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

ORDER PO-2729

Appeal PA07-115

Ministry of Training, Colleges & Universities

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NATURE OF THE APPEAL:

The Ministry of Training, Colleges & Universities (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to any complaints made against twelve named private career colleges. The request also sought records pertaining to the outcomes of any investigations and/or inspections by the Ministry of the twelve private career colleges.

The Ministry identified records responsive to the request and, after notifying the private career colleges pursuant to section 28 of the *Act*, provided the requester with its decision letter. The Ministry:

- granted access to the responsive records for seven of the twelve named private career colleges, in their entirety;

- granted partial access to the sole responsive record about one of the remaining named private career colleges, relying on the mandatory exemption in section 21(1) (personal privacy) of the *Act* to deny access to the remainder of that record;

- advised that no responsive records could be located for one of the other remaining named private career colleges; and

- relying on the discretionary exemptions in sections 14(1) (law enforcement) and 19 (solicitor-client privilege), denied access to the responsive records for the last three remaining named private career colleges.

The requester (now the appellant) appealed the Ministry's decision.

In the course of the resolution of a related third party appeal, the Ministry identified a further responsive record relating to one of the named private career colleges. The Ministry relied on the mandatory exemption at section 17(1) of the *Act* (third party information) to deny access to it. Access to this further responsive record is, accordingly, also at issue in the appeal.

During mediation, the Ministry advised that it was no longer relying on section 19 to deny access to any of the information it withheld. As a result, the application of that discretionary exemption is no longer at issue in the appeal. The Ministry also clarified that:

- with respect to the discretionary exemption at section 14(1), sections 14(1)(a) and (b) were applicable, and

- where it referred to the mandatory exemption at section 21(1), the presumption in section 21(3)(d) (employment or educational history), applied.

Also at mediation, the appellant advised that in the circumstances of the appeal, the "public interest override" at section 23 of the *Act* should apply.

Mediation did not resolve the appeal and the matter was moved to the adjudication stage of the appeal process.

I initially sent a Notice of Inquiry setting out the facts and issues in the appeal to the Ministry and eight third parties, including individuals, whose interests may be affected by disclosure of the responsive records. Only the Ministry provided representations in response to the Notice. The Ministry asked that a portion of its representations not be shared due to confidentiality concerns. I then sent a copy of the Notice of Inquiry, along with the Ministry's non-confidential representations, to the appellant. The appellant provided representations in response to the Notice. In her representations the appellant submits that certain information can be severed from the records at issue. In this way, the appellant says, any disclosure of personal information can be avoided. This is addressed in more detail in the section of this order dealing with personal information, below.

I determined that the appellant's representations raised issues to which the Ministry should be given an opportunity to reply. Accordingly, I sent a copy of the appellant's representations to the Ministry inviting its reply representations. In reply, the Ministry advised that because of certain changes in circumstances and the appellant's position regarding the severance of certain information from the records:

- Part of the information severed from a six-page inspection report for a named private career college (identified as Record A in the Ministry's representations) would now be disclosed to the appellant.

- The mandatory exemption at section 17 applied to a six-page complaint summary for another named private career college (identified as Record B in the Ministry's representations).

- Subject to notifying the private career college that is the subject of a three-page inspection report (identified as Record D in the Ministry's representations) the Ministry would provide a revised decision letter disclosing it to the appellant.

- It was withdrawing its claim that the discretionary exemptions at sections 14(1)(a) and (b) applied to two complaint forms accompanying a six page inspection report for another named private career college (collectively identified as Record E in the Ministry's representations). However, the Ministry took the position that the mandatory exemption at section 21(1) applied to a portion of the information in these records. The Ministry further advised that, subject to the notification of the private career college, it would provide a revised decision letter and give the appellant access to a severed version of the six-page inspection report.

Shortly thereafter, the Ministry provided this office with a copy of two revised decision letters pertaining to the Records it had described as D and E, above.

Finally, in the course of adjudication, the appellant advised that she is no longer seeking access to the withheld portions of Record D, the six-page inspection report identified by the Ministry as part of Record E or to any invoice number or other type of identifying numbers that may appear on the records remaining at issue. As a result, access to the remainder of Record D, the six page inspection report or to any invoice number or other type of identifying numbers that may appear on the remaining responsive records is no longer at issue in the appeal.

RECORDS:

Accordingly, remaining at issue in this appeal is the following:

Record(s)/Description of Record(s)	Exemption(s) at Issue
A. Six-page inspection report for a specified career college. (At issue are the withheld notations on pages 3 and 6 of the report)	Section 21(1) (with reference to 21(3)(d)).
B. Six-page complaint summary for a specified career college.	Sections 17(1)(a),(b) and (c), 21(1).
C. Five-page inspection report for a specified career college.	Sections 14(1)(a) and (b)
D and E. (originally identified by the Ministry as part of Record E) A fourteen-page complaint summary and a one page student complaint form pertaining to a specified career college.	Section 21(1).

DISCUSSION:

LAW ENFORCEMENT

The Ministry claimed that the discretionary exemptions at sections 14(1)(a) and (b) of the *Act* apply to Record C.

Sections 14(1)(a) and (b) state:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (a) interfere with a law enforcement matter; and

> (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

The term "law enforcement" is used in several parts of section 14, and is defined in section 2(1) as follows:

> "law enforcement" means,
>
> (a) policing,
>
> (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
>
> (c) the conduct of proceedings referred to in clause (b)

A "tribunal" is a body that has a statutory mandate to adjudicate and resolve conflicts between parties and render a decision that affects the parties' legal rights or obligations [Order M-815]. There are other bodies or entities that preside over proceedings distinct from, but in the same class as, those before a court or tribunal. This body or entity may have the authority to conduct proceedings and the power, by law, binding agreement or mutual consent, to decide the matters at issue, but not be a tribunal [Order M-815].

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

Under section 14(1)(a) a "matter" may extend beyond a specific investigation or proceeding. [*Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 4233 (Div. Ct.)]. The exemption does not apply where the matter is completed, or where the alleged interference is with "potential" law enforcement matters [Orders PO-2085, MO-1578].

Under section 14(1)(b) the law enforcement investigation in question must be a specific, ongoing investigation. The exemption does not apply where the investigation is completed, or where the alleged interference is with "potential" law enforcement investigations [Order PO-2085]. The institution holding the records need not be the institution conducting the law enforcement investigation for the exemption to apply [Order PO-2085].

Except in the case of section 14(1)(e), where section 14 uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario*

(Information and Privacy Commissioner), [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

It is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*, cited above].

The Ministry's Representations

The Ministry submits that it administers and regulates private career colleges (PCC)'s under the *Private Career Colleges Act* (*PCCA*). It submits that it "fulfills a consumer protection type role", which includes providing a student complaint mediation service. The Ministry explains that the *PCCA* provides a series of "escalating actions" against a PCC that is not in compliance with the *PCCA*, which can include providing a notice of refusal to register or renew a registration and/or suspend or revoke it. Upon receipt of such a notice an applicant/registrant may request a hearing before the Licence Appeal Tribunal (LAT). The Ministry submits that failure to comply with an order under the *PCCA* can lead to proceedings under the *Provincial Offences Act*.

The Appellant's Representations

The appellant submits that an investigation under the *PCCA* does not meet the definition of "law enforcement" because it does not lead to "proceedings in a court or tribunal if a penalty or sanction could be imposed", as required by paragraph (b) of the law enforcement definition. The appellant argues that while the LAT reviews a sanction or penalty (and has the power to uphold it), the LAT does not *impose* the penalty or sanction. The appellant further submits that the "mere existence of offence provisions in the *PCCA* is not sufficient to make to make all investigations conducted under the *PCCA* 'law enforcement'" and relies upon Order PO-1921 in support of her position. The appellant submits that the Ministry defines its role as one of consumer protection and mediation and it has stated that a PCC is given opportunities to remedy breaches of the *PCCA* during the course of investigation. The appellant submits that this means that the purpose of the investigatory powers is to carry out consumer protection and provide mediation, rather than law enforcement.

Analysis and Findings

Section 38(1) of the *PCCA* provides that the Superintendent or his or her designate may make inquiries and conduct examinations of the affairs of a PCC to enforce and regulate compliance with the conditions of the PCC's registration and the requirements of the *PCCA*. Section 38(3) provides broad entry, examination and inspection powers for that purpose. Under section 18(2) of the *PCCA*, subject to providing notice, and the PCC's ability to request a hearing before the LAT, the Superintendent or his or her designate has the power to refuse to renew a registration or

may suspend or revoke it. Under section 20 of the *PCCA*, in limited circumstances, the Superintendent may suspend a registration immediately.

If a hearing under section 18(2) is requested because of the refusal to renew a registration, or a suspension or revocation, under section 19(6) of the *PCCA*, the LAT has the power to direct the Superintendant:

(a) to carry out the proposal specified in the notice;

(b) to refrain from carrying out the proposal;

(c) to attach such conditions to a registration as the Tribunal considers appropriate; or

(d) to take such other action as the Tribunal considers appropriate.

Section 20(3) of the *PCCA* provides that section 19(6) applies, with necessary modifications, to the immediate suspension of a registration.

Section 39(1) of the *PCCA* allows the Superintendent or his or her designate to fix and collect administrative fines and impose other penalties for a contravention of the *PCCA*. Section 46(2) allows the Superintendent to order a registrant to comply with the conditions of the registration or with the provisions of the *PCCA*. Under section 48 of the *PCCA*, failure to comply with an order, direction or other requirement under that legislation may lead to proceedings under the *Provincial Offences Act*.

Dealing first with the appellant's submission that the LAT does not impose a penalty or sanction, in my view there is no practical distinction between having the power to impose a penalty or sanction and having the power to direct that the penalty or sanction be carried out, be refrained from being carried out, or be amended in some way.

I now turn to the applicability of Order PO-1921. That order involved a consideration of the powers of the Office of the Fire Marshall (OFM) with respect to its governing statute, the *Fire Protection and Prevention Act, 1997* (*FPPA*) in relation to an exemption claim under sections 14(1)(c), (g) and (l) of the *Act*. In his section 14(1)(c) analysis in that order Senior Adjudicator David Goodis determined that, in the context before him, the fundamental purpose of the powers of the OFM was to assist the OFM in carrying out its non-law enforcement mandate. In the result, he concluded that the OFM was not engaged in law enforcement activities. In my view, however, the case before me bears a closer resemblance to the appeal that was before former Adjudicator Anita Fineberg in Order P-1399. In that appeal, former Adjudicator Fineberg considered whether records pertaining to an investigation which might culminate in the issuance of a Notice of Proposed Order to Refuse Registration regarding a license application under the provisions of the *Gaming Control Act, 1992* (*CGA*) and a possible hearing before the

Commercial Registration Appeal Tribunal qualified as "law enforcement". In finding that it did, she wrote:

> The appellant submits that the records do not relate to a "law enforcement" matter as defined in (b) above, as there is not presently, nor could there be in the future, a proceeding in a court or tribunal capable of imposing a penalty or sanction against his clients who have applied for the licences. At most, he submits that the application could be denied.
>
> The Ministry states that, if as a result of the investigations the Registrar refuses to grant the licences, he is required pursuant to section 13 of the *GCA* to issue a Notice of Proposed Order to Refuse Registration, along with written reasons. The applicant then has the opportunity to request a hearing before the Commercial Registration Appeal Tribunal (CRAT), which is a proceeding before a tribunal. The Ministry states that this situation is analogous to those in Orders P-200, P-403 and P-1049 in which records prepared to assist a tribunal in assessing an individual's eligibility for certain benefits were found to relate to a "law enforcement matter". Thus, the Ministry states that it has a law enforcement mandate as defined in paragraph (b) and that the records relate to this mandate.
>
> In the orders referred to by the Ministry, the investigations related to situations in which individuals were previously licensed, registered or receiving certain benefits. The issue to be determined in those cases was whether the licences should be renewed, revoked or benefits cancelled or refunded. As the appellant notes, in this case, the matter is still at the application stage.
>
> However, in my view, the circumstances of this case are analogous in that the nature of the investigations carried out to date and the potential for denial of the licence could lead to proceedings in which a penalty or sanction is imposed. Pursuant to section 17 of the *GCA* when a person is refused registration, or is refused renewal of a licence, he or she cannot apply to the Registrar for registration until at least two years have passed since the refusal or revocation. Accordingly, I find that Records 9-14 in Appeal P-9600460 relate to a "law enforcement matter".

I agree with this analysis.

In my view, the structure and content of the *PCCA*, the fact that the LAT has the power to direct the Superintendent to enforce, refrain from carrying out or amend a proposal refusing to renew a registration or suspending or revoking it, and that a failure to comply with an order, direction or other requirement under that legislation may lead to proceedings under the *Provincial Offences Act* leads me to conclude that the process of enforcing the provisions of the *PCCA* involves investigations or inspections which could lead to proceedings before a tribunal (either before the LAT or in a Provincial Offences proceeding) where a penalty or sanction could be imposed.

Accordingly, I find that Record C relates to "law enforcement" under part (b) of the definition of that term in section 2(1) of the *Act*.

Sections 14(1)(a) and (b): law enforcement matter and law enforcement investigation

Although both sections 14(1)(a) and (b) are claimed, the Ministry's submissions focus on interference with a law enforcement investigation under section 14(1)(b).

The Ministry submits that the five-page inspection report (Record C) contains information about non-compliance with the *PCCA*. The Ministry further submits that as a result of the five-page inspection report, the named PCC was subject to ongoing law enforcement proceedings. In the non-confidential portion of its representations, the Ministry submits that releasing this information into the public realm in the midst of the investigation could reasonably be expected to interfere with the law enforcement investigation as well as cause the subject school to cease operating abruptly. This, the Ministry submits, would lead to the loss of the opportunity to collect evidence (such as perusing records and interviewing students) thereby compromising any ongoing law enforcement investigation. In the confidential portion of its reply submissions which I cannot reproduce here, the Ministry provides details of the status of that investigation. No further evidence is provided in the Ministry's confidential reply submissions with respect to how releasing the record could reasonably be expected to cause the harms alleged.

The appellant submits that the Ministry has failed to lead sufficiently detailed and convincing evidence to establish a reasonable expectation of harm from disclosure. The appellant argues that the Ministry has also not provided any explanation or evidence to support its assertion that releasing the information could cause a PCC to cease operating abruptly, leading to the loss of opportunities to collect evidence. In support of her position, the appellant points to the broad powers under section 38(3) of the *PCCA* to examine the premises, documents and affairs of a PCC to demonstrate that the Ministry does not need the types of "opportunities" it says it requires to collect evidence. The appellant also submits that at this point in time, the Ministry must have collected all the relevant evidence and conducted the necessary interviews to establish its case.

The appellant also submits that the Ministry has failed to provide any evidence of how many of these investigations generally lead to prosecution, or to provide any non-confidential evidence of a specific investigation relating to the PCC that is the subject of Record C.

In reply, the Ministry points out that paragraph 81(a) of the appellant's representations contains an acknowledgement that complaints have been lodged by students who paid tuition fees to PCC's that then ceased operating.

I have considered the content of Record C and the confidential and non-confidential representations which I have received from the parties on this issue on this issue and find that, in all the circumstances, the Ministry has failed to provide sufficiently detailed and convincing evidence to establish a reasonable expectation of harm under sections 14(1)(a) or (b) of the *Act*.

In particular, the ground raised confidentially in the Ministry's first representations really speaks to an interference with matters relating to other roles that may be assumed by the Ministry when dealing with a PCC and does not fall within the types of harms contemplated by sections 14(1)(a) or (b).

Furthermore, baldly asserting that releasing this information into the public realm in the midst of the investigation could reasonably be expected to interfere with the law enforcement investigation, as well as cause the subject school to cease operating abruptly, is not sufficient. Simply put, the Ministry does not provide any sufficiently persuasive evidence to support this first allegation that the release of Record C will give rise to the interference alleged. In addition, regarding the second proposition, the harm contemplated by sections 14(1)(a) and (b) is to the law enforcement matter [14(1)(a)] or investigation [14(1)(b)], not the threat of a PCC closing its doors. And, in any event, I am not satisfied that the Ministry's speculation that the PCC could close, frustrating its attempt to collect further evidence, constitutes "detailed and convincing" evidence to support a reasonable expectation of interference.

I conclude, therefore, that the Ministry has failed to provide sufficient evidence to demonstrate that disclosure of Record C could reasonably be expected to cause the sections 14(1)(a) and (b) harms alleged.

Accordingly, I am not satisfied that the discretionary exemptions at sections 14(1)(a) and (b) apply to Record C.

As no other discretionary exemptions were claimed by the Ministry for Record C and, in my view no mandatory exemptions would apply, I will order that Record C be disclosed to the appellant.

THIRD PARTY INFORMATION

The Ministry claims that the mandatory exemptions at sections 17(1)(a), (b) and (c) of the *Act* apply to Record B.

Sections 17(1)(a), (b) and (c) read:

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

Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions [*Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.) (*Boeing Co.*)]. Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace [Orders PO-1805, PO-2018, PO-2184, PO-2371, PO-2384, MO-1706].

For section 17(1) to apply, the institution 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 paragraphs (a), (b) and/or (c) of section 17(1) will occur.

The materials that are contained in Record B were supplied by a student to the Ministry in the context of a complaint against the subject school.

Part 1: Type of Information

In light of my conclusion on part 2 of the test it is not necessary for me to consider whether Record B contains "commercial information" or "financial information" within the section 17(1)(a) definition.

Part 2: supplied in confidence

In order to satisfy part 2 of the test, the institution and/or an affected party must establish that the information was "supplied" to the institution "in confidence", either implicitly or explicitly.

Supplied

The requirement that information be supplied to an institution reflects the purpose in section 17(1) of protecting the informational assets of third parties [Order MO-1706]. Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party [Orders PO-2020, PO-2043].

In this appeal, while acknowledging that the information on the complaint form was provided by the student, the Ministry argued that it still qualified as being "supplied" for the purposes of section 17(1).

In Order PO-2675, Adjudicator Colin Bhattacharjee considered a similar argument from the Ministry regarding a record containing information pertaining to complaints about PCC's. After considering the Ministry's virtually identical submissions on the section 17(1) exemption in that appeal, he wrote:

> …, information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party [Orders PO-2020, PO-2043]. Moreover, in the *Boeing Co*. case, cited above, the Divisional Court upheld Order PO-2226, which had found that section 17(1) "is designed to protect the confidential "informational assets" of *private businesses or other organizations from which the government receives information* in the course of carrying out its public responsibilities." (Emphasis added.)
>
> The *Boeing Co*. decision makes it clear that, as a general principle, information qualifies as "supplied" for the purposes of section 17(1) if it is provided to the institution by the third party to whom the information relates. However, in the circumstances of the appeal before me, this is not the case. The commercial and financial information in the records at issue was provided by the complainants, not the PCCs who were the subjects of these complaints. Consequently, I find that this information was not provided to the Ministry by the third party to whom the information relates, as contemplated in the *Boeing Co*. decision.
>
> In my view, there may be limited circumstances in which the information of a third party may qualify as "supplied," for the purposes of section 17(1), even if this information is provided to an institution by another party. For example, if an agent (e.g., an accountant) is acting on behalf of a business and provides the confidential "informational assets" of that business (e.g., profit and loss data) to an institution, this information would still be considered "supplied," for the purposes of section 17(1), even though it was not provided to the institution by the third party itself.

> However, those types of limited circumstances do not exist in the appeal before me. The PCCs who were the subject of complaints did not provide their "informational assets" to students or other PCCs, who then turned around and supplied this information to the Ministry. In addition, the complainants were not acting as agents for these PCCs and clearly did not provide the information in the records at issue to the Ministry on behalf of these PCCs. Consequently, in the circumstances of this case, it cannot be said that the information at issue has been "supplied," for the purposes of section 17(1).
>
> In short, I find that the Ministry has failed to prove that the commercial and financial information in the records at issue qualifies as "supplied," within the meaning of that term in section 17(1). This information was not directly supplied to the Ministry by the PCCs that were the subject of complaints, nor would the disclosure of this information reveal or permit the drawing of accurate inferences with respect to any information that may have been supplied to the Ministry by these PCCs.

I agree with this analysis and adopt it for the purposes of this appeal. In my view, Adjudicator Bhattacharjee's analysis provides a complete response to the Ministry's argument with respect to Record B. Accordingly, I find that find that the Ministry has failed to prove that the information in the record at issue qualifies as "supplied," within the meaning of that term in section 17(1).

Accordingly, I find that this part of the three-part test under section 17(1) has not been satisfied.

As all three parts of the test must be met in order for the information to be found to be exempt under section 17(1), I find that this exemption does not apply to Record B.

PERSONAL INFORMATION

If a record contains personal information only of an individual other than the appellant, consideration must be given to the mandatory exemption at section 21(1) of the *Act*. The appellant takes the position, however, that after severing certain information from the records the application of the section 21(1) exemption is not engaged. This is because, the appellant says, the records will then be "anonymized" and no longer contain information that qualifies as personal information as defined in section 2(1) of the *Act*.

Section 2(1) of the *Act* defines "personal information" as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name if 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.

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225]. However, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

At various points in her submissions the appellant states that particular information can be severed from the records thereby resulting in no "personal information" being disclosed. However, it must be emphasized that "personal information" may take many forms and, as set out above, is not limited to the paragraphs (a) to (h) of the definition.

Based upon my review of the withheld portions of the records remaining at issue, I find that all of them contain the personal information of identifiable individuals as defined in section 2(1) of the *Act*. The records at issue do not contain any personal information of the appellant. That does not end the analysis, however, as I must consider whether the severances suggested by the appellant will result in no "personal information" being disclosed.

The Ministry's Representations on Severing Personal Information

The Ministry submits that the information severed from pages 3 and 5 of Record A pertains to the educational history of an instructor at a specified PCC. It submits that while the severed information on page 3 does not contain a last name, the severed information on page 5 dealing with the same individual, does include the last name. The Ministry further submits that, in any event, this individual would be identifiable as the only instructor of the course mentioned in Record A. Records B, D and E are all student complaints against named colleges. The Ministry submits that these records contain the students' name, contact information and/or date of birth as well as their educational and/or employment history. The Ministry further submits that Record B also contains a student's financial information, including information about their bank account. The Ministry submits that Record D contains the name and contact information of the student's former employer, information about payments the student made, a letter from the student to the former employer and a letter to the student from a consumer protection body.

The Appellant's Representations on Severing Personal Information

The appellant submits that she would be content with the student complainant's name, date of birth, contact information and bank account information being severed from Record B prior to disclosure. In addition, as set out above, in the course of adjudication, the appellant advised that she is no longer seeking access to any invoice number or other type of identifying numbers that may appear on the records remaining at issue.

With respect to records A, D and E, the appellant submits:

> The Ministry claims that the severed portions of Record A relate to the educational history of an instructor at the named PCC. In most cases, this information could be anonymized by severing the name of the instructor. In this case, the Ministry claims that "even if the individual were not named, the individual would be identifiable as the only instructor of the course mentioned in the record". I submit that, if this is the case, the name of the course and the name of the individual should be severed, but the educational history should be

> disclosed. If it is anonymized in this way, this information is no longer personal information since it is not information about an identifiable person.
> Similarly, with respect to Record E [now records D and E], I would like to see the following information severed prior to disclosure: the name and contact information of the student complainant, the name and contact information of the student's former employer and the student complainant's date of birth. Without this information, information about the educational program the student was interested in would not constitute personal information, since it would not be linked to the student in any way. Similarly, information about the payments the student made would be anonymized, and would therefore not constitute personal information. The copies of the letters from the student to the former employer and to the student from a consumer protection body can also be anonymized by severing the student's name and the name of the former employer. Following this process, the severed records will not, therefore, contain any "personal information" about an "identifiable individual" and should be disclosed …

The Ministry's Reply Representations

The Ministry submits in reply, that:

> … [subject to its decision to disclose a portion of the previously withheld information in Record A] the s. 21 exemption applies to the remaining, previously severed personal information, which includes the instructor's name, the name of the course taught, the usual requirements for teaching that course (which could identify the course, and thus the instructor as the only one for that course), and the name of the college the instructor attended. …
>
> When it comes to the personal information in the complaint forms included in Record B, and Record E, the appellant has indicated that she is content to view the record subject to severance of personal information under section 21. However, the Ministry respectfully submits that these records do not lend themselves to severance in such a way as to "anonymize" the record.
>
> Record B is a six page complaint. Record E contains a 14 page complaint by one person [now Record D], and a one page complaint by another [now Record E]. The complaints are handwritten by each complainant. Information about the complainant's country of origin and intended course of study is present throughout the document and its attachments in the six page complaint of Record B and the 14 page complaint in Record E; the complainant's course of study is noted in the one page complaint in Record E. Further, given that only one or two complaints were responsive to this request relating to each school, it could be possible to identify each complainant even in the absence of the complainant's name, address, and other more direct personal identifiers. Therefore, it is the Ministry's position that section 21 requires that the complaints

> contained in Records B and E cannot be released - severance is not an option in this case.

The Ministry previously submitted that its publicly accessible website only contains the following information about each registered PCC: its name, address, telephone number and fax number. In the event of an inquiry from a member of the public, Ministry staff are only authorized to disclose the legal and operating names of the PCC, contact information for the PCC, whether the PCC is registered under the *PCCA* and the PCC's registered programs.

Analysis and Findings

Record A

After severing the name of the instructor and the name of the course, all that remains at issue in Record A is a one line notation on page three and a small portion severed from page five. In my view, as a result of the severances suggested by the appellant, this information does not represent recorded information about an identifiable individual and does not meet the definition of personal information. I find that it is not reasonable to expect that an individual may be identified if the information is disclosed. As no other discretionary exemptions have been claimed for this information and, in my view, as no mandatory exemptions apply, I will order that this information be disclosed to the appellant.

Records B, D and E

After removing the names, dates of birth, identifying numbers, contact information and financial information from Records B and D, as well as the name and contact information of the student's former employer from Record E, all that remains at issue in these records is the following: the student complainant's country of origin, his or her intended course of study, the nature of his or her concerns and some financial information, including the amount of tuition fees payable.

As set out in reply, the Ministry resists disclosure because "given that only one or two complaints were responsive to this request relating to each school, it could be possible to identify each complainant even in the absence of the complainant's name, address, and other more direct personal identifiers." However, the Ministry fails to provide the numbers of students enrolled in the relevant course of study (or their countries of origin) or to otherwise provide sufficiently cogent evidence to enable me to determine whether such identification could occur after the severances have been made. In my view, as a result of the severances suggested, or agreed to, by the appellant, the remaining information in records B, D and E does not represent recorded information about an identifiable individual and does not meet the definition of personal information. I find that it is not reasonable to expect that an individual may be identified if the information is disclosed. Accordingly, I will order that this information be disclosed to the appellant.

ORDER:

1. I order the Ministry to disclose to the appellant the **additional highlighted** portions of Record A and the **non-highlighted** portions of Records B, D and E on the copy of those records provided to the Ministry with this order, and all of record C, by sending her a copy of the records by **December 8, 2008** but not before **December 2, 2008**.

2. In order to verify compliance with the terms of this order, I reserve the right to require the Ministry to provide me with a copy of the records as disclosed to the appellant, upon request.

October 30, 2008

Steven Faughnan
Adjudicator