

Office of the Access  
to Information and  
Privacy Commissioner

New Brunswick



Commissariat à l'accès  
à l'information et à la  
protection de la vie privée

Nouveau-Brunswick

## REPORT OF THE COMMISSIONER'S FINDINGS

*Right to Information and Protection of Privacy Act*

Complaint Matter: 2013-1656-AP-893

April 15, 2014

*Case about access to third party services provided to Université de Moncton*

## INTRODUCTION

1. At the end of last summer, the Applicant, who is a party to this complaint matter, made a request for information under the *Right to Information and Protection of Privacy Act* (the "Act") to obtain information contained in records held by the Université de Moncton, an educational body and a local public body subject to the Act.
2. On August 30, 2013, the President of the Université de Moncton received a Request for disclosure of a list of payments made by the Université to a third party (R. B.), which was to include the amounts paid to R. B., whether in the form of salary, professional fees or other payments, and the reason (nature of the work performed) for each of the payments and the dates. The Applicant sought the information for the period from July 1, 2000, to the end of August 2013.
3. For the purposes of this Report of the Commissioner's Findings, we believe it would be appropriate to explain the entire process for handling requests for information that are made under the Act.

## THE ACT

4. We begin by explaining the principle on which the fundamental right to information codified by the Act is based, namely to inform the public about public business relating to public bodies, such as departments, offices, boards and other similar entities of the provincial government. In just the past few years, that right has been extended to the public business of municipalities and educational bodies such as schools, colleges and universities.

### Exercise of the fundamental right granted by the Act

5. The fundamental right to information rests on the primary spirit of the Act, which is to encourage the disclosure of information, thereby promoting release of the requested information, and such disclosure must be made unless the information comes under the scope of the limited and specific exceptions to disclosure.<sup>1</sup>

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<sup>1</sup>See section 7 of the Act.

6. Consequently, to respect the spirit and intent of the *Act* and this fundamental right, the head of a public body should, whenever possible, exercise his or her discretion in favour of the release of as much information as possible.
7. That approach is consistent with the principle laid down by the Supreme Court of Canada, whereby the “overarching purpose of access to information legislation is to facilitate democracy *by helping to ensure that citizens have the information required to participate meaningfully in the democratic process...*” (see *Dagg v. Canada (Minister of Finance)* 1997, 2 SCR 403, 1997 CanLII 358).
8. For their part, applicants must meet certain conditions in exercising their right to information. Applicants must direct their request to the head of the public body they believe has the records. Not knowing exactly which records are involved, applicants must provide enough detail to enable the head, who is more knowledgeable about the subject matter, to identify the requested records.<sup>2</sup> In addition, applicants have a duty to provide all of the information required under section 3 of Regulation 2010-111, i.e., their name, mailing and e-mail address, telephone number, and so on, and, in particular, the request must be made under the *Right to Information and Protection of Privacy Act*. If the request is unclear or does not contain enough detail to precisely identify the requested information, the public body may seek clarification from the applicant. In such cases, the applicant must respond to the request for clarification. If the applicant fails to do so, the public body may rightly abandon the application.<sup>3</sup>
9. Every person, without exception, is entitled to request information relating to the public business of public bodies, subject to the rules set out in the *Act*. Consequently, the applicant’s identity is excluded from the process. In addition, the applicant’s identity is not to be disclosed to those persons in the public body who will be assisting in gathering the requested information. Only the content of the request, i.e., the requested information, may be released to further the process when the relevant records are contained in several filing cabinets in different locations or in regional offices (outside the main office). Only the head and, if applicable, his or her delegate under the *Act*, are entitled to know the applicant’s identity. This well-established principle stems from the public’s statutory right to know about the business of public bodies through a process free of influence that could affect discretionary exceptions to disclosure.

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<sup>2</sup>See section 8 of the *Act*.

<sup>3</sup>See section 12 of the *Act*.

10. Nor should we seek to know the applicant's reasons or grounds for, or interest in, making a request for information, as it is not relevant in the exercise of the right to information.
11. The head of the public body and his or her delegate, as the case may be, simply has a duty to assist persons who make a request for information under the *Act*, and to process the request in full recognition of the applicant's statutory right, as set out in section 9 of the *Act*.

### **Processing a request for information made under the Act**

12. To be clear, neither the Commissioner nor her office (Office of the Access to Information and Privacy Commissioner) is involved in the processing of requests for information. The Commissioner will not get involved in complaint matters involving requests for information unless one of the parties to the request makes a complaint to her, the object of which, in most cases, will be to take issue with the processing of the request. The Office of the Access to Information and Privacy Commissioner is not an information conduit. Rather, it monitors compliance with the provisions of the *Act* as regards the decision of public bodies to disclose or not to disclose information that is requested.
13. Consequently, when a request for information is duly made under the *Act*, it shall be given directly to the head of the public body that is believed to have custody of the requested information.
14. The head and the employee tasked with processing the request and notifying the responding head are responsible for
  - ensuring the confidentiality of the applicant's identity;
  - assisting the applicant without delay, fully and in an open and accurate manner;
    - a) reviewing the request to ensure that it is sufficiently clear, and asking the applicant for clarification if necessary;
    - b) identifying any relevant information and in which records under his or her control the information may be found;
    - c) granting access to the relevant information by releasing the information the *Act* stipulates must be disclosed to the applicant;
    - d) carefully examining the information that could be subject to the specific and limited exceptions under the *Act* in order to decide whether to disclose the information.

### ***Examining the requested information***

15. After considering a request for information, the head of the public body shall identify all of the information that is relevant to the request, including information that can be disclosed and which, at first glance, warrants a more careful review before being disclosed to the applicant. In examining that information more closely, the head determines whether the information comes under any of the exceptions set out in Part 2 of the *Act*. If it does, the head must determine whether the exception is mandatory or discretionary, as the process for releasing or not releasing information that constitutes a mandatory exception to disclosure is not the same as that for information that meets the conditions for discretionary disclosure.

#### Mandatory exceptions to disclosure (Division B of Part 2 of the *Act*)

16. The *Act* provides for mandatory exceptions to disclosure where the information must be protected, and those exceptions are illustrated in sections 17 to 22 in Division B, where the *Act* lists situations where the head of the public body has no choice but to refuse access to the requested information owing to its particular nature.
17. That said, there are nonetheless exemptions to the mandatory exceptions to disclosure, meaning that the *Act* has established circumstances where the said mandatory exceptions will not apply. In those cases, the *Act* permits the disclosure of the information, regardless of its particular nature which otherwise would have dictated that it be withheld. For instance, a trade secret whose disclosure could harm the competitive position of a third party may be disclosed if the third party consents to its release. Retirement benefits granted to a third party will not be subject to disclosure unless the third party is an employee of a public body.

#### Discretionary exceptions to disclosure (Division C of Part 2 of the *Act*)

18. The *Act* also holds that in certain instances, the head of the public body must first consider all of the factors present when the request for information was made in deciding whether or not to disclose the information. These instances are the specific and limited situations triggered by the discretionary exceptions to disclosure provided for in sections 23 to 33 in Division C, which will require that the head refuse access to the information only in specific circumstances.

19. In addition, if the head decides to refuse access to the requested information and a complaint is made, the head of the public body will have to give reasons for deciding that the applicant does not have a right of access under the circumstances. The fact that the requested information comes under a discretionary exception does not, in and of itself, give rise to a general exception. Consequently, in the case of a discretionary exception, the head of the public body must complete an additional step—determining whether the information should be disclosed or withheld, despite the exception in the circumstances surrounding the request for information.
20. This approach is consistent with the interpretation of the discretionary provisions of the federal *Privacy Act*, as expressed by Strayer J. in *Kelly v. Canada (Solicitor General)* (1992), 53 F.T.R. 147, aff'd (1993), 154 N.R. 319 (F.C.A.) at page 149:

*It will be seen that these exemptions require two decisions by the head of an institution: first, a factual determination as to whether the material comes within the description of material potentially subject to being withheld from disclosure; and second, a discretionary decision as to whether that material should nevertheless be disclosed.*

21. In the process the head of a public body undertakes to decide whether to release information subject to a discretionary exception, the head must consider all of the factors that were relevant when the information was requested, as he or she must have compelling reasons to refuse access to the requested information.
22. The following comments offered by the Office of the Information Commissioner of Canada provide assistance to public bodies when faced with making such a decision:

The exercise of discretion allows the head of a government institution to demonstrate that the institution is operating in the spirit of the legislation. It is not simply a formality where the head considers the issues before routinely saying no. The head must show that the relevant factors were considered and, if the decision is to withhold the information, that there were compelling reasons to support the decision...

The discretion given to the institutional head is not unfettered. It must be exercised in accordance with recognized legal principles and in accord with the conferring statute (i.e., in exercising his discretion, the head must be governed by the principles that information should be available to the public and that exemptions to access should be limited and specific).

(Source: *Investigator's Guide to Interpreting the Access to Information Act*)

23. In addition, a list of factors the public body should consider in applying a discretionary exception has been established in access-to-information case law.<sup>4</sup>
24. Following an assessment of the relevant factors, the head of the public body must decide whether to release the requested information, taking into account the general purpose of the *Act*, which is to facilitate disclosure in view of the duty to release as much information as possible. In doing so, it is also important for the head to keep in mind the possibility of providing partial access whenever information that needs to be protected can reasonably be severed from a record that can otherwise be disclosed.
25. In keeping with the spirit and intent of the *Act*, the head of a public body is accountable for any decision made to refuse access to requested information, and the *Act* provides for an independent review mechanism for a decision to refuse access if a complaint is filed. That duty is established in subsection 84(1), which requires that the head give reasons for refusing access, including the factors on which he or she relied in making that decision. This burden of proof also applies whenever the head of a public body refuses to disclose the information when he or she has discretion to do so.

#### **Handling information that belongs to or concerns a third party under the *Act***

26. Personal information belonging to or concerning a third party enjoys certain protections under the *Act*. The *Act* sets out the circumstances in which such information may be disclosed, and the circumstances in which it may not be released. Furthermore, it establishes the process the public body must follow when the requested information constitutes information belonging to or concerning a third party.

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<sup>4</sup>The list below is not exhaustive. Some factors will play a greater role in some cases and a lesser one in others depending on the circumstances at the time of the request. The factors to be considered include (a) the general purpose of the legislation, i.e., public bodies should make information available to the public, and people should have access to personal information that concerns them; (b) the exact wording of the discretionary exemption and the interests which the exemption attempts to balance; (c) whether the requestor's request could be satisfied by severing the record and by providing the requestor with as much information as reasonably practicable; (d) the historical practice of the institution with respect to the release of similar types of records; (e) the nature of the record and its importance in the eyes of the public body; (f) whether the disclosure of the information will increase public confidence in the operation of the public body; (g) the age of the record; (h) whether there is a compelling need to release the record; (i) whether the Commissioner has previously ordered that similar types of records or information should or should not be disclosed; (j) if the exception applicable to a "notice or recommendation" is used, whether the decision to which the notice or recommendation applies has already been made; and (k) whether the requested information is already available elsewhere to the public.

27. The *Act* defines “third party” as a person, group of persons or an organization other than the applicant or a public body.

*Personal information belonging to a third party*

28. Where relevant information consists of *personal information belonging to a third party*, the head must review the related exceptions set out in subsections 21(1), 21(2) and 21(3) of the *Act*, i.e., whether the information is subject to mandatory or discretionary non-disclosure.

29. If the personal information belonging to a third party is subject to mandatory non-disclosure, the head must report that fact when responding to the request for information, and inform the applicant of his or her right to appeal the decision to the Commissioner or the courts.

30. However, if the personal information belonging to a third party is subject to discretionary non-disclosure, the head must first examine all of the circumstances surrounding the request before deciding whether or not to disclose the personal information belonging to the third party, and follow the process established in Division 2 of Part 2 of the *Act* – Third party intervention:

- If the head of a public body is considering giving access to a record belonging to a third party, he or she must notify the third party first, and inform it of its right to file a complaint with the Commissioner or to refer the matter to the courts;
  - If the third party does not exercise its right to file a complaint, the head may release the personal information in question;
  - If the third party exercises its right to file a complaint, either the Commissioner or the courts will have to decide whether the information should be released;
    - The burden is on the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party’s privacy.<sup>5</sup>
- Notice of the decision to recommend or order the disclosure or non-disclosure of the personal information in question is made to the head of the public body, the third party and the applicant.

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<sup>5</sup>See subsection 84(2) of the *Act*.

Information concerning a third party

31. Where relevant information concerns a third party, e.g., information concerning its finances or business, and whose release could be *harmful to its business or financial interests*, the head must review the related exceptions contained in subsections 22(1), 22(2), 22(3), 22(4) and 22(5) of the *Act*, to determine whether the information is subject to mandatory or discretionary non-disclosure.
32. If the information concerning a third party is subject to mandatory non-disclosure, the head must report that fact when responding to the request for information, and inform the applicant of his or her right to appeal the decision to the Commissioner or the courts.
33. Similarly, if the information concerning a third party is subject to discretionary non-disclosure, the head must first examine all of the circumstances surrounding the request before deciding whether or not to disclose the information, and follow the process established in Division D of Part 2 of the *Act* – Third party intervention:
- If the head is considering giving access to information concerning a third party, he or she must first notify the third party and inform it of its right to appeal to the Commissioner or the courts;
    - If the third party does not exercise its right to appeal, the head may release the information in question;
    - If the third party exercises its right to appeal, either the Commissioner or the courts will rule on the matter of disclosure;
      - The burden is on the third party to prove that the applicant has no right of access to the record.<sup>6</sup>
  - The decision to recommend or order the disclosure or non-disclosure of the information in question shall be made known to the head of the public body, the third party and the applicant.
34. Neither the Commissioner nor the courts are involved in the final step of responding to the request for information, as processing of the request continues following the Commissioner's or the courts' decision in a complaint made by a third party, and the head of the public body shall provide a response to the applicant.

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<sup>6</sup>See subsection 84(3) of the *Act*.

35. Now that we have discussed the procedure for dealing with requests for information made under the *Act*, we shall now examine the complaint matter at issue here. As indicated at the beginning of this Report, R. B., the third party, filed a complaint with the Commissioner following a notice by the head of the public body—the Université de Moncton—of its intention to disclose information concerning R. B. in response to a request for information made under the *Act*.

### **THIS COMPLAINT MADE BY R. B., THE THIRD PARTY**

36. The facts in this complaint case concern a Request for information made on August 30, 2013, to the President of the Université de Moncton. The Applicant wished to receive a list of the payments made by the Université to R. B., the third party. The list was to include the amounts paid to R. B., whether in the form of salary, professional fees or other payments, and specify the nature of the work performed for which each of these payments was made and the dates. The applicant sought the information for the period from July 1, 2000, to the end of August 2013.
37. After reviewing the Request, the President determined that the information in question was contained in the records concerning R. B., the third party, and a company owned by R. B.
38. The Université identified all of the relevant records containing the requested information, and indicated that it was prepared to fulfil its duty as set out in section 9 of the *Act* to assist the Applicant by responding fully and in an open and accurate manner. For all intents and purposes, the Université did not differentiate between R. B. the individual and the company owned by R. B., since R. B. was the sole director according to the Corporate Registry operated by the Province of New Brunswick, the business name of the company—a professional corporation—bore R. B.'s last name, and the payments made to R. B. were in the company's name, care of R. B.
39. That said, the Université sought legal advice to make certain of that before proceeding. Having received confirmation in the matter, the Université proceeded to the next step in processing the request, i.e., listing all of the payments made to R. B., the third party, during the period in question, adopting an open and complete interpretation of what was meant by amounts of money in the form of salary, professional fees or other payments made to R. B., regardless of the nature of the work performed.

40. As for accounting information, the Université destroys such records 10 years after they are created. As a result, there was no information for the period from July 1, 2000, to December 31, 2003 contained in the Request. The first payment listed was made in August 2004.
41. With that task done, the President examined the records that had been gathered and determined that the requested information should be disclosed. The President was cognizant of the fact that the records contained personal information or information of a business nature concerning the third party (R. B.), which according to the *Act* could be withheld under sections 21 and 22.
42. However, the Université also took into account the substance of the exceptions set out in the *Act*, whereby the public body must disclose personal information or business or financial information in cases where the information concerns transactions with the public body (subsections 21(3), 22(3) and subsequent subsections). Consequently, to process the request for information properly, the Université proceeded to the step set out in paragraph 11(3)(d) to give itself a little more time before responding, in order to notify the third party (R. B.) of its intention to disclose the information concerning it. The Université notified the applicant that it was extending the deadline for responding.
43. The Université first notified the third party (R. B.) of the Request, and on October 11, 2013, provided R. B. with a table listing the 61 payments made to its company between August 24, 2008, and August 8, 2013. The table showed the date and the nature of the work performed (translation, revision and public relations), as well as the amount paid on each date. The Université asked the third party (R. B.) to review the information that would be disclosed, and to consent to the disclosure, or in the opposite case, to submit written arguments as to why the information should not be disclosed to the applicant.
44. For the purposes of this Report, the notice to the third party is given following the process set out in section 34 and subsequent sections, whereby the third party has 21 days to examine the information to be disclosed, and to give its consent, or to present convincing arguments as to why the head of the public body should not release the information. To convince the head, the third party must present facts to show that the information should not be released (disclosed or made public) because doing so would constitute a fortuitous, arbitrary or unreasonable invasion of its privacy or could harm its business interests. It should be noted that the third party does not, and should not, know the applicant's identity.

45. On October 22, 2013, the lawyer for the third party (R. B.) presented arguments on behalf of R. B., who was opposed to the disclosure of the payments to R. B.'s company. The President was not convinced by the arguments made with respect to the matter, for on November 7, 2013, he proceeded and formally notified the third party (R. B.) and the Applicant in writing of his decision to disclose all of the information if R. B. did not file a complaint by November 28, 2013. The third party (R. B.), through its lawyer, did file a complaint, dated November 23, 2013, with the Commissioner on November 28, 2013.

### ***Procedure for investigating a complaint – review of the head's decision***

46. Where a third party files a complaint with the Commissioner, we will examine or investigate the matter, i.e., review the decision made by the head of the public body at issue in the complaint surrounding the disclosure or refusal to disclose the requested information. The Commissioner is not a tribunal and does not have jurisdiction to hold hearings, a power reserved solely for The Court of Queen's Bench in appeals under section 65 of the *Act*. The Commissioner will examine the records that are relevant to the complaint, receive the facts on which the head based his or her decision, and consider the written arguments of the parties to the complaint.
47. There is no requirement in the procedure initiated by the Commissioner to hear the parties in a joint debate on the matter, given the confidentiality of the Commissioner's investigation and of the information the *Act* may have deemed to be outside the public domain, taking into account the exceptions to disclosure set out in sections 17 to 33.
48. Where the Commissioner is apprised of a decision to disclose information that could be protected under the *Act*, we will examine the decision to ensure that it respects the right to information while protecting sensitive information and taking the relevant factors of the matter into account.
49. It should be remembered that where the head decides to disclose information concerning a third party to the applicant and the third party is not satisfied with the decision and makes a complaint under paragraph 67(1)(b), the burden of proof shifts:
- a) If the decision is made to disclose records that contain personal information about a third party, the burden is on the applicant to prove that the disclosure of the records/information would not be an unreasonable violation of the third party's privacy subsection 84(2)); and

- b) If the decision is made to disclose records that contain information that is not personal information about a third party, the burden is on the third party to prove that the applicant has no right of access to the records/information (subsection 84(3)).
50. We received this complaint matter on November 28, 2013. In accordance with the *Act*, when a complaint is made by a third party under paragraph 67(3)(b), our complaint process with respect to third parties requires that we notify every party to the matter of the request for disclosure that triggered the process under the *Act*, i.e., the applicant, the public body (the Université), and the third party (R. B.) that processing of the request in question was being suspended until we could examine the matter and make a decision regarding the disclosure of the requested information concerning the payments made to R. B. In addition, we reminded the parties of their right to submit written arguments, and each party exercised that right by the end of February 2014.

### ***Parties' arguments***

51. In this complaint matter, R. B., the third party, objects to the decision by the President of the Université to disclose to the Applicant some of the information concerning R. B., without any other explanations. The parties' arguments reflected their perspectives about the right to information.
52. It would not be appropriate for us to elaborate on the parties' observations for the purposes of this Report, other than to reiterate that every member of the public has the right to request the disclosure of information contained in the records of a public body, such as the Université. Suffice it to say that the primary spirit of the *Act* is to promote the openness and transparency of the business of public bodies, in this case, the Université, and the public's right to know how public monies are spent, and that the right to information takes into account the protection of the personal information of a third party or information whose disclosure could harm its business interests.
53. It is necessary to examine the Request that was made and to respond to it. While proper consideration is of course the backdrop here, it must never interfere with the procedure for dealing with the request for information. In this case, the request for information, i.e., a list of all of the payments made to R. B., is clear and precise. The Université therefore had to respond, and that is precisely what the Université did in this case.

54. Consequently, the next step in our review of this complaint by the third party (R. B.) is to determine whether it is a question of disclosing records containing personal information about the third party (R. B.), or whether it involves information concerning its company, owing to the distinction made with respect to the particular nature of the information and to the applicable burden of proof.
55. If a request is made for disclosure of personal information about a third party, the burden is on the applicant to prove that the information can be disclosed because it will not violate the third party's privacy. If a request is made for disclosure of business information about a third party, the burden is on the third party to prove that the applicant has no right of access. We will therefore examine the relevant records.

### ***Review of relevant records***

56. The Request in this case concerns all of the payments made by the Université to R. B., whether in the form of salary, professional fees or other payments, including the nature of the work performed and the dates. Since the Université made payments to R. B.'s company and not to R. B. personally, the Université gleaned from its accounting data a series of payments and the dates when they were made to the company bearing R. B.'s name. Moreover, R. B.'s company is managed and governed solely by R. B. So, for all intents and purposes, we are speaking about the same person, someone who chose to offer his services under the auspices of a business incorporated in their name, as that person is perfectly entitled to do.
57. However, the spirit of the *Act* requires the public body to respect the right to information, meaning the public body must make sure to clearly identify all of the information and records that are relevant to the request for information. It would be inconsistent with the *Act* to say that the Université did not make any payments to R. B. because all of the payments were made to R. B.'s company. Saying so would be nonsensical. That is why we agree that the Université could consider that the payments it made to R. B.'s company were those made to R. B. the person, in keeping with its statutory duty to identify all of the information and records relevant to the request for information concerning the *payments made by the Université or other payments made to R. B.* before issuing its response.

58. The payments made to the third party (R. B.) during the period in question consist of payments made from August 24, 2004 to August 8, 2013, inclusive, and the nature of the work performed, i.e., translation and revision services, and public relations.
59. We shall begin with the translation and revision services. Where our review deals with the public relations services, we shall provide a more detailed analysis.

### ***Translation and revision services***

60. The Université identified to whom the translation and revision services were provided— Université employees and groups or related groups. The Applicant wishes to receive a list of payments, i.e., not necessarily a copy of all of the related records.
61. Thus, in terms of the information concerning the translation and revision services, the list was to include the date, the payment made, the nature of the service (translation or revision), and the name of the person or group affiliated with the Université that received the service. We note in passing that the list provided by the Université does not include the names of the persons or groups to whom these services were provided. Those names should be added, for the following reason. The information reveals to whom in the public body the services were provided, but those names do not constitute information warranting protection of privacy or business interests. The Université, like all other public bodies, has a statutory duty to disclose such information under paragraph 21(3)(f) of the *Act*: a public body must disclose the benefits provided to its employees (in this case, the benefit of receiving a translation and revision service paid for by the body).
62. We shall now turn to the question of the nature of the information concerning payment for the translation and revision services provided by the third party (R. B.) through its company. Is it personal information? Yes.
63. The argument that the third party (R. B.) and its company are, for all intents and purposes, the same body or entity is tantamount to recognizing that R. B.'s company's income is the income of the third party (R. B.) as an individual. The definition of personal information in section 1 of the *Act* includes the source of an individual's income. And, under paragraph 21(2)(g), the source of a third party's income must not be disclosed, as doing so could constitute an unreasonable invasion of privacy. However, the *Act* also recognizes that where some personal information is concerned, including the source of an individual's income, disclosure may take place, as making the information public

would not constitute an unreasonable violation of the individual's privacy. When an individual does business with the public sector, he or she can expect the income stemming from such business to be made public (see paragraph 21(3)(g) of the *Act*: a public body must disclose the financial conditions for the supply of goods and services provided to or for it).

64. In addition, if we consider that the information concerning the payments for translation and revision services provided by R. B.'s company could be characterized as personal information instead of information concerning the business interests of a third party, would the Université be entitled to disclose the information? Once again, the answer is yes.
65. Indeed, the definition of personal information under section 1 does not apply to a group or a company, and section 21 and its subsections do not apply either, since a business does not have *privacy*. However, the *Act* does protect certain information relating to the business of a third party, and the test in such cases is whether disclosure of the information, including the source of the company's income, could harm its business interests under subsection 22(1) of the *Act*. That said, the third party must nonetheless present facts on which the head may base his or her decision not to disclose information about the payments made under its service contract either because they were strictly confidential, or because disclosing the payments made under its service contract would likely harm its competitive position, hinder its contract negotiations, result in losses, etc. This burden on the third party is not easy to discharge, considering the primary spirit of the *Act* to demonstrate transparency and openness, and the right to inform the public how public bodies are spending their budgets. In this case, there is no sufficiently convincing evidence that disclosure of the payments made to R. B.'s company for translation and revision services under its contract would likely harm its business interests.
66. In sum, if the President's decision to disclose a list of payments for translation and revision services is tantamount to revealing personal information about the third party (R. B.), the Applicant had to prove that disclosure of the information is not an unreasonable violation of the R. B.'s privacy (subsection 84(2)). We conclude that this burden has been met, as the income of the third party (R. B.) must be disclosed, in accordance with paragraph 21(3)(g) of the *Act*, since the information relates to the financial conditions governing the services that were provided to a public body, namely the Université and its employees and related groups. If we consider that the decision was to disclose records containing non-personal information about a third party, the

burden was on the third party (R. B.) to prove that the applicant had no right of access to the information (subsection 84(3)), and we conclude that this burden was not met.

### ***Public relations services***

67. Having concluded that the source of income of the third party (R. B.) and/or its company for translation and revision services is not information warranting protection under the *Act*, we should add that our finding is the same for the source of income from the payments for public relations services.
68. The Université President's decision was to add to the list of payments made to R. B.'s company those payments for public relations services. However, the list did not provide any explanations about the nature of those services, i.e., what they involved.
69. In the case of the translation and revision of documents, it is easier for us to invoke the nature of that kind of work. However, such is not necessarily the case for public relations services.
70. In that regard, the Université identified a service contract between the Université and R. B.'s company dated July 4, 2004, which stipulated the particulars of the public relations services to be provided by R. B. The contract indicates why it was entered into between the parties. We examined the contract and can say that it provides the necessary explanations about the nature of the public relations services provided by R. B., and those explanations are therefore germane to the request for disclosure at issue here.
71. It should be remembered that the Applicant wishes to receive information about the nature of the work performed by R. B., and the contract dated July 4, 2004, specifies the nature of those services. Those explanations should be included in the list in order for the Université to respond completely to the Request.
72. It is not up to us to explain the nature of those services; however, we would encourage the Université to disclose the contract in order to provide those explanations to the Applicant and to demonstrate its openness and transparency.

## **FINDINGS AND RECOMMENDATIONS**

73. We find that the Université's decision to disclose a list of payments for translation, revision and public relations services provided by the third party (R. B.), challenged in

this complaint matter by R. B., is appropriate and consistent with the *Act*, except that the decision should have disclosed more information and contained more explanations.

74. The disclosure of this “personal” information concerning the third party (R. B.) is not an unreasonable violation of its privacy, as the information must be disclosed, pursuant to paragraph 21(3)(g) of the *Act*, as the financial conditions governing services that were provided to a public body, namely the Université and its employees and related groups. The Applicant met the burden of proof by showing that disclosure of that information is mandatory under the *Act*.
75. If we consider that disclosure of these payments involves non-personal information about the third party (R. B.), the burden was on R. B. to prove that the Applicant had no right of access to the information. We find that R. B. did not meet that burden.
76. Given our findings that the list of payments requires more information and explanations in order for the Université to respond completely to the Request, we recommend under paragraph 73(1)(b) of the *Act* that
- the Université disclose to the applicant a complete list of the payments made to the third party (R. B.) and the company that bears its name, for the period from July 1, 2000, to August 28, 2013, while recognizing that accounting data for the period from July 1, 2000, to December 31, 2003, no longer exist;
  - the list indicate for each payment for translation and revision services the date, the amount paid and the name of the Université-affiliated employee or group to whom these services were rendered; and
  - the list indicate for each payment for public relations services the date, the amount paid, and explanations concerning the nature of these services.

Respectfully submitted, this 15th of April, 2014.

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Anne E. Bertrand, Q.C.  
Commissioner