty other consultants who consented to the release.

2. I further order the head not to disclose the information described in Provision 1 of this Order until thirty (30) days following the date of the issuance of this Order. This time delay is necessary in order to give the affected parties sufficient opportunity to apply for judicial review of my decision before the record is actually disclosed. Provided that an application for judicial review has not been served on the institution or my office within this thirty (30) day period, I order that the record as described in Provision 1 of this Order be disclosed within thirty-five (35) days of the date of this Order.

3. The institution is further ordered to advise me in writing within five (5) days of the date of disclosure, of the date on which disclosure was made. This notice should be forwarded to my attention, c/o Information and Privacy Commissioner/ Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: November 4, 1991
Tom Mitchinson   Date
Assistant Commissioner