



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

ORDER P-729

Appeal P_9300556

Ontario Film Development Corporation



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ontario Film Development Corporation (the OFDC) received a request for the dollar amounts of financial assistance received by individuals, corporations and other entities during the period of April 1, 1990 to March 31, 1992 (Part A of the request). The appellant also requested copies of the information provided by these organizations or individuals when they submitted their applications for the financial assistance (Part B of the request).

Both the appellant and the OFDC have agreed that because there are voluminous records responsive to this request, the scope of the appeal would be narrowed and limited to a sample of the records.

The OFDC has indicated that it does not have the information responsive to Part A of the request in a consolidated format. Consequently, it has provided samples of its commitment letters and contracts with both individuals and corporations in which the requested information is contained. However, the only information which is responsive to the request in these documents is the dollar figure advanced by the OFDC to either the company or individual for the financing of a project.

The OFDC has denied access to this information on the basis of the following exemptions:

- third party information - section 17(1)(a)
- valuable government information - section 18(1)(a)
- economic and other interests - sections 18(1)(c) and (d)
- invasion of privacy - section 21(1) [only for those records involving **individuals** who received financial assistance]

The records responsive to Part B of the request consist of Section A, entitled "General Information", of the various types of financial assistance applications received by the OFDC. The OFDC has identified 11 different types of applications:

- Screenplay development
 - Special projects travel (corporation)
 - Special projects travel (individual)
 - Special projects development
 - Export marketing (corporation)
 - Development (corporation)
 - Development (individual)
 - Non-theatrical production (corporation)
 - Repertory cinema exhibition
 - Domestic marketing
-
- Ontario Film Investment Program (this form does not have a Section A, General Information portion. The top part of page 1 to the end of the section entitled "Address of Production Office" contains the same
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information as that in Section A of the other forms. I will therefore consider this information in the context of Part B of the request).

The OFDC claims that release of this information would also result in disclosure of third party information and an invasion of the privacy of the individual recipients. In addition, the OFDC claims that some of this information is publicly available, thereby relying on the exemption in section 22(a) of the Act.

A Notice of Inquiry was sent to the parties to this appeal, including two individuals and eight companies whose interests might be affected by the disclosure of the information requested (the affected parties). Representations were received from the OFDC only.

DISCUSSION:

INFORMATION PUBLISHED OR AVAILABLE

The OFDC claims that most of the information responsive to Part B of the request has been published or is currently available to the public. Accordingly, it has withheld this information on the basis of section 22(a) of the Act which states:

A head may refuse to disclose a record where,

the record or the information contained in the record has been published or is currently available to the public;

In its representations, the OFDC states that most of the information may be obtained from the following sources: the telephone directory, the Canadian Film and Television Producers Association, industry periodicals and journals such as Playback (which provides information on all Ontario film productions on a regular basis) and the Ministry of Consumer and Commercial Affairs [Relations] for the Ontario corporation numbers.

While I accept that certain pieces of the requested information are available from the sources identified by the OFDC, I cannot agree, however, that this means that the information "is currently available to the public" within the meaning of section 22(a) of the Act.

The purpose of section 22(a) relates to questions of convenience (Order 170). Where the record in dispute constitutes a copy of the entire published document, the balance of convenience leans in favour of the institution and the record can be properly withheld. Where the records at issue constitute only a portion of a much larger document, the balance of convenience does not favour the institution.

In the instant case, it would be necessary for the appellant to search potentially three or more sources to locate and compile the information which is available from the OFDC on one sheet of paper. In addition, because the information contained in the General Information sections of the applications varies depending on the nature of the application, the appellant would have to be advised as to the nature of the information on each form. Only then would he be in a position to search for it in the locations identified by the OFDC.

Therefore, it is my view that the balance of convenience in this case clearly favours the appellant. Accordingly, I find that the information responsive to Part B of the request is not publicly available and the section 22(a) exemption does not apply.

THIRD PARTY INFORMATION

For a record to qualify for exemption under sections 17(1)(a), (b) or (c) of the Act the institution and/or the affected parties must satisfy each part of the following three-part test:

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 harms specified in (a), (b) or (c) of subsection 17(1) will occur.

[Order 36]

Part One

As I have previously indicated, the information responsive to Part A of the request is the dollar figure received by a number of individuals and corporations in the form of grants, loans or other subsidies from the OFDC.

The information contained in the General Information section of the applications responsive to Part B of the request varies depending on the type of application. In addition to the name of the applicant and name of the project, event etc., the applications contain some or all of the following information about the applicant:

- citizenship and residency if the applicant is an individual
- corporate status (partnership, sole proprietor or corporation) and corporation number and date of incorporation
- address, telephone number, and contact
- the name, address and telephone number of the applicant's lawyer, accountant and banker.

In my view, all of the above, relating as it does to those affairs of the applicants which are relevant to the OFDC's decision on granting financial assistance, constitutes financial and/or commercial information within the meaning of section 17(1). Therefore, the first part of the test has been satisfied with respect to both parts of the request.

Part Two

Part two of the test requires that the information must have both been **supplied** to the OFDC and that it was supplied **in confidence**, either explicitly or implicitly. In addition, information contained in a record would **reveal** information **supplied** by an affected party within the meaning of section 17(1) of the Act, if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the OFDC.

In this case, the OFDC indicates that when an individual or corporation applies to any OFDC program for financial assistance, the applicant, who in this case would be one of the affected parties, submits a requested amount. If the application is approved by the OFDC, the OFDC will approve a grant, loan or investment amount "... which often matches the requested amount; on occasion it is a smaller sum."

Thus, in those cases in which the amount of financial assistance given by the OFDC is the same as that requested, disclosure of the amount granted could **reveal** information supplied by an affected party. In fact, it is actually the same dollar figure. In those circumstances in which a smaller amount is granted by the OFDC, it would not reveal information which has been so supplied. Therefore, I find that some of the dollar amounts responsive to Part A of the request were "supplied" by the affected parties to the OFDC, while other amounts were not; they were determined by the OFDC. On the records provided, the OFDC has not identified into which category the dollar amounts fall.

As far as Part B of the request is concerned, I am satisfied that all of the General Information contained in Part A of the application forms was supplied by the affected parties to the OFDC.

I will now turn to the matter of the confidentiality of the information I have found was supplied to the OFDC by the affected parties. In its representations, the OFDC merely states that the applicants submit this information "in confidence". I have not been provided with any information pertaining to the application process itself to determine whether, in fact, the affected parties held a reasonable expectation of confidentiality with respect to the information contained in their applications or the amounts of financial assistance received. I have received no representations from any of these individuals or corporations. The records themselves are not designated confidential in any way.

Accordingly, I find that the second part of the section 17(1) test has not been satisfied with respect to the information responsive to Parts A or B of the request. As all three parts of the section 17(1) test must be satisfied in order for the exemption to apply, it is not necessary for me to consider the application of the third part of the test.

VALUABLE GOVERNMENT INFORMATION

The OFDC claims that the dollar amounts of grants, loans and other subsidies given to recipients of OFDC assistance should not be disclosed as it represents valuable government information (section 18(1)(a) of the Act).

In order to qualify for exemption under section 18(1)(a), the OFDC must establish that the information:

1. is a trade secret, or financial, commercial, scientific or technical information; **and**
2. belongs to the Government of Ontario or an institution; **and**
3. has monetary value or potential monetary value.

[Order 87]

In my discussion of third party information I have established that these dollar figures constitute financial and/or commercial information. Therefore the first part of the section 18(1)(a) test has been met.

In order to satisfy part three of the test, the OFDC must show that the dollar figures themselves have an intrinsic value. The purpose of section 18(1)(a) is to permit an institution to refuse to disclose a record which contains information where circumstances are such that disclosure would deprive the institution of the monetary value of the information (Order P-219).

The OFDC has not provided any evidence to substantiate its position that the nature of this information, in and of itself, has some monetary value which would be lost to the OFDC upon its disclosure. Accordingly, I find that section 18(1)(a) does not apply to the dollar figures.

The submissions of the OFDC focus on the adverse consequences which could result from the disclosure of the amounts of financial assistance provided by it. These concerns are more properly addressed under Economic and Other Interests.

ECONOMIC AND OTHER INTERESTS

Sections 18(1)(c) and (d) of the Act state:

A head may refuse to disclose a record that contains,

- (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;

The OFDC submits that because one source of funding for its annual budget is monies recouped either from loan repayments or recouped investments, it is important for it to maintain its bargaining power. It states that this position could be threatened by the disclosure of the requested information in that:

... [its] economic position (i.e. repayment, recoupment, profit participation) in future projects could be limited or undermined by producers or distributors on the basis of past **deal structures** with other producers which were unusually favourable to those producers ... [emphasis added]

I agree that it is possible that disclosure of the details of the terms and conditions of the financial assistance provided by the OFDC to any one individual or company might result in the economic harms described. However, I have not been provided with sufficient evidence to conclude that there is a clear and direct linkage between the disclosure of the **dollar amounts** of assistance, with nothing more, and the alleged harm to the economic interests of the OFDC. Accordingly, I find that sections 18(1)(c) and (d) do not apply to exempt the information responsive to Part A of the request from disclosure.

INVASION OF PRIVACY

Personal information is defined in section 2(1) of the Act, in part, as "recorded information about an identifiable individual" and includes information relating to financial transactions in which the individual has been involved as well as national origin, phone numbers and addresses.

The OFDC maintains that the amount of financial assistance received by an individual applicant, as opposed to one that is a corporation, sole proprietorship or partnership, qualifies as the "personal information" of that individual as defined above. I am of the view that the amount of financial assistance received from the OFDC relates to the "business activities" of the individual recipients and thus cannot be characterized as their personal information (Order P_710). The same analysis applies to the identity of and information concerning the individual recipients' lawyers, bankers and accountants.

However, any information contained in those records responsive to Part B of the request that indicate an individual applicant's home address, telephone number, citizenship and/or residency constitutes the personal information of these individuals.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances.

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 personal privacy. Where one of the presumptions in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

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

The appellant has not submitted any representations outlining any factors which favour the disclosure of the personal information in the circumstances of this appeal. Accordingly, I find that the mandatory exemption provided by section 21(1) of the Act applies to the home addresses, telephone numbers, citizenship and/or residency of the individual affected parties.

ORDER:

1. I uphold the decision of the OFDC not to disclose the telephone numbers, addresses, citizenship or residency of the **individuals** who received financial assistance from the OFDC as found in the records responsive to Part B of the request.
2. I order the OFDC to disclose to the appellant the balance of the information contained in the records responsive to Part B of the request.
3. I order the OFDC to disclose to the appellant the amounts of the financial assistance responsive to Part A of the request.
4. I order the OFDC to disclose to the appellant the records and information described in Provisions 2 and 3 within thirty-five (35) days after the date of this order and not earlier than the thirtieth (30th) day after the date of this order.
5. In order to verify compliance with the provisions of this order, I reserve the right to require the OFDC to provide me with a copy of the records and information which are disclosed to the appellant pursuant to Provisions 2 and 3.

Original signed by: _____
Anita Fineberg
Inquiry Officer

July 22, 1994

POSTSCRIPT:

As I have indicated, the OFDC does not have, in a consolidated or list form, the information I have ordered disclosed pursuant to Provision 3 of this order. Rather, this information is located in other documents, such as letters of commitment and contracts. I will leave it to the discretion of the OFDC to determine the form in which this information is disclosed to the appellant, i.e. whether it creates a list of the recipients with the amounts of financial assistance granted or provides the appellant with a severed version of the contracts and/or commitment letters.