

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4589

Appeal PA22-00387

Northern College of Applied Arts and Technology

January 16, 2024

**Summary:** The appellant requested information, under the *Freedom of Information and Protection of Privacy Act*, relating to enrolment and admission applications of domestic and international students from the college. The college denied access to the responsive information under the economic and other interests exemption at section 18(1) of the *Act*.

The appeal is allowed. The adjudicator finds that information is not exempt and orders the college to disclose the information to the appellant.

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

### OVERVIEW:

[1] The appellant requested access to the following information from the Northern College of Applied Arts and Technology (the college) under the *Freedom of Information and Protection of Privacy Act* (the *Act*):

1. Number of international students enrolled in Fall 2021, Winter 2022 and Spring 2022.

If your institution separates this enrolment figure by campus (or public college/private college agreement if applicable) please provide a total for each campus (Fall 2021, Winter 2022 and Spring 2022).

2. Total number of letters of acceptance issued by your institution to international students/agents according to campus (see above) for the following periods:
  - 2021 (Winter, Spring, Fall)
  - 2022 (Winter, Spring, Fall)
3. Total international admissions applications refused by your institution for the following periods:
  - 2021 (Winter, Spring, Fall)
  - 2022 (Winter, Spring, Fall)
4. Total number of domestic student admissions applications received in 2021
5. Total number of domestic admissions applications refused in 2021
6. Total number of admissions offers issued to domestic student in 2021
7. Percentage of international applicants who applied for admissions to your institution through an agent or aggregator platform (i.e., Apply Board)
8. Percentage of international applicants who self-applied directly to your institution
9. If your institution is a signatory party to a private college/public college agreement, please include the date on which the agreement was ratified.

[2] The college issued a decision in which it granted partial access to the responsive records. The college denied access to parts 2 through 8 pursuant to section 18(1)(c) and (d) of the *Act*.

[3] The appellant appealed the college's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[4] During mediation, the college issued a revised decision in which it granted access to records responsive to part 9 of the request and waived any associated fees. The college maintained its decision to deny access to parts 2 through 8 pursuant to section 18(1)(c) and (d) of the *Act*, and it included a summary of fees that the college proposes to charge in respect of parts 2 through 8 should disclosure be required.

[5] The college subsequently issued an amended revised decision in which it granted access to records responsive to part 1 of the request and waived the associated fees. There were no additional changes to the substance of the college's revised decision.

[6] The appellant advised the mediator that he wished to pursue access to the records that are responsive to parts 2 through 8 of the request, and he raised the possible

application of the public interest override in section 23 of the *Act*. The appellant also confirmed that he does not object to the fees that the college proposed to charge in respect of parts 2 through 8 should disclosure be ordered.

[7] The appeal did not resolve at mediation and the file was moved to the adjudication stage of the appeals process where an adjudicator may conduct an inquiry under the *Act*. I conducted an inquiry and both parties provided representations. Representations were shared in accordance with the IPC's *Code of Procedure*.

[8] In this decision, I allow the appeal. I find the records are not exempt under section 18(1) and order the college to disclose them to the appellant.

## **DISCUSSION:**

[9] The sole issue in this decision is whether records responsive to parts 2 – 8 of the appellant's request are exempt under sections 18(1)(c) and/or (d) of the *Act*. These sections state:

A head may refuse to disclose a record that contains,

(c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

(d) information whose disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;

[10] The purpose of section 18 is to protect certain economic and other interests of institutions. It also recognizes that an institution's own commercially valuable information should be protected to the same extent as that of non-governmental organizations.<sup>1</sup>

[11] An institution resisting disclosure of a record on the basis of sections 18(1)(c) and (d) cannot simply assert that the harms mentioned in those sections are obvious based on the record. It must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, the institution should not assume that the harms are self-evident and can be proven simply by repeating the description of harms in the *Act*.<sup>2</sup>

[12] The institution must show that the risk of harm is real and not just a possibility.

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<sup>1</sup> *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (the Williams Commission Report) Toronto: Queen's Printer, 1980.

<sup>2</sup> Orders MO-2363 and PO-2435.

<sup>3</sup>However, it does not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information. <sup>4</sup>

### **Analysis and finding**

[13] The college submits that it is a college operating in the province and as such the market it operates in is competitive with over 23 universities and more than 500 private career colleges competing for both domestic and international students.

[14] The college notes that the appellant operates a private company that solicits post-secondary institutions to join the service his company provides to support incoming international students. The college alleges that the appellant's business claims that it will increase the enrollment of international students in post-secondary institutions while also claiming in the media that colleges over-enroll students.

[15] The college states that it is not a client of the appellant's business and submits that the appellant will use the responsive information that he receives from his request to launch a campaign against the college unless it agrees to sign up for his services.

[16] The college further submits that the appellant's reason for seeking the responsive information is not neutral and instead the appellant will use the information to increase the international student enrollment of his clients.

[17] Based on my review of its representations, I find that the college has not established that disclosure of the requested information would either prejudice its economic interests or competitive position under section 18(1)(c). Nor has the college established that disclosure of the information would be injurious to the financial interests of the Government of Ontario or the Government of Ontario's ability to manage the economy of Ontario under section 18(1)(d).

[18] The college's main argument is that the harms in section 18(1) are present because the nature of the appellant's business. The appellant does not deny that he runs a business, and his representations seek to address the college's claims. However, he also submits that the college's submissions have not met the burden of establishing its section 18(1) claims.

[19] As stated above, in order to establish the harm in section 18(1), the college must provide detailed evidence about the risk of harm if the records are disclosed. The college's representations fall far short of the evidence necessary to establish the harms in section 18(1)(c) and (d). Given the breadth and depth of the information sought, the college's

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<sup>3</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

<sup>4</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

representations focus primarily on the appellant's reasons for seeking the information and do not address at all how disclosure of the requested information would either prejudice its economic and financial interests or be injurious to the Government of Ontario or its ability to manage the economy of Ontario.

[20] Furthermore, while I accept that the appellant's business is not an irrelevant consideration for the college, I find the college's arguments about the appellant's motives for seeking access to the records to be speculative at best.

[21] Accordingly, I find the responsive records are not exempt under section 18(1).

**ORDER:**

1. I order the college to disclose the responsive records to the appellant by providing a copy of the records to him by **February 17, 2025** subject to the appellant's payment of any fees.
2. In order to verify compliance with order provision 1, I reserve the right to require the college to provide me with a copy of the records disclosed to the appellant.

Original Signed By: \_\_\_\_\_  
Stephanie Haly  
Adjudicator

\_\_\_\_\_ January 16, 2025