



Information and Privacy
Commissioner/Ontario

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

ORDER P-788

Appeal P-9400135

Seneca College of Applied Arts and Technology



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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 appellant has requested a list of respondents to a survey related to the expansion of Seneca College of Applied Arts and Technology (the College) in the west of Yonge Street area. Fifty-five of the 60 respondents listed are identified as organizations. The other five respondents are not identified as being associated with a specific organization.

The College relies on the following exemption to withhold the list:

- third party information - section 17(1)(b)

A Notice of Inquiry was sent to the College, the appellant and the respondents. In addition to inviting comments on the exemption relied on by the College, the Notice of Inquiry invited the five respondents identified as individuals to comment on the possible application of the mandatory personal privacy exemption (section 21).

Representations were received from the appellant, the College and seven of the respondents. Six of the 55 "organization" respondents submitted representations, with three consenting to disclosure and three objecting. One of the five "individual" respondents submitted representations indicating that it was an organization (not an individual) and consenting to disclosure.

DISCUSSION:

THIRD PARTY INFORMATION

For a record to qualify for exemption under section 17(1)(b) of the Act, the College and/or the respondent(s) 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 College in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that the harm specified in (b) of section 17(1) will occur.

[Order 36]

Part One of the Test

The College submits that the record qualifies under part one of the above test as "commercial information." Previous orders have determined that commercial information is information which relates solely to the buying, selling or exchange of merchandise or services (Order P-493).

The College submits that education is the College's business; instruction is the service it sells; and the west of Yonge Street community is the educational market. The College submits that the survey was primarily a needs assessment, designed to assist the College in determining how best to satisfy college education needs within a particular community - in other words, the survey involved market research. The College points out that the **results** of market research were held to be commercial information in Order 41.

Having reviewed the evidence before me, I have made the following findings with respect to part one of the test:

- (1) Previous orders make it clear that the term "commercial information" is to be given specific and narrow interpretation.
- (2) While market research might be termed commercial information in certain cases, in the circumstances of this case the list of respondents does not meet the definition of commercial information.
- (3) As all three parts of the test must be met and the College has failed to meet part one of the test, it is not necessary for me to deal with the remaining parts of the test, and section 17 does not apply to exempt the record from disclosure.

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined to mean recorded information about an identifiable individual. The College submits that the fact that individuals gave views and opinions and took part in a survey should be considered personal information.

The College states that the respondents not listed as being affiliated with an organization provided information in their personal capacities. It further contends that many of the listed groups are very small, consisting only of one principal and two or three members. The College also submits that the survey itself assures that the **views** of the respondents would be kept confidential.

No representations were received from individual respondents to the survey.

Having reviewed the evidence before me, I make the following findings:

- (1) The survey itself was labelled as a "Community Leader Survey" and indicated that it was being distributed to "community organizations, social agencies and educators". Accordingly, the respondents were chosen to participate based on their professional, rather than their personal,

capacities and, as such, the fact of their participation cannot be considered personal information within the meaning of section 2(1) of the Act.

- (2) As the names of the individuals who completed the survey are not considered personal information, the invasion of personal privacy provision of the Act (section 21) cannot apply to the record at issue.

ORDER:

1. I order the College to disclose the record to the appellant within thirty-five (35) days following the date of this order and not earlier than the thirtieth (30th) day following the date of this order.
2. In order to verify compliance with this order, I reserve the right to require the College to provide me with a copy of the record disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ October 26, 1994