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

ORDER PO-2003

Appeal PA-010265-1

Ministry of Training, Colleges & Universities

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NATURE OF THE APPEAL:

The appellant submitted a request to the Ministry of Training, Colleges and Universities (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to a named Private Investigators Training School (the school) and the school's owner.

The Ministry identified responsive records and notified both the school and its owner pursuant to section 28(1) of the *Act* in order to determine their views regarding disclosure. A lawyer representing the interests of both parties responded to the Ministry's notice and objected to the disclosure of any information. In doing so, the lawyer indicated that the owner and her corporation had in the past been subject to a "pattern of harassment" by certain students and instructors, which included the filing of a series of small claims court actions, which he indicated were dismissed after trial in May 2000. The lawyer indicated that the owner is concerned that this pattern will continue and, in particular, that disclosure of any information would lead to the continued harassment of her and her business interests. In this order, I will refer to the owner and the corporation, collectively as the "third party", making reference to each party separately only where such a distinction is necessary.

The Ministry subsequently issued a decision to the appellant in which it divided the request into eight parts, noting that records responsive to part one are exempt pursuant to section 22(a) of the *Act* in that they are publicly available on the Ministry's website (URL provided). The Ministry indicated further that no records exist with respect to parts three and eight of the request and that it would not respond to part seven, which was worded as a question. Finally, the Ministry indicated that it had located records responsive to parts two, four, five and six of the request and was denying access to this information in its entirety on the basis of section 20 of the *Act* (danger to safety or health).

The appellant appealed the Ministry's decision. During intake, the appellant clarified that she was only appealing the denial of access to records responsive to parts two, four, five and six of her request. In these four parts of the request, the appellant asked for:

> Part two - any reprimands, conditions, etc. if the school wishes to begin operating again;
>
> Part four - the outcome of any complaints against the school;
>
> Part five - who at the Ministry approved the application for the licence; and
>
> Part six - whether Corporate Documents were filed with the Ministry.

At this time, the Ministry also provided this office with an index of records on which 70 records are identified.

Extensive mediation was undertaken which resulted in the resolution of one issue and the removal of a number of records from the scope of the appeal. In particular, the appellant indicated that she is only interested in pursuing access to the portions of Records 5, 8, 9 (page 1 only), 10 (page 1 only), 11, 20, 26 (page 4 only), 27, 28 (page 2 only), 36, 37, 44, 49 and 60 that do not contain personal information.

Further mediation could not be effected and this appeal was moved to inquiry. I decided to seek representations from the Ministry and the third party, initially, and sent a Notice of Inquiry outlining the facts and issues remaining on appeal to them. The Ministry has only claimed the application of section 20 to the records at issue. However, it is apparent that the third party has, apart from arguments that appear to be directed at a section 20 claim, made references to the application of the mandatory exemption in section 17 (third party information). I will, therefore, consider whether this section applies in the circumstances. In addition, although the appellant indicates that she is not seeking any personal information *per se*, her request identified the owner and the records contain information relating to her business interests. Also, certain portions of the records contain information relating to the teaching staff at the school. It was not clear, from the portions of the mediation file that are not mediation privileged, whether the appellant was pursuing this information. Section 21 (invasion of privacy) is also a mandatory exemption. Accordingly, I included the possible application of section 21 as an issue in this appeal.

During the Inquiry stage, the appellant was contacted and confirmed that she is not interested in any information that might be considered to be "personal", including specific information relating to the teaching staff and the owner. Accordingly, the portions of the records that contain this type of information are no longer at issue.

Both the Ministry and the third party submitted representations in response to the Notice. After reviewing them, I decided that it was not necessary to hear from the appellant.

RECORDS:

In its representations, the third party states:

> With respect to the documents referred to as numbers 5, 8, 9, 10, 26, 27, 28 and 44, we do not object to the disclosure of and release of the said documents provided that the following conditions are met:
>
> 1. The amounts of the bonds noted in those documents is deleted;
>
> 2. The serial number of the bonds referred to in those documents is deleted; and
>
> 3. Any reference to the [named] insurance broker also be deleted.

The Ministry's position regarding disclosure of the records at issue is based entirely on the apparent position taken by the third party in its submissions to the Ministry, and in response to telephone conversations its staff had with the third party. As will be discussed further below, the Ministry interpreted the third party's comments as raising concerns about the health or safety of the owner. Since the third party consents to the disclosure of certain information contained in some of the records at issue, such a decision is antithetical to the harm contemplated by section 20 (at least as far as this information is concerned). In these circumstances, I conclude that section 20 has no application to the portions of Records 5, 8, 9, 10, 26, 27, 28 and 44 that the

third party does not object to disclosing. Similarly, I find that neither section 21(1) nor 17 are applicable to this information in the circumstances.

On review, I note that the only portion of Record 10 at issue (page one) does not contain any information pertaining to the bonds referred to by the third party above. Accordingly, with the exception of any personal information on this record, it should be disclosed to the appellant.

The records at issue in this appeal consist of the remaining portions of the applications for registration (or re-registration) to conduct or operate a Private Vocational School and re-registration checklists (Records 11, 20, 36, 37, 49 and 60) and bond information (the remaining portions of Records 5, 8, 9, 26, 27, 28 and 44). It should be noted that Records 11, 37, 49 and 60 also contain bond information similar to that found on Records 5, 8, 9, 26, 27, 28 and 44.

DISCUSSION:

PERSONAL INFORMATION

The section 21 personal privacy exemption applies only to information which qualifies as "personal information", as defined in section 2(1) of the *Act*. "Personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual [paragraph (c)] and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual [paragraph (h)].

The third party submits that the records contain the owner's personal information. In this regard, the third party states:

> The reasons for requesting that the above information (portions of Records 5, 8, 9, 10, 26, 27, 28 and 44) be deleted are as follows:
>
> (a) The amounts of the bonds constitute financial information and the disclosure of same is objected to on the basis that the information is financial and was provided to the Ministry in confidence, either explicitly or implicitly. In addition, it is possible for the requesting party to determine further financial information regarding my clients if the amount of the bond is revealed. Notably, the amount of the bond is related to the annual gross revenues of the school when it was in operation.
>
> (b) In addition, the request for deletion of the bond serial number and the responsible broker is requested to prevent the requestor from contacting the insurance broker or the bonding company and obtaining further financial and personal information regarding my clients, which they might be inclined to reveal if the requestor were to impersonate my

> client. Impersonating my client would be made easier if the bond number and/or the broker information were revealed to the requestor.

In respect of the documents numbered 11, 20, 36, 37, 49 and 60, we continue to maintain the position that none of these documents nor the information contained therein should be released to the requestor on the basis that these documents contained personal information and financial information regarding my clients and other individuals named therein, including without limitation names, home addresses and home telephone numbers.

To this extent, the information is most certainly "personal information" and we rely on the presumption that the release of this personal information would constitute an unjustified invasion of personal privacy. In addition, due to the identity of the requestor and the prior history (a continuing and unrelenting pattern of harassment of my client, as referred to in my letter dated May 22nd, 2001), the release of the personal information is likely to cause harm to my client through the continuation of this pattern of harassment. To the extent necessary, the following additional arguments are raised to establish that the information is personal information and should not be released:

1. Some of the information relates to the employment and/or educational history of [the owner] and other persons who are named in the various documents;

2. Some of the information is financial information relating to [the owner] and/or her corporation, [the school]; and

3. The requestor is unable to satisfy any of the conditions set out in section 21(1) of the *Act*.

As I noted above, the appellant is not seeking any information that might be considered to be personal and specifically referred to information pertaining to identified teachers and certain information regarding the owner. Once this information is removed from the record, the question remains whether the records at issue consist of recorded information about the owner more generally.

The Ministry's representations do not specifically address this issue, but rather, indicate that in the overall context of this appeal, any personal privacy or third party information issues are intrinsically linked to the section 20 argument. On this basis, it is apparent that the Ministry takes the position that the records pertain to the owner personally.

Previous decisions of this office have drawn a distinction between an individual's personal, and professional or official government capacity, and found that in some circumstances, information associated with a person in his or her professional or official government capacity will not be

considered to be "about the individual" within the meaning of section 2(1) definition of "personal information" [Orders P-257, P-427, P-1412, P-1621].

The Commissioner's orders dealing with non-government employees, professional or corporate officers treat the issue of "personal information" in much the same way as those dealing with government employees. The seminal order in this respect is Order 80. In that case, the institution had invoked section 21 to exempt from disclosure the names of officers of the Council on Mind Abuse (COMA) appearing on correspondence with the Ministry concerning COMA funding procedures. Former Commissioner Linden rejected the institution's submission:

> The institution submits that "...the name of the individual, where it is linked with another identifier, in this case the title of the individual and the organization of which that individual is either executive director, or president, is personal information defined in section of the *FIO/PPA*..." All pieces of correspondence concern corporate, as opposed to personal, matters (i.e. funding procedures for COMA), as evidenced by the following: the letters from COMA to the institution are on official corporate letterhead and are signed by an individual in his capacity as corporate representative of COMA; and the letter of response from the institution is sent to an individual in his corporate capacity. In my view, the names of these officers should properly be categorized as "corporate information" rather than "personal information" under the circumstances.

In Reconsideration Order R-980015, Adjudicator Donald Hale reviewed the history of the Commissioner's approach to this issue and the rationale for taking such an approach. He also extensively examined the approaches taken by other jurisdictions and considered the effect of the decision of the Supreme Court of Canada in *Dagg v. Canada (Minister of Finance)* (1997), 148 D.L.R. (4th) 385 on the approach which this office has taken to the definition of personal information. In applying the principles which he described in that order, Adjudicator Hale came to the following conclusions:

> I find that the information associated with the names of the affected persons which is contained in the records at issue relates to them only in their capacities as officials with the organizations which employ them. Their involvement in the issues addressed in the correspondence with the Ministry is not personal to them but, rather, relates to their employment or association with the organizations whose interests they are representing. This information is not personal in nature but may be more appropriately described as being related to the employment or professional responsibilities of each of the individuals who are identified therein. Essentially, the information is not about these individuals and, therefore, does not qualify as their "personal information" within the meaning of the opening words of the definition.
>
> In order for an organization, public or private, to give voice to its views on a subject of interest to it, individuals must be given responsibility for speaking on its behalf. I find that the views which these individuals express take place in the context of their employment responsibilities and are not, accordingly, their

> personal opinions within the definition of personal information contained in section 2(1)(e) of the Act. Nor is the information "about" the individual, for the reasons described above. In my view, the individuals expressing the position of an organization, in the context of a public or private organization, act simply as a conduit between the intended recipient of the communication and the organization which they represent. The voice is that of the organization, expressed through its spokesperson, rather than that of the individual delivering the message [emphasis in original].
>
> In the present situation, I find that the records do not contain the personal opinions of the affected persons. Rather, as evidenced by the contents of the records themselves, each of these individuals is giving voice to the views of the organization which he/she represents. In my view, it cannot be said that the affected persons are communicating their personal opinions on the subjects addressed in the records. Accordingly, I find that this information cannot properly be characterized as falling within the ambit of the term "personal opinions or views" within the meaning of section 2(1)(e).

Consistent with the reasoning in previous orders, I find that because of the incorporation and operation of the school as a business, information relating to its registration and operation would generally be categorized as "corporate information" rather than "personal information" under the circumstances. This does not mean that an individual is precluded from having a personal interest in certain information pertaining to a corporate enterprise. Where it is established that there is a sufficient nexus between the information about the corporation and the individual's personal interests, information about the corporation may be considered to be "about" the individual (see, for example: Order P-364).

As the "owner" of the school, the individual third party no doubt has a personal interest in the operation and success of the school. However, the records at issue pertain to the registration, bonding and operation of the school itself. In this sense, the owner's personal interest is only peripheral to that of the school's. I am not persuaded that information that might reveal the "gross" revenues of the school are sufficiently connected to the owner's personal finances to bring this "corporate" information within the definition of personal information. In my view, the records at issue are more appropriately characterized as containing information "about" the school as opposed to information "about" the owner. On this basis, I conclude that the records at issue do not contain the owner's personal information.

Since the appellant is not interested in the discrete portions of the records that do or might contain personal information, and these portions have been removed, the remaining portions of the records at issue do not contain personal information and section 21(1)(f), therefore, cannot apply to them.

THIRD PARTY INFORMATION

For a record to qualify for exemption under sections 17(1)(a), (b) or (c), the institution and/or third party 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.

[Orders 36, P-373, M-29 and M-37]

The Court of Appeal for Ontario, in upholding Assistant Commissioner Tom Mitchinson's Order P-373 stated:

> With respect to Part 1 of the test for exemption, the Commissioner adopted a meaning of the terms which is consistent with his previous orders, previous court decisions and dictionary meaning. His interpretation cannot be said to be unreasonable. With respect to Part 2, the records themselves do not reveal any information supplied by the employers on the various forms provided to the WCB. The records had been generated by the WCB based on data supplied by the employers. The Commissioner acted reasonably and in accordance with the language of the statute in determining that disclosure of the records would not reveal information supplied in confidence to the WCB by the employers. Lastly, as to Part 3, the use of the words "**detailed and convincing"** do not modify the interpretation of the exemption or change the standard of proof. These words simply describe the quality and cogency of the evidence required to satisfy the onus of establishing reasonable expectation of harm. Similar expressions have been used by the Supreme Court of Canada to describe the quality of evidence required to satisfy the burden of proof in civil cases. If the evidence lacks detail and is unconvincing, it fails to satisfy the onus and the information would have to be disclosed. It was the Commissioner's function to weigh the material. Again it cannot be said that the Commissioner acted unreasonably. Nor was it unreasonable for him to conclude that the submissions amounted, at most, to speculation of possible harm. [emphasis added]

[*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.)]

Since my finding on the third part of the above test (reasonable expectation of harm) is determinative, it is not necessary to consider the first two parts.

Part 3: Harms

The words "could reasonably be expected to" appear in the preamble of section 17(1), as well as in several other exemptions under the *Act* dealing with a wide variety of anticipated "harms". In the case of most of these exemptions, including section 17(1), in order to establish that the particular harm in question "could reasonably be expected" to result from disclosure of a record, the party or parties with the burden of proof must provide "detailed and convincing" evidence to establish a "reasonable expectation of probable harm" [see Order P-373, two court decisions on judicial review of that order in *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 at 40 (Div. Ct.), and *Ontario (Minister of Labour) v. Big Canoe*, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)].

In the present appeal, the Ministry and the third party, as the parties resisting disclosure, must provide detailed and convincing evidence to establish a reasonable expectation of probable harm, in this case one or more of the harms outlined in sections 17(1)(a), (b) or (c) of the *Act* should the remaining records at issue be disclosed (Order P-373).

With respect to the harms contemplated under this section, the Ministry states:

> The Ministry also received written representation from the third party's legal counsel after it (the Ministry) made third party notification to the third party on May 11, 2001. Upon review, the representation faxed to the Ministry on May 22, 2001, made persuasive argument for concerns more directly related to section 20 than to third party interests as contemplated in section 17 of the *Act*.

The Ministry goes on to cite the third party's submissions. In this regard, the third party states in its May 22, 2001 representations to the Ministry:

> As you can appreciate, it would be difficult for [the owner] to object or provide consent to the release of the requested documentation without knowing the identity of the requesting party(ies) and the purpose(s) for which the information is being requested.
>
> [The owner] and her corporation have been subjected to a seemingly incessant pattern of harassment by a certain few prior students and instructors, most recently in a series of Small Claims Court actions that were dismissed in their entirety following a trial which was concluded on May 26, 2000.
>
> If the requesting party(ies) in this situation are any of the following persons, then there can be no reasonable reason for the requested information other than to continue the pattern of harassment against [the owner]…
>
> In respect of the request that has been made, I would ask you to carefully scrutinize the reasons given for the requested information prior to making any determination, in light of the information that I have provided to you in this letter.

> Unless you are able to confirm to me in writing that the requesting party is none of the above-named persons and that the apparent purpose for the request appears to be innocent, then it would be the position of [the owner] and the [School] that the information should not be disclosed due to the following reasons:
>
> 1. The information constitutes technical, commercial and financial information regarding [the owner] and her corporation;
>
> 2. The information was most certainly supplied to the Ministry in confidence, either explicitly or implicitly; and
>
> 3. Disclosure of the information could reasonably be expected to cause harm to [the owner] through a continuing harassment of herself and her business interests by the person or persons that have requested the information.

The third party's representations in response to the Notice of Inquiry make indirect reference to the harms anticipated by disclosure. As noted above under the discussion relating to the definition of personal information, the third party is concerned that disclosure of the amount of the bond would reveal the gross revenues of the school when it was in operation. In addition, the third party asserts that disclosure of the bond serial number and the responsible broker would permit the requester to contact the broker and fraudulently obtain other information about the owner and her corporation. With respect to the remaining information at issue, the third party believes that its disclosure would facilitate the "continuing and unrelenting pattern of harassment" which it submits would cause harm.

In my view, the third party's representations with respect to the harms contemplated by section 17(1) (a), (b) and (c) lack the level of detail necessary to establish a reasonable expectation of harm. Moreover, the submissions that were made are unconvincing as a basis for harm in that they are, for the most part, speculative and unsupported. In particular, the third party alleges that the appellant might resort to fraudulent activity to obtain additional information about the owner and her corporation. This is a serious allegation of potential criminal activity for which the third party provides no evidence in substantiation.

Further, the only evidence of "harassment" provided by the third party relates to a small claims court action. I am not persuaded that the pursuit of a legal action against the third party constitutes "harassment" (see, for example: Orders PO-1912 and MO-1481, which discuss this issue generally) or that the pursuit of information under the *Act* is evidence of a continuation of such harassment. The *Act* provides a right of access to information in the custody and/or control of government. Absent other cogent evidence of harassment, I do not accept that, in exercising her rights under the *Act*, the appellant is engaging in harassing behaviour. Moreover, the third party has not established a reasonable basis for concluding that any harassment, if it did or might occur, is in any way connected to one of the harms in section 17(1).

The third party expresses concern that information about the amounts of the bonds would reveal the gross revenues of the school. Among the records at issue is a table attached to the application forms. This table sets out the gross tuition revenue ranges and the amount of the bond required by regulation. Based on the information in the table, the bonding information would enable a party to determine only the range within which the gross tuition revenues fall, not the actual revenue.

Even if information about gross revenues could be determined, the third party's submissions do not explain how or why the harms envisioned by section 17(1) could reasonably be expected to result from the disclosure of this information. Finally, the third party indicates that the school is no longer in operation. In these circumstances, I am not persuaded that any of the harms envisioned by section 17(1) could reasonably be expected to occur as a result of disclosure of the information about previous gross revenues

In the absence of detailed and convincing evidence regarding this issue generally, I find that the third party and the Ministry have failed to provide a sufficient basis for a finding that there is a reasonable expectation that one or more of the harms in section 17(1) could occur as a result of disclosure of the records at issue. On this basis, I find that the parties bearing the onus have failed to satisfy the third part of the test and section 17(1), therefore, does not apply.

DANGER TO SAFETY OR HEALTH

Section 20 of the *Act* reads:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

The words "could reasonably be expected to" appear in the preamble of section 20, as well as in several other exemptions under the *Act* dealing with a wide variety of anticipated "harms." As I noted above, in the case of most of these exemptions, in order to establish that the particular harm in question "could reasonably be expected" to result from disclosure of a record, the party with the burden of proof must provide "detailed and convincing" evidence to establish a "reasonable expectation of probable harm" [see Order P-373, two court decisions on judicial review of that order in *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 at 40 (Div. Ct.), and *Ontario (Minister of Labour) v. Big Canoe*, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)].

In *Ontario (Minister of Labour)*, the Court of Appeal for Ontario drew a distinction between the requirements for establishing "health or safety" harms under sections 14(1)(e) and 20, and harms under other exemptions. The court stated (at p. 6):

> The expectation of harm must be reasonable, but it need not be probable. Section 14(1)(e) requires a determination of whether there is a reasonable basis for concluding that disclosure could be expected to endanger the life or physical safety of a person. In other words, the party resisting disclosure must demonstrate

> that the reasons for resisting disclosure is not a frivolous or exaggerated expectation of endangerment to safety. Similarly [section] 20 calls for a demonstration that disclosure could reasonably be expected to seriously threaten the safety or health of an individual, as opposed to there being a groundless or exaggerated expectation of a threat to safety. Introducing the element of probability in this assessment is not appropriate considering the interests that are at stake, particularly the very significant interest of bodily integrity. It is difficult, if not impossible, to establish as a matter of probabilities that a person's life or safety will be endangered by the release of a potentially inflammatory record. Where there is a reasonable basis for believing that a person's safety will be endangered by disclosing a record, the holder of that record properly invokes [sections] 14(1)(e) or 20 to refuse disclosure.

In my view, despite this distinction, the party with the burden of proof under section 20 still must provide "detailed and convincing evidence" of a reasonable expectation of harm to discharge its burden. This evidence must demonstrate that there is a reasonable basis for believing that endangerment could be expected to result from disclosure or, in other words, that the reasons for resisting disclosure are not frivolous or exaggerated [see Orders MO-1262 and PO-1747].

As I indicated above, the Ministry refers to the third party's submissions made in response to its notification of the third party, which I have cited above in their entirety. The Ministry states further:

> The Ministry submits that the section 20 claim is warranted for the records still at issue …
>
> …
>
> In determining that there was "a reasonable basis for believing that a person's safety [would] be endangered by disclosing a record," the Ministry took into consideration its contact with the third party and the third party's representation to the Ministry regarding third party views on disclosure of the records found to be responsive to the original request (including the records at issue in this appeal).
>
> Although the Ministry's Freedom of Information and Protection of Privacy Coordinator did not annotate every phone conversation that she had with the third party, she is reasonably certain that she spoke to the third party or had messages from her about ten times before the decision letter was prepared. Each time, the third party reiterated the fears expressed in her call on May 16, 2001, after reviewing the third party notice she received from the Ministry inviting representation concerning disclosure of records responsive to the request. During that conversation, the third party asked who made the request and told of harassment for the past three years – since the private school she had owned had closed – by a group of former students and by an instructor she had hired to teach part-time at the school. She stated that the instructor had turned out to have a criminal record and was arrested for fraud. The third party was not told who the

> requester was; however, she stated that she was concerned that the requester might be one of the group of former students mentioned above. The third party listed the names of the former students and one of them was indeed the requester. She also stated she had been run down by a truck and crippled and believed that this incident was linked to the harassment to which she had been subjected by the instructor and/or former students. Furthermore, the group of former students had gone to Small Claims Court against the third party and lost.

The Ministry concludes:

> Under the circumstances, it is not really the Ministry's place to doubt the degree of fear or concern expressed by the third party. The Ministry submits that, from the perspective of the third party, it would appear that the concern for endangerment is neither frivolous nor exaggerated. In addition, the third party has already suffered "health or safety" harm for which she believes a group of persons that includes the appellant to be responsible.

Although the third party was provided with an opportunity to address this issue, it did not specifically do so in its submissions in response to the Notice of Inquiry. As I noted above, the third party's submissions made an unsupported suggestion that the requesting party could impersonate the owner and obtain further financial and personal information as a consequence. Apart from that argument, the third party simply states:

> In addition, due to the identity of the requestor and the prior history (a continuing an unrelenting pattern of harassment of my client, as referred to in my letter dated May 22nd, 2001), the release of the personal information is likely to cause harm to my client through the continuation of this pattern of harassment.

While the third party is not required to provide evidence of "probable" harm, there is a requirement that the owner's expectation of harm not be frivolous or exaggerated. The Ministry argues that the owner's subjective fear of harm alone is sufficient to establish the application of section 20. The Ministry sees, as an indicator of her subjective fear, the number of times the owner contacted its Freedom of Information office to express her fear. The Ministry has also taken at face value, the owner's use of the word "harassment" to describe the actions of former students and staff of the school. As well, the Ministry has accepted the owner's conclusion that there is a connection between the motor vehicle accident and the dispute with the school's former students and staff.

I am not prepared to accept these assertions at face value. There must be a "reasonable" basis for concluding that disclosure of the information at issue could be expected to seriously threaten the owner's safety or health. Subjective fear, while certainly an important consideration in a section 20 claim, is not, in and of itself sufficient to establish its application. I am not satisfied that the submissions before me provide a reasonable basis for concluding that a section 20 claim has been established.

The third party alleges that the appellant (or some other person) may impersonate her and obtain other information about her if the information at issue is disclosed. Although the third party told the Ministry that one of the school's former staff members had been arrested for fraud, no further evidence on this issue has been provided. I find that this information is not sufficient to provide a reasonable basis for concluding that a fraud would be perpetrated on the owner if the records at issue were disclosed. Rather, I find such an allegation, in the face of the evidence provided, to be, if not frivolous, at least exaggerated.

The third party has alleged "harassment" on a number of occasions, yet the only written evidence it has provided in support of the allegation pertains to a legal action. As I found above, the pursuit of legal remedies in a court of law does not substantiate a claim of harassment. The fact that the plaintiffs lost is not, in itself, evidence of harassment. The third party does not indicate, for example, that the claim was dismissed as being frivolous or vexatious. Similarly, the fact that there was a dispute between the former students and staff and the school, which ultimately led to the small claims court action is not, in and of itself, evidence of harassment. I stress here that the only evidence presented by the third party of harassment appears to relate to the court action. Although given the opportunity, the third party has not provided any details of actions taken by the former students and staff against the owner or the school. The owner may not have appreciated the consequences of the school's former students' and staff's dissatisfaction and may see it as "harassment". In my view, however, the basis for her "fears" in this regard is exaggerated.

Similarly, with respect to the motor vehicle accident involving the owner, I would expect that a serious accident of this nature would have been investigated and that there would be some evidence to support her contention that there was a connection between it and the matter involving the school's former students and staff. Again, although the third party had opportunity to address this issue, no evidence was forthcoming regarding the circumstances of the accident, such as, where and how it occurred, who was involved, the results of the police investigation, etc. In fact, this evidence was only provided indirectly, through the recollection of the Ministry's Freedom of Information Co-ordinator of a telephone conversation with the owner; clearly not the best available evidence.

Motor vehicle accidents are, unfortunately, common enough occurrences that I am not prepared to accept, simply on the owner's word, as described second hand, that there was a connection between the accident and the matter involving the former students and staff to satisfy the third party's onus of providing detailed and convincing evidence of a reasonable expectation of harm.

In conclusion, I am not satisfied that disclosure of the records at issue to the appellant could reasonably be expected to threaten the safety or health of the owner. In the circumstances, the expectation of the harms described in section 20 arising from disclosure is exaggerated.

The Ministry's safety or health concerns are based on the owner's telephone conversations with the Co-ordinator, and the third party's written submission to the Ministry, which, for the reasons discussed above, are not persuasive. Accordingly, I find that the requested information is not exempt under section 20 of the *Act*. Since no other exemptions are at issue, I will order the Ministry to disclose the records at issue to the appellant. To ensure that personal information is

not disclosed, I have provided a highlighted copy of the records at issue to the Ministry along with the copy of this order. This highlighted information should not be disclosed.

ORDER:

1. I do not uphold the Ministry's decision.

2. I order the Ministry to disclose the records at issue to the appellant by providing her with a copy of them in accordance with the highlighted copy of the records that I have enclosed with the copy of this order by **May 16, 2002** but not before **May 10, 2002**. The highlighted information should not be disclosed.

3. In order to verify compliance with provision 2 of this order, I reserve the right to require the Ministry to provide me with a copy of the material sent to the appellant pursuant to provision 2.

April 9, 2002

Laurel Cropley
Adjudicator