



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

ORDER P-386

Appeal Numbers P-9200292, P-9200294, P-9200295,
P-9200296, P-9200297, P-9200301, P-9200302,
P-9200307, P-9200397, P-9200398

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ORDER

BACKGROUND:

Between November 1991 and March 1992, the Stadium Corporation of Ontario Limited (SkyDome) received ten requests from the same individual for information relating to the proposed sale of SkyDome. [The specific wording of each request is set out in the Appendix attached to this order]. SkyDome issued several decision letters, each denying access on the basis that no records exist. The requester appealed all of the decisions.

In order to assist in determining whether any responsive records did exist, this agency's Compliance department was asked to attend at SkyDome and make an independent determination as to whether SkyDome had made reasonable efforts to locate responsive records. The Compliance department completed its investigation and submitted a written report to me, which I have taken into account in reaching my decision in these appeals.

Following completion of the Compliance department's investigation, this office sent a letter to an official at SkyDome, asking him to search the files of certain members of its board of directors, and to determine the institutional status of the committee negotiating the sale of SkyDome (the negotiating committee). SkyDome did not respond to this letter.

Mediation was not possible, and notice that an inquiry was being conducted to review SkyDome's decisions was sent to the appellant and SkyDome. Written representations were received from SkyDome only.

ISSUES:

The issues arising in this appeal are:

- A. Whether SkyDome conducted a reasonable search for the requested records.
- B. Whether SkyDome fulfilled its obligations under section 25(1) of the Act.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether SkyDome conducted a reasonable search for the requested records.

The report prepared by the Compliance department indicates that when staff attended at SkyDome to determine the adequacy of search for responsive records, they interviewed an official of SkyDome and were advised that no searches had been conducted. The reason offered by the official, which was subsequently confirmed in SkyDome's representations, was:

I explained time and time again that the documents requested by [a named individual] do not exist as his request for the most part do (sic) not make sense in relation to the contemplated sale of SkyDome.

In addition to the interview with the SkyDome official, Compliance staff conducted random searches of a record storage area identified by SkyDome, but were unable to locate any responsive records.

SkyDome acknowledges that no searches for responsive records were conducted. Accordingly, I must find that the searches for responsive records were not reasonable. However, based on the independent investigation conducted by this agency's Compliance department, I am satisfied that SkyDome's position that no responsive records exist is a reasonable one, but only as it relates to records within the custody or under the control of SkyDome.

I will now turn to the issue of whether the responsive records may be in the custody or under the control of another institution.

ISSUE B: Whether SkyDome fulfilled its obligations under section 25(1) of the Act.

Section 25(1) of the Act reads:

Where an institution receives a request for access to a record that the institution does not have in its custody or under its control, the head shall make all necessary inquiries to determine whether another institution had custody or control of the record, and where the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,

- (a) forward the request to the other institution; and
- (b) give written notice to the person who made the request that it has been forwarded to the other institution.

In the Notice of Inquiry and other correspondence sent to SkyDome during the course of these appeals, SkyDome was asked to address the issue of transfer. Specifically, the Notice of Inquiry stated:

Should records of this nature not be found, or where it appears that additional records pertaining to the sale of SkyDome may be in the custody or control of the

negotiating team, to identify the institution to which the negotiating team is attached and, pursuant to your institution's obligations under section 25(1)(a) of the Act, to transfer the requests to this institution. (In addition, by virtue of section 25(1)(b) of the Act, your institution was asked to provide the requisite notices to the appellant.)

SkyDome states in its representations:

I have advised the compliance personnel that while there is a negotiating team, they would not have any records other than those that would be located at SkyDome that would be responsive to the request. In any event, the negotiating committee that has been referred to in your letter of August 13, 1992 is a provincial negotiating committee, reporting directly to the Province and not to Stadco and therefore may not in any event be subject to the request.

The representations do not identify which provincial institution, if any, the negotiating committee reports to.

In order to ascertain the institutional status of the negotiating committee, this agency contacted an official at the Ministry of Treasury and Economics (the Ministry), who advised that the negotiating committee was appointed by the Treasurer of Ontario and reports to the Treasurer. The official also confirmed that the negotiating committee does not report to the Board of Directors of SkyDome. Therefore, it appears that any records relating to the activities of the negotiating committee, if they exist, would be in the custody or under the control of the Ministry.

In my view, SkyDome failed to comply with the requirements of section 25(1) of the Act when responding to the appellant's requests. SkyDome should have made the necessary inquiries and transferred these requests to the Ministry under section 25(1)(a), and advised the appellant accordingly, under section 25(1)(b).

ORDER:

1. Based on the results of the independent review conducted by Compliance staff, I find that SkyDome's position that no responsive records exist in its custody or under its control is reasonable in the circumstances.
2. I order SkyDome to transfer the ten requests to the Ministry of Treasury and Economics within five (5) days of the date of this order, and to concurrently advise the appellant in writing of this transfer. The Ministry will then be required to respond to the requests within the thirty-day period provided by section 26 of the Act. [A copy of this order will be forwarded to the Ministry].

3. In order to verify compliance with this order, I order SkyDome to provide me with a copy of the notice of transfer sent to the Ministry pursuant to Provision 2 of this order, within ten days of the date of this order. Such notice should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

POSTSCRIPT:

I want to comment briefly about the manner in which SkyDome handled these appeals.

SkyDome unnecessarily delayed the resolution of these appeals. Had SkyDome properly addressed the issue of the institutional status of the negotiating committee at an early stage in the process, the requests could have been transferred to the Ministry and dealt with by that institution. Instead, it was only through the efforts of employees of this office that the institutional status of the negotiating committee was determined, despite the fact that SkyDome was in the best position to make this determination, and had the statutory obligation to do so.

The actions of SkyDome during the course of these appeals was clearly not in keeping with the spirit of the Act, and, in my view, not what would be expected from an institution which has had considerable experience in dealing with the request and appeal procedures contained in the Act.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

December 21, 1992

APPENDIX

Appeal #	Request #	Date	Request
P-9200292	92004	Dec. 20/91	Any analysis/reports prepared on the November 14/91 intended agreement analysis of media or other reaction.
P-9200294	92007	Dec. 20/91	Status of breweries and consortium members not putting in additional \$110 million, and responses they have to the intended deal, and any new private firms invited to participate.
P-9200295	92008	Dec. 20/91	Any 1990, 1991 approaches from outside consortium interests to buy SkyDome.
P-9200296	92810	Dec. 20/91	Payments/expenses accorded to the provincial (and Stadco board members) negotiating representatives, and towards consortium (Stadco negotiating costs).
P-9200297	92011	Dec. 20/91	Effect of intended deal announced on November 14/91 on existing supplier agreements, other agreements with Argonauts, Blue Jays, McDonald's and others, and any new or additional agreements contemplated/put in place.
P-9200301	920017	Nov. 4/91	Status of any further construction/enhancement and additional costs incurred to complete such enhancements, 1990 & 1991.
P-9200302	920018	Nov. 4/91	Any changes made to agreements with consortium members since 1990. Include any arrangements entered into for exclusive concert promotion rights.
P-9200307	920026	Nov. 4/91	Status of records, past and present, of employees should the Stadium be privatized.
P-9200397	920034	Mar. 10/92	Record of 1992 development that change the November 14/91 intended deal.

Appeal #	Request #	Date	Request
P-9200398	920019	Nov. 4/91	Identify and provide the specifics for consortium members who have not made all their required payments (provide amounts), who have not lived up to their supplier arrangements (provide service/goods/dates), to the quality good/service SkyDome and fellow consortium members expect (detail's please).