

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3594

Appeal PA14-74-2

Fleming College

April 8, 2016

Summary: Fleming College (the college) received a request under the *Freedom of Information and Protection of Privacy Act (FIPPA)* for access to records about the review of the college's Emergency Management post-graduate certificate program. The college denied access to the records in part, citing the application of the discretionary economic and other interests exemptions in section 18(1). This order partially upholds the college's decision.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 18(1)(c) and (f).

Orders Considered: Order MO-2267-I.

OVERVIEW:

[1] Fleming College (Fleming or the college) received a request under the *Freedom of Information and Protection of Privacy Act (FIPPA or the Act)* for access to the following records:

Emergency Management [EM] Program Review

- Undertaken by [named Vice President] and [named Dean]
- Commissioned during, or around the summer of 2012 and continuing to, or around the summer of 2013.

[2] The college located nine responsive records and issued a decision granting partial access. The college disclosed one record and denied access to the remainder of the records citing the discretionary exemptions in sections 13(1) (advice or recommendations) and 18(1) (economic and other interests) and the employment-related exclusion in section 65(6) of the *Act*.

[3] The requester (now the appellant) appealed the college's decision.

[4] In the course of mediation, the college issued a revised decision granting partial access to an additional record. Along with the decision, the college issued to the requester an index of records listing the responsive records in an alphabetical order from A to I. The index of records indicated that the college had granted partial access to the responsive records and cited sections 13(1), 18(1), 21(1) (personal privacy) and the employment-related exclusion in section 65(6) of the *Act* to withhold the remaining records.

[5] The college then issued a revised decision granting partial access to one additional record (Record B).

[6] The appellant indicated that he was not seeking Records A, H and I. As a result, Records A, H, I and the application of sections 21(1) and 65(6) of the *Act* are no longer at issue in this appeal.

[7] The college issued a revised decision and amended index indicating that access to Record D was granted in part. The college continued to rely on sections 13(1), 18(1)(c) and 18(1)(f) of the *Act* to deny access to the remaining records at issue.

[8] The appellant later advised the mediator that he was no longer seeking Record C. Accordingly, Record C is no longer at issue in this appeal.

[9] As mediation did not resolve the issues in this appeal, the file was transferred to adjudication where an adjudicator conducts an inquiry. Representations were sought and exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*. In its representations, the college withdrew its section 13(1) claim.

[10] In this order, I partially uphold the college's application of sections 18(1)(c) and (f) to the records.

RECORDS:

[11] The records remaining at issue are described in the college's amended index of records, as follows:

Record	Name	Description	Released?	Exemptions claimed
B	2012 Minutes from EM Program Review Meeting Page 1	Summary of program review meeting from September 17, 2012	In part	18(1)(c) and (f)
D	2013 EM Program Review Report Pages 2-21	Executive summary of program review from February 5, 2013	In part	18(1)(c) and (f)
E	2012 EM Research Findings Pages 22-44	Key research findings on program from 2012	No	18(1)(c)
F	2012 KPI [Key Performance Indicator] Results for EMP Page 45	Program summary report of program key performance indicators from 2012	No	18(1)(c)
G	2012 Student Satisfaction Survey Pages 46 - 52	Consolidation of 2012 student satisfaction survey	No	18(1)(c)

ISSUES:

- A. Does the discretionary economic and other interests exemption at sections 18(1)(c) and 18(1)(f) apply to the records?
- B. Did the institution exercise its discretion under section 18(1)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

A. Does the discretionary economic and other interests exemption at sections 18(1)(c) and 18(1)(f) apply to the records?

[12] Section 18(1) states in part:

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;

(f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;

Section 18(1)(c): prejudice to economic interests

[13] The college has applied the section 18(1)(c) exemption to Record B, pages 1 to 4, 6 to 7, 9, and 18 to 20 of Record D, Records E, F, and G.

[14] The college states that it competes with other colleges for enrollment into the Emergency Management post-graduate certificate program (the program). It lists three other colleges as direct competitors offering programs identical in nature, and lists another three colleges that offer programs in the same area. It submits that disclosure of the information at issue in the records to its competitors would allow them to implement changes to their programs that would counteract the college's strengths and exploit its weaknesses, making the college less attractive to new students enrolling in the program.

[15] Concerning Record B, the college describes the information at issue as data on the optimal size of its classes and how it is considering changing the program structure.

[16] Concerning Record D, the college describes the information at issue as follows:

- Page 2 and 3 - outlines the strength of the program and compares it to two other institution's programs.
- Page 3 - discusses cost structure and contribution to overhead.
- Page 4 – discusses enrolment growth and contribution to overhead.
- Page 6 - discusses graduation rate and student satisfaction data.
- Page 7 - discusses historical enrolment data.
- Page 9 - discusses the possibility of adding a new component to the program.
- Page 18 - lists the program's contribution to overhead.
- Page 19 - lists recommendations to build on the program's strengths and address its weaknesses.

- Page 20 - lists the learning outcomes and employability skills of students who are successful in the program.

[17] Concerning Record E, the college describes the information at issue as a measurement of the program's strength and weaknesses by category.

[18] Concerning Record F, the college describes the information at issue as the graduation rate and student satisfaction data.

[19] Concerning Record G, the college describes the information at issue as the student satisfaction data.

[20] The appellant states that one competitor's EM program is completely online and another's is almost completely online. He submits that these two colleges would only attract potential applicants interested in studying at home and that these colleges are not competing with the college and, therefore, disclosure of the records is unlikely to reduce the potential applicant pool currently enjoyed by the college.

[21] The appellant states that the college sold its curriculum to another college and profited from this, even though it is now asserting that this college is a "competitor".

[22] The appellant also disputes that three named colleges offer similar programs in the same area as the college does, as they do not offer a post graduate certificate in EM. The appellant states that he had suggested improvements to the program to the college. He states that in the last two years the college has not yet used the information in the records to put into place plans or improvements to the program, suggested by him or others. If that is the case, the appellant submits there is no reason to believe that the college's competitors will use the information in the records that the college has not used itself.

[23] As well, the appellant submits that if a weakness in the program has been corrected, then it cannot be exploited by a competitor college.

[24] The appellant states that he is already aware of the outcome of the student surveys, not only by being told of the same by a college official but also from the disclosed portions of Record C. Therefore, he states that there is no reason to withhold information from him that he is aware of already.

[25] The appellant further submits that the college routinely posts similar data to that in the records on its website, which has not proven damaging to its economic interests or competitive position.

[26] In reply, the college states that "it is within the realm of possibility that" its competitors could make use of the information in the records to change aspects of their programs to more closely align to its program. It states that even if they do not currently compete for the same type of applicant today, they could make changes and

offer a program that does.

[27] The college further states that the appellant does not have knowledge of whether the plans to address the program's weaknesses set out in the records have been put in place in the last two years or whether they will ever be put in place.

[28] With respect to the survey information, the college states that the appellant being broadly aware of the information does not constitute a valid reason for disclosing the records. It states that the records contain much more comprehensive data than what it publishes online or what the appellant may be aware of.

[29] In surreply, the appellant states that the college appears to concede that there is presently no competition for the pool of potential applicants to the EM program and in order for its competitors to approach a competitive stance they would have to enact massive changes to their programs. He states that there is no bona fide concern that the potential applicant pool currently enjoyed by the college might be diminished through competition.

[30] The appellant submits that the data found in Record D is not comprehensive and is unlikely to provoke a thorough and complete understanding of the program. He also states that given that the college is also attempting to use section 18(1)(f) to withhold other portions of Record D, it appears that no plans have been put in place in response to any of the data found in the surveys.

[31] The appellant submits that if the Student Satisfaction information found in Records D, F and G is so difficult for the Coordinator of the program to interpret to any effect, three years after it was recorded, it is highly improbable that any future competitor colleges would find any competitive advantage with this information.

Analysis/Findings re: section 18(1)(c)

[32] The college has claimed the application of section 18(1)(c) for all of the information at issue, except for portions of Record D, where it has claimed the section 18(1)(f) exemption to certain information.¹

[33] The purpose of section 18 is to protect certain economic interests of institutions. Generally, it is intended to exempt commercially valuable information of institutions to the same extent that similar information of non-governmental organizations is protected under the *Act*.²

[34] For section 18(1)(c) to apply, the institution must provide detailed and

¹ The college has claimed section 18(1)(f) for Record B and for pages 5, 19 and 21 of Record D. It has also claimed section 18(1)(c) for Record B and page 19 of Record D.

² Toronto: Queen's Printer, 1980.

convincing evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.³

[35] The failure to provide detailed and convincing evidence will not necessarily defeat the institution's claim for exemption where harm can be inferred from the surrounding circumstances. However, parties should not assume that the harms under section 18 are self-evident or can be proven simply by repeating the description of harms in the *Act*.⁴

[36] The purpose of section 18(1)(c) is to protect the ability of institutions to earn money in the marketplace. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions.⁵

[37] The section 18(1)(c) exemption requires only that disclosure of the information could reasonably be expected to prejudice the institution's economic interests or competitive position.⁶

[38] I agree with the college that information in the records that would allow the college's competitors to implement changes to their programs that would exploit the college's weaknesses, would make the college less attractive to new students enrolling in the program. I do not have evidence that the weaknesses of the program included in the records have been addressed as referenced by the appellant. I find that information about weaknesses in the program comes within section 18(1)(c) as being information whose disclosure could reasonably be expected to prejudice the economic interests or the competitive position of the college.

[39] However, I do not accept the college's argument that information about the EM program's strengths is information that comes within section 18(1)(c). I find that information about the program's strengths is information that the college would publicize and is information whose disclosure would not be prejudicial to its economic interests or competitive position, but beneficial to the same.

[40] I will now consider the application of the section 18(1)(c) exemption to the individual records.

³ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

⁴ Order MO-2363.

⁵ Orders P-1190 and MO-2233.

⁶ Orders PO-2014-I, MO-2233, MO-2363, PO-2632 and PO-2758.

- Record B - contains the minutes from the EM Program Review Meeting of September 17, 2012. The college has withheld the names of the attendees and some of the discussion at the meeting. I find that all of the information at issue in this record is not exempt under section 18(1)(c).

The college has not provided representations on how disclosure of this particular information would result in harm to its interests, other than stating that it contains data on the optimal size of its classes and how it is considering changing the program structure. It is not apparent from my review of this record what information can be considered to reveal a weakness that could be exploited by the college's competitors. Most of the information that has been withheld is non-substantive or procedural information, such as the names of the meeting's attendees, details of the next meeting, and basic follow-up action items.

I will consider below whether section 18(1)(f) applies to the information at issue in Record B.

- Record D - 2013 EM Program Review Report from February 5, 2013. The college has applied section 18(1)(c) to all of pages 2⁷ to 4, 6, 7, 19, and 20 and to one severance on each of pages 9 and 18. Although the college has provided a description of the information at issue in this record, it did not provide, about this and about the other records at issue, explicit representations as to the potential for harm should the specific information at issue be disclosed.

I will consider the information at issue on each page of Record D.

Pages 2 to 4 - I find that the information on page 2 and the first paragraph of page 3 outlines the programs strengths and are not exempt under section 18(1)(c). As no other exemptions have been claimed for this information, I will order it disclosed. The remainder of page 3 and page 4 reveal weaknesses in the program and I find that section 18(1)(c) applies to this information.

Pages 6 and 7 - I agree with the college that these two pages are exempt under section 18(1)(c) as these pages are charts that categorize and tabulate the information that is summarized on page 4 of Record D. As stated above, I have found that the information on page 4 is subject to 18(1)(c).

Page 9 - I find that the information on page 9 about adding a new component to the program does not by itself demonstrate a risk of harm that is well beyond the merely possible or speculative. The college has only severed this one sentence from the section on page 9 that discloses other components it is considering adding to the program. It has not explained why the severed

⁷ The college has disclosed the title information of Record D on page 2.

component is distinguishable from the non-severed components on this page. Accordingly, I find that this information is not exempt under section 18(1)(c).

Page 18 - The college has severed the percentage the program contributes to its overhead from page 18. As I have found the same information on page 4 subject to section 18(1)(c), I find the exemption applies to the same information on page 18 of Record D.

Page 19 - I note that, other than a difference in the introductory wording and the addition of a listing of the program review panel participants the information in page 5 is identical to the information in page 19. The college has withheld both pages 5 and 19 of Record D. It claimed the application of section 18(1)(c) to page 19 but has not claimed the application of section 18(1)(c) for page 5. Nor has it provided an explanation why it only claimed section 18(1)(c) for page 19, but not page 5. Although the college states that this page reveals weaknesses in the program, I cannot ascertain the same from my review of this page. Based on my review of page 19, I find that it is not subject to section 18(1)(c). I will consider the application of section 18(1)(f) for page 19, below.

Page 20 - The college has severed the learning outcomes and employability skills of students who are successful in the program. This information appears to be positive information about the program and I cannot ascertain how disclosure of this information could reasonably be expected to result in any of the harms argued by the college. Accordingly, I will order the information on page 20 disclosed, as section 18(1)(c) does not apply and no other exemptions have been claimed for this information.

- Record E - this record is entitled Key Research Findings. The college has withheld this entire 23 page record under section 18(1)(c) and describes this as information that measures the program's strength and weaknesses by category. Much of this record contains research from publicly available sources about the college, other colleges, job postings, and registration data. I find that this information is not subject to section 18(1)(c). However, I find that certain information in this record does reveal weaknesses in the program, specifically page 31 and certain information on pages 22, and 23, and I find that this information is subject to section 18(1)(c). Other than this information on pages 22, 23, and 31, I will order the remaining information in Record E disclosed, as no other exemptions have been claimed for this information.
- Record F - is a one page Program Summary Report of program key performance indicators from 2012 and has been withheld in its entirety. The college describes the information at issue as the graduation rate and student satisfaction data. Integrated into this record is information that reveals weaknesses in the program. Based on my review of the college specific detailed information in this record, I find that section 18(1)(c) applies to this record.

- Record G - is a seven page consolidation of the 2012 student satisfaction survey. The college describes the information at issue as student satisfaction data. I find that pages 46⁸ to 49 contain background or general summary information whose disclosure would not result in the harms set out in section 18(1)(c). As no other exemptions have been claimed for this information, I will order pages 46 to 49 disclosed. I find that remaining pages in this record, pages 50 to 52, reveal weaknesses about the program and I find disclosure of this information could reasonably be expected to result in the harm set out in section 18(1)(c).

Conclusion re section 18(1)(c)

[41] In conclusion, I find that the following information is exempt under section 18(1)(c), subject to my review of the college's exercise of discretion:

- page 3 (other than the first paragraph), pages 4, 6, 7, and 18 of Record D,
- page 31 and portions of pages 22 and 23 of Record E,
- Record F, and
- pages 50 to 52 of Record G.

[42] On the other hand, I find that the following information is not exempt under section 18(1)(c):

- Record B,
- page 2, the first paragraph of page 3, pages 9, and 19 to 20 of Record D,
- Record E (except page 31 and portions of pages 22 and 23), and
- pages 46 to 49 of Record G.

[43] I will order disclosure of page 2, the first paragraph of page 3, pages 9, and 20 of Record D, Record E (except page 31 and portions of pages 22 and 23), and pages 46 to 49 of Record G disclosed, as no other exemptions have been claimed for this information and no mandatory exemptions apply.

[44] I will consider the application of section 18(1)(f) to the information in Record B and page 19 of Record D, as the college has also claimed this exemption for this information.

⁸ Page 46 is the title page of Record G.

Section 18(1)(f): plans relating to the management of personnel or the administration of an institution

[45] The college has provided representations on section 18(1)(f) for Record B and for pages 5, 19, and 21 of Record D. It has also marked section 18(1)(f) on page 9 of Record D, but has not provided representations on the application of this exemption to this page.

[46] The college states that section 18(1)(f) applies to Record B because two bullets in that record contain plans that relate to the administration of the program that have not been put into operation.

[47] The college states that the exemption at section 18(1)(f) applies to Record D, pages 5, and 19, because all of the numbered bullets use action verbs that are plans to change the program based on building on its strengths and addressing its weaknesses. It states that none of these plans have been put in place.

[48] The college states that section 18(1)(f) applies to Record D, page 21, since these are all suggested changes for the program title and outcomes upon successful completion of the program. It states that these changes would be put in place once the plans outlining earlier in the document had been put in place.

[49] The appellant states that, as the college is also relying on section 18(1)(c) for the information in Record B and page 19 of Record D, it appears that it has not put the plans in place two years after it was recorded in the records. He states that, therefore, there is no reason to believe its competitor colleges will use this information either.

[50] The appellant states that since the date of the record in February 2013, the program was suspended for one year (2013-2014) and only one cohort (2014-2015) has completed the program. He states that if these plans have not been put into place, then it is unlikely that these plans are a formulated and especially detailed method by which a thing is to be done.

[51] With regards to page 21 of Record D in particular, the appellant states that the suggested changes in this page rely on the enactment of plans which the college has been incapable of enacting for more than two years. As such, he submits that this is unlikely to fall into the category of a formulated and especially detailed method by which a thing is to be done.

[52] The appellant states further that:

The program under discussion is one of more than 100 programs at Fleming College. The program typically enrolls 10-30 full time students per year. Each cohort represents a miniscule percentage of approximately 6,000 full time students per year, approximately 0.005% of the College's total full time intake and even less of the total intake. The documents

under dispute discuss events which took place more than three years ago. Two cohorts (2012-13, 2014-15) have graduated from this program since these documents were created. A third cohort is scheduled to begin in [September 2015]. Business has continued as usual. Fleming has done absolutely nothing with these documents. There is no reason to believe that Fleming ever will do anything with these documents. Therefore any alleged "competitors" are just as unlikely to use these documents to any effect. Given the relative size of the program, the age of the events discussed and Fleming's lack of action in addressing identified weaknesses, it is improbable that the release of these documents poses a reasonable expectation of harm to the economic or competitive interests of the institution.

[53] In reply, the college states that the appellant has no knowledge as to the extent of these plans or how long it would take to put these plans in place.

[54] In surreply, the appellant states that because the plans in the records are from over two years ago that they must be insufficiently detailed and do not include a definitive date for enactment. Therefore, the appellant submits that this information cannot constitute "plans" as understood under the *Act*.

Analysis/Findings re: section 18(1)(f)

[55] In order for section 18(1)(f) to apply, the institution must show that:

1. the record contains a plan or plans, and
2. the plan or plans relate to:
 - i. the management of personnel, or
 - ii. the administration of an institution, and
3. the plan or plans have not yet been put into operation or made public.⁹

[56] This office has adopted the dictionary definition of a "plan" as a "formulated and especially detailed method by which a thing is to be done; a design or scheme".¹⁰

[57] I will deal with each record separately.

[58] Record B –contains the minutes from EM Program Review Meeting of September 17, 2012. The college has withheld the names of the attendees and some of the

⁹ Orders PO-2071 and PO-2536.

¹⁰ Orders P-348 and PO-2536.

discussion at the meeting.

[59] As stated above, I find that the names of the attendees at the meeting in Record B are not information that comes within section 18(1). It also does not reveal plans within the meaning of section 18(1)(f).

[60] The college has only made specific representations on two bullet points in this record. These two bullet points are referred to by the college as:

- Wxxxx will begin ...
- Dxxxxx will investigate ...

[61] I find that neither of these two bullet points are a "formulated and especially detailed method by which a thing is to be done; a design or scheme"¹¹ as set out above. Based on my review of all of the information at issue in this record, I find that it is not subject to section 18(1)(f). The information at issue does not contain plans but merely some action items to follow-up on before the next meeting of the attendees. As neither section 18(1)(c) or 18(1)(f) apply to Record B, I will order it disclosed.

[62] Record D – 2013 EM Program Review Report from February 5, 2013. The college has provided a description of the information at issue on pages 5, 19, and 21, as set out above.

[63] Similar to my finding above concerning the program review panel participants in Record B, disclosure of the information on page 5 of this record that lists the review panel participants is not exempt under section 18(1)(f).

[64] The college states that the exemption at section 18(1)(f) applies to Record D, pages 5 and 19, because all of the numbered bullets use action verbs that are plans to change the program based on building on its strengths and addressing its weaknesses. It states that none of these plans have been put in place.

[65] These two pages are identical, except for a slight modification in the introductory wording.¹² I find that these two pages contain recommendations. These pages do not contain a "formulated and especially detailed method by which a thing is to be done; a design or scheme"¹³.

[66] Pages 5 and 19 of Record D contain information that is similar to information at issue in Interim Order MO-2267-I. In that order, a record at issue was a Gym Floor Replacement Summary. I found that this record did not contain information which qualifies as an "especially detailed method by which a thing is to be done"; rather, I

¹¹ Orders P-348 and PO-2536.

¹² As well, page 5 contains the names and titles of the program review panel participants.

¹³ Orders P-348 and PO-2536.

found that this record contains suggestions or ideas about possible approaches to take regarding the replacement of gym floors.

[67] Similarly, in this appeal, I find that pages 5 and 19 of Record D contain suggestions or ideas about possible approaches to take with respect to possible improvements to the program. I find that the information in pages 5 and 19 of Record D does not come within section 18(1)(f).

[68] The college states that section 18(1)(f) applies to Record D, page 21, since these are all suggested changes for the program title and outcomes upon successful completion of the program. It states that these changes would be put in place once the plans outlined earlier in the document had been put in place.

[69] I agree with the college that page 21 contains a “formulated and especially detailed method by which a thing is to be done; a design or scheme”¹⁴ as to what it anticipates the program will offer in the future. I have no evidence that the plan on page 21 has been put into operation or made public. Therefore, I find that this page is subject to section 18(1)(f).

[70] Although page 9 of Record D has section 18(1)(f) listed on it as an exemption, this exemption was not listed for that page on the mediator’s report. As well, the college did not provide representations on the application of section 18(1)(f) for page 9 of Record D. Based on my review of this information, I find that section 18(1)(f) does not apply to page 9 of Record D. As no other exemptions have been claimed for this information, I will order the college to disclose the information at issue on page 9 of Record D.

Conclusion re section 18(1)(f)

[71] In conclusion, I find that page 21 of Record D is subject to the section 18(1)(f) exemption. This information is exempt, subject to my review of the college’s exercise of discretion.

[72] I further find that Record B and pages 5, 9, and 19 of Record D are not subject to section 18(1)(f). As no other exemptions apply to this information, I will order these pages disclosed.

B. Did the institution exercise its discretion under section 18(1)? If so, should this office uphold the exercise of discretion?

[73] The section 18(1) exemption is discretionary and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the

¹⁴ Orders P-348 and PO-2536.

institution failed to do so.

[74] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[75] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.¹⁵ This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

[76] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:¹⁶

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution

¹⁵ Order MO-1573.

¹⁶ Orders P-344 and MO-1573.

- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

[77] In exercising its discretion, the college states that it considered the following:

- the appellant did not request any of his own personal information,
- there were no individuals whose privacy should be protected,
- exemptions from right of access have been limited to 18(1),
- the nature and quantity of the information requested, as it relates to the program, is significant enough in its entirety to be harmful to the college's ability to compete against other colleges in attracting new students to the program.

[78] The appellant did not provide representations on this issue.

Analysis/Findings

[79] Based on my review of the information at issue and the college's representations, I find that the college exercised its discretion in a proper manner, taking into account relevant considerations and not taking into account irrelevant considerations.

[80] I find that the college properly considered the purpose of the section 18 exemption, which is to protect certain of its economic interests. Therefore, I uphold the college's exercise of discretion and find that the following information is exempt from disclosure:

- page 3 (other than the first paragraph) and pages 4, 6, 7, 18, and 21 of Record D,
- page 31 and portions of pages 22 and 23 of Record E,
- Record F, and
- pages 50 to 52 of Record G.

ORDER:

1. I order the college to disclose all of the information in the records to the appellant by **May 6, 2016**, except for:

- page 3 (other than the first paragraph), pages 4, 6, 7, 18, and 21 of Record D,
 - page 31 and portions of pages 22 and 23 of Record E,
 - Record F, and
 - pages 50 to 52 of Record G.
2. For ease of reference, I have provided the college with this order a copy of pages 22 and 23 of Record E, highlighting the portions that should not be disclosed.
 3. In order to verify compliance with order provisions 1 and 2, I reserve the right to require a copy of the records disclosed by the college to the appellant to be provided to me.

Original Signed by: _____
Diane Smith
Adjudicator

_____ April 8, 2016