OFFICE OF THE
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COMMISSIONER
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British Columbia

Order 01-21

CAPILANO COLLEGE

David Loukidelis, Information and Privacy Commissioner
May 25, 2001

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Summary: Applicant requested a copy of a 1997 exclusive sponsorship agreement between IDEA, a society the members of which are educational bodies, and Coca-Cola Bottling Ltd. Capilano College initially denied access to most of the agreement under s. 17(1) and s. 21(1), but later disclosed further portions. Section 25 found not to require disclosure in the public interest. Remaining withheld portions of the agreement required to be disclosed because s. 17(1) and s. 21(1) requirements not met.

Key Words: financial or economic interests – trade secret – third party commercial or financial information – monetary value – supplied in confidence – competitive position – negotiating position – significant harm – interfere significantly with – undue financial loss or gain – disclosure clearly in the public interest.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 17(1), 21(1) and 25(1)(b).

Authorities Considered: B.C.: Order No. 126-1996, [1996] B.C.I.P.C.D. No. 53; Order 01-20, [2001] B.C.I.P.C.D. No. 21.

Cases Considered: *Tromp* v. *British Columbia (Information and Privacy Commissioner)*, 2000 BCSC 598, [2000] B.C.J. No. 761.

1.0 INTRODUCTION

[1] This case arises from an access request, under the *Freedom of Information and Protection of Privacy Act* ("Act"), made on March 24, 1999, for "all records concerning the contract between Coca-Cola Inc. and Capilano College." The public body to which the request was made is Capilano College. The applicant is a representative of the

Capilano Publishing Society, which publishes the student newspaper at Capilano College. The contract referred to in the access request is similar to the exclusive sponsorship agreement at issue in Order 01-20, [2001] B.C.I.P.C.D. No. 21, which is issued concurrently with this order.

[2] By a letter dated August 27, 1999, Capilano College told the applicant that, on the basis of Order No. 126-1996, [1996] B.C.I.P.C.D. No. 53 – which was then under judicial review – it would only disclose the signatories to the requested contract, *i.e.*, the Institutional Development in Education Association ("IDEA") and Coca-Cola Bottling Ltd. ("CCB"). The letter offered the following further explanation:

> The members of the Institutional Development in Education Association are Trinity Western University, Douglas College, Capilano College and Kwantlen University College.
>
> You will see from this that Capilano College and Coca-Cola do not formally have a contract between themselves but I am not going to refuse disclosure on that technical ground. Capilano College and others joined together to form an association and enter into a contract with Spectrum Marketing for the provision of Coca-Cola products. I presume that is the contract you are interested in receiving and that is the contract we are refusing to disclose since the Commission has already made a decision that would be applicable here to say that it is not disclosable under the legislation.

[3] This response prompted a request for review, under s. 52 of the Act, dated September 16, 1999. On February 29, 2000, Capilano College issued a further response to the access request. It indicated that the exclusive sponsorship agreement with CCB was being withheld, except for the names of its signatories, under s. 21 of the Act.

[4] On March 17, 2000, the British Columbia Supreme Court quashed Order No. 126-1996, on the ground that my predecessor had failed, in that order, to consider the applicant's argument under s. 25 of the Act. See *Tromp* v. *British Columbia (Information and Privacy Commissioner)*, 2000 BCSC 598, [2000] B.C.J. No. 761. The Court remitted Order No. 126-1996 to me for reconsideration. As is explained in Order 01-20, the applicant in Order No. 126-1996 elected not to pursue the reconsideration because the same record was by then the subject of an access request made by another applicant. That new access request resulted in Order 01-20, which is released concurrently with this order.

[5] CCB and IDEA participated in this inquiry as third parties, as defined in the Act. I also granted intervenor status to three members of IDEA – Trinity Western University, Douglas College and Kwantlen University College. Capilano College, CCB, IDEA, Trinity Western University and Douglas College were represented by the same counsel, who made joint submissions on their behalf. Kwantlen University College was represented by separate counsel. (For convenience, I refer below to Capilano College, CCB, IDEA, Trinity Western University and Douglas College collectively as the "interested parties".)

[6] After the *Tromp* decision, Capilano College released further information from the requested records. At this point, it maintains that ss. 17(1) and 21(1) of the Act apply to portions of the two agreements and that s. 25 (which the applicant has raised) does not require disclosure of any part of those records.

[7] I should also note that the applicants, the public bodies and CCB were represented by the same respective counsel in this inquiry and the inquiry for Order 01-20. Some evidence was also filed jointly in both inquiries.

2.0 ISSUES

[8] The issues to be addressed in this inquiry are as follows:

1. Is Capilano College required by s. 25(1)(b) of the Act to disclose information to the applicant?
2. Is Capilano College authorized by s. 17(1) of the Act to refuse to disclose information to the applicant?
3. Is Capilano College required by s. 21(1) of the Act to refuse to disclose information to the applicant?

[9] Under s. 57(1) of the Act, Capilano College bears the burden of proof with respect to the second and third issues. Previous decisions have established that the applicant bears the burden of proof with respect to s. 25(1).

[10] All participants submitted arguments on the s. 25(1)(b) issue in their initial and reply submissions, even though that issue was not identified in the Notice of Written Inquiry issued by this Office. I have, accordingly, considered that issue, especially in light of comments made by Hutchison J. in *Tromp*.

[11] In its initial response to the applicant's access request, Capilano College appeared to adopt the position that the requested records were being withheld because their status under the Act had already been determined by Order No. 126-1996. Capilano College, the third parties and the intervenors did not pursue this argument before me. As I noted earlier, Order No. 126-1996 has, in any case, been quashed. This decision does not, therefore, address *res judicata stare decisis* or related principles.

3.0 DISCUSSION

[12] **3.1 Descriptions of the Agreements** – This inquiry concerns portions of an exclusive sponsorship agreement between IDEA and CCB and a very small amount of the funding administration agreement between IDEA and its four member institutions. Both agreements are dated September 1, 1997. (I refer below to the first agreement as the "exclusive sponsorship agreement" and to the second as the "funding administration agreement".) As is the case in Order 01-20, it is desirable to describe in some detail the agreements and the information that has been withheld and disclosed. This will assist in explaining my reasoning.

Description of the Exclusive Sponsorship Agreement

[13] The exclusive sponsorship agreement is 121 pages long, including appendices. It begins with a preamble, which identifies the parties and what they do. Trinity Western University, Douglas College, Capilano College and Kwantlen University College are said to be charged with the operation and administration of various educational facilities and campuses. The preamble notes that, as participants of a "buying group", these public bodies formed IDEA, for the purpose of entering into the exclusive sponsorship agreement with CCB. CCB is identified as the authorized bottler and distributor in Canada of beverages manufactured or produced under licence. The preamble goes on to say the agreement's parties have agreed that CCB will supply cold beverage products to IDEA, or other designated parties, for use on the identified campuses. CCB also agrees to supply, maintain and service beverage dispensing, point of sale and other equipment, while IDEA is to provide CCB with certain exclusive supply, advertising and promotional rights.

[14] Some or all of certain definitions found in the interpretation section, on pp. 2 to 13, have been withheld by Capilano College. The definitions of "Cold Beverage Products", "Commission" (and a related definition) have been entirely withheld, while only some portions of the definition of "Term" have been withheld.

[15] As is the case with the agreement dealt with in Order 01-20, the exclusive sponsorship agreement contains the following sections: 2 ("Grant of Rights"), 3 ("Participant's Marks"), 4 ("Supply of Cold Beverage Products"), 5 ("Supply and Maintenance of Equipment") and 6 ("Advertising"). Relatively small amounts of information have been withheld from these portions. Five words have been withheld from section 4.7.2; they identify the source of wholesale price figures. Under section 4.7 ("Unavailability of Non-Carbonated Cold Beverage Products"), IDEA is permitted to dispense and sell a non-carbonated cold beverage product if there is no comparable CCB product and it is obtained from a competitive supplier, under stipulated conditions. Those conditions have been withheld.

[16] Under section 7.1 ("Annual Sponsorship Fee"), the amount of that fee and the term of the contract have been withheld. Under section 7.2 ("Additional Marketing/ Promotional Support"), an amount to be contributed by CCB during the first contract year has been withheld. Under section 7.3 ("Commission"), information has been withheld relating to the timing of the payment of commission and advances on commission payments.

[17] The term, or length, of the agreement has been withheld from section 8.1 ("Expectation") and from article 11 ("Term"). Section 8.2 has been withheld entirely. All of section 9 ("Premiums") and section 10 ("Protection of Marks") have been disclosed.

[18] One of the conditions for termination of the agreement has been withheld from section 12.1.1(a). A passage in section 12.7 ("Failure to Supply CCB Cold Beverage

Products"), which governs the purchase of cold beverage products from other local suppliers if CCB fails to supply such products, has been severed.

[19] All of the following sections have been disclosed in their entirety: 13 ("Indemnity and Insurance"), 14 ("Representations and Warranties"), 15 ("Assignment"), 16 ("Relationship of the Parties"), 17 ("Waiver"), 18 ("Severability of Provisions"), 19 ("Entire Agreement/Agreement Supersedes"), 20 ("Notices"), 21 ("Headings"), 22 ("Governing Law"), 23 ("Alternative Dispute Resolution"), and 24 ("Interest on Arrears"). Sections 25 and 26 have been withheld in their entirety, while all of section 27 ("Confidential Information") has been disclosed. Section 27 reads as follows:

> The parties to this Agreement acknowledge and agree that the provisions contained in this Agreement are confidential to the parties and that they shall keep the provisions in this Agreement confidential. Without limiting the foregoing, the parties acknowledge and agree that the provisions of this Agreement constitute commercial and financial information of CCB which has been supplied in confidence. The parties to this Agreement acknowledge and agree that disclosure of the provisions of this Agreement could reasonably be expected to harm significantly the financial and/or economic interests of the Society [IDEA] (and/or the Participants) and the CCB. The parties to this Agreement acknowledge and agree that the disclosure of the provisions of this agreement could reasonably be expected to:
>
> (i) harm significantly the competitive position and/or interfere significantly with the negotiating position of CCB, Society or the Participants;
>
> (ii) result in similar information no longer being supplied to Society or the Participants by CCB; and
>
> (iii) result in undue financial loss or gain to other persons and organizations.
>
> The parties acknowledge and agree that before any of the material provisions of this Agreement are disclosed (other than on a "need to know" basis) all parties to this Agreement will first agree in writing to any disclosure. The parties further agree that they will use reasonable efforts to keep as confidential any confidential information that comes to the attention of a party as a result of this Agreement as confidential. Notwithstanding the foregoing, the parties may disclose the provisions of this Agreement:
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> (a) to their employees, legal counsel and other professional advisors, to the extent reasonably necessary for them to carry out their duties;
>
> (b) as required by law;
>
> (c) as required by order of a Court or government authority.

[20] All of section 28 ("Ambush Marketing") and some of section 32 ("Advertising by Special Brands") has been withheld. The signature block on pp. 64 and 65 of the exclusive sponsorship agreement has been disclosed.

[21] Schedule A to the exclusive sponsorship agreement, which contains maps of the various campuses, was disclosed, as was Schedule B ("Third Party Purchasers"). Schedule C ("Excluded Facilities") was withheld. Exhibit D ("Participants' Marks") and the title page for Schedule E ("Vending Machines and Locations") were disclosed. The text of Schedule E was, however, withheld. Schedule F was withheld in its entirety. Schedule G ("Signage and Advertising") was disclosed. Schedule H was withheld entirely, while Schedule I ("Conditions of Use of Participant's Marks") was disclosed. Schedule J was withheld entirely. Schedule K, a sample equipment movement order and agreement, was disclosed. A table of contents for the exclusive sponsorship agreement, at pp. 120 and 121, was disclosed (except for the titles and page references for section 8.2 and sections 25 and 26).

Description of the Funding Administration Agreement

[22] The funding administration agreement, which is 43 pages long, has two schedules. The parties to it are IDEA and its members, Capilano College, Trinity Western University, Douglas College and Kwantlen University College. The preamble to the agreement acknowledges the existence of the exclusive sponsorship agreement with CCB. It also says IDEA's members wish to enter into the funding administration agreement in order to record their respective rights and obligations concerning IDEA's governance, administration of the CCB agreement, other sponsorship and future funding administration agreements, and other related matters.

[23] The entire body of this agreement was disclosed to the applicant. The only information withheld is in Schedule B ("Allocation of Consideration Under Coke Agreement"). Six entries relating to the term of the CCB agreement also were withheld from that schedule.

[24] The funding agreement contains detailed provisions under the following sections: 1 ("Definitions and Interpretation"), 2 ("Relationship of the Parties"), 3 ("Term of the Agreement"), 4 ("Conduct of Society Affairs"), 5 ("Coke Agreement"), 6 ("Future Agreements"), 7 ("Confidentiality"), 8 ("Indemnities"), 9 ("Termination/Force Majeure"), 10 ("Dispute Resolution"), 11 ("Miscellaneous"). Schedule A ("Founder's Marks"), which is 21 pages long, was entirely disclosed.

[25] **3.2 Reliance on *In Camera* Evidence and Argument** – As was the case in Order 01-20, the applicant in this case raised concerns about his inability to respond to the evidence and arguments in the *in camera* joint initial submission of the interested parties. After reviewing that submission, I invited the interested parties to reconsider their contention that certain portions justified *in camera* treatment. As a result, the *in camera* submission was re-submitted in an amended form, which disclosed to the applicant most of the questionable portions I had identified.

[26] The interested parties asked that some passages remain *in camera*, on the grounds that their disclosure would cause the type of harm in respect of which the ss. 17 and 21 exceptions had been claimed or would reveal or permit accurate inferences to be drawn regarding the information in dispute. I have accepted those remaining *in camera* portions on that basis.

[27] **3.3 Public Interest Disclosure** – The arguments and evidence in this inquiry regarding s. 25(1)(b) of the Act are very similar to those made in the inquiry leading to Order 01-20. My reasoning on the s. 25(1)(b) issue in that order applies here as well. I adopt that reasoning and conclude that, in the circumstances of this case as well, s. 25(1)(b) does not require disclosure of the requested records.

[28] **3.4 Harm to Interests Under Sections 17 and 21** – As is the case in Order 01-20, the evidence of the parties who oppose release of the disputed information has been jointly advanced in this inquiry in a manner which reflects the overlapping nature of some of the requirements of s. 17(1) and s. 21(1) of the Act. Kwantlen University College did make a separate submission in which it adopted the submissions of the other parties opposing release of the disputed information, but also added brief further argument of a similar nature. It provided in support of its submissions a brief affidavit sworn by Roy Daykin, Kwantlen University College's Director of Finance. Because of the way in which the evidence and argument have been presented in this case, I have analyzed the application of ss. 17 and 21 under a single main heading, an approach I also took in Order 01-20.

General Positions of the Parties

[29] In Order 01-20, I set out at some length the general positions of the parties under ss. 17 and 21. I have reviewed the parties' material in this inquiry in detail. The general positions of the parties are very similar in the two cases. Indeed, many of the submissions in the two inquiries reflect a common template and, with the exception of the brief submission from Kwantlen University College, they were prepared by the same counsel in both inquiries. In this light, I do not intend to repeat here the description in Order 01-20 of the general positions of the parties.

[30] The main difference between the evidence in this inquiry and that in the inquiry for Order 01-20 is that the latter included affidavit evidence from the inquiry for Order No. 126-1996. In this inquiry, with the exception of the 1999 affidavit of the applicant in the inquiry for Order 01-20, all the evidence submitted to me was prepared in 2000. The open and *in camera* affidavits relied on by the interested parties are listed in Appendix A to this order and are referred in this order by the labels given to them in Appendix A.

[31] The applicant in this inquiry relies on several affidavits. The affidavit of the applicant in this case – to which is exhibited numerous media reports – was submitted in both this case and the inquiry for Order 01-20. The affidavit sworn by the applicant involved in Order 01-20 has also been submitted here. Exhibited to it are further media reports, numerous agreements between U.S. universities and various cold beverage

companies and minutes of the meeting of the Vancouver Parks Board approving the terms of a 1996 agreement with CCB.

[32] As was the case in Order 01-20, the applicant here initially did not dispute whether the information in issue was "supplied" within the meaning the meaning of s. 21(1)(b) of the Act. After I invited further submissions, in light of recent decisions I had made concerning s. 21(1), the applicant made submissions on the "supply" issue. The interested parties and Kwantlen University College opposed this. For the same reasons as I expressed in Order 01-20, I have found consideration of "supply" to be appropriate and not unfair. This is particularly so in this case, where Capilano College itself failed to raise s. 17 until its initial submission in the inquiry. (That issue has been addressed by the applicant in his reply submission and I have fully considered it in this order.)

Proof of Harm

[33] The applicant in this inquiry has objected to the quality of the evidence submitted in support of the application of s. 17(1) and s. 21(1) to the disputed information. He does so on the same grounds as are described in Order 01-20. The response of the interested parties and of Kwantlen University College is similar to the position taken by their counterparts in Order 01-20. I have adapted here the standard of proof analysis found in Order 01-20 and have taken the same approach in conducting that analysis as I did there. In the interests of preserving background context and overall intelligibility, I have considered all of the evidence submitted by each of the parties, but I have borne in mind the lack of probative value in speculative, conclusionary, argumentative or rhetorical passages, which are found particularly in the affidavit evidence adduced in support of the application of s. 17(1) and s. 21(1) to the disputed information. By way of example – and this list is by no means exhaustive – I agree with the applicant that the following paragraphs contain bare assertions or speculations and thus do not contribute to the discharge of Capilano College's burden of proof in respect of s. 17(1) and s. 21(1): Greenwood Affidavit, paras. 7, 8, 18, 26, Jordan Open Affidavit, paras. 7 to 9, Kuehl IDEA Affidavit, paras. 7, 8 and 21, Keuhl Trinity Western Affidavit, paras. 7, 8, 17, and Vernon Open Affidavit, paras. 6, 7, 66,

Meaning of "Trade Secret"

[34] I have analyzed the meaning of "trade secret" in Order 01-20. The discussion there is equally applicable in this inquiry. Paragraph 34 of the initial submission of the interested parties provides a list of references to parts of the various affidavits that are said to be relevant to the argument that the disputed information is a "trade secret" within the meaning of s. 17(1)(a) and s. 21(1)(a)(i). I have examined that evidence and conclude, without hesitation, that it does not establish that the disputed information is a "trade secret" of Capilano College, IDEA, CCB or others of the interested parties.

[35] I find that, at the very least, the disputed information has not been shown to have independent economic value in any sense intended in para. (b) of the Act's definition of "trade secret". Even if it could be shown that Capilano College, IDEA, CCB or other

parties might be harmed if the disputed information is disclosed, and that others may benefit from that disclosure, those findings would not mean there is independent economic value in the secrecy of the disputed information. Even if, for the sake of argument, all of the requirements of the definition of "trade secret" had been established, as in Order 01-20 I would not be satisfied that ownership of the disputed information in the manner contemplated by s. 17(1)(a) and s. 21(1)(a)(i) has been established here. I find that the disputed information does not qualify as a "trade secret" for the purposes of the Act.

Financial, Commercial or Technical Information

[36] It is also submitted that the disputed information is financial, commercial or technical information for the purposes of s. 17(1)(b) and s. 21(1)(a)(ii) of the Act. The applicant has not contested that the information is financial information.

[37] As I found in Order 01-20, I am of the view that the disputed information in the exclusive sponsorship agreement is "commercial", and in some cases also "financial", information of Capilano College and CCB (except for Schedule E, which is a list of vending machines and their locations on the various campuses of IDEA member institutions). For the same reasons as I gave in Order 01-20, I do not agree that any of the disputed information is "technical" information under the Act.

Understanding of Confidentiality of the Parties to the Agreements

[38] As with the disputed record in Order 01-20, the exclusive sponsorship agreement in this case contains an explicit confidentiality clause (s. 27). Explicit confidentiality provisions are also found in the funding administration agreement (s. 7). Further, the applicant has not disputed that the parties to these agreements intended and expected confidentiality. The affidavit evidence before me also supports an understanding of confidentiality. I therefore find that the "in confidence" element of s. 21(1)(b) has been established for the disputed information in the exclusive sponsorship agreement. It does not, however, follow from this finding that the element of "supply" in s. 21(1)(b) or a reasonable expectation of harm under s. 17(1) or s. 21(1)(c) has been established.

The Question of "Supply"

[39] The parties in this inquiry made essentially the same arguments on the "supply" requirement in s. 21(1)(b) as were made by the parties in the inquiry for Order 01-20. See, for example, paras. 18 to 48 of the supplemental submission of the interested parties and the supplemental submission of the applicant, at paras. 9 to 17. The evidence was also very similar in both inquiries. See, for example, the Vernon Open Affidavit, paras. 42 to 44, the Jordan *In Camera* Affidavit, paras. 11 to 42, and the initial submission of the interested parties, paras. 5 and 13. I adopt for the purposes of this order my discussion of the question of "supply" in Order 01-20.

[40] I find that each item of information referred to in paras. 13-28 and 32 of the Jordan *In Camera* Affidavit was a negotiated component of the exclusive sponsorship

agreement. As I said in Order 01-20, the fact that CCB may have proposed these contractual terms in identical or similar form to that form in which they exist in the exclusive sponsorship agreement does not change the fact that they were negotiated by the parties to the agreement or mean that those items were supplied by CCB within the meaning of s. 21(1)(b) of the Act. I also find that the proposal of contractual terms (or some form of them) by CCB during the course of negotiation does not constitute the "supply" of confidential information which could be disclosed, by inference, by disclosure of the contractual terms ultimately agreed upon.

[41] Paragraphs 29 and 30 of the Jordan *In Camera* Affidavit address sections 25 and 26 of the exclusive sponsorship agreement, which are similar to sections 26 and 27 of the agreement in issue in Order 01-20. Len Jordan deposed that the information in sections 25 and 26 of the exclusive sponsorship agreement was not itself supplied in confidence, but disclosure of that information would "facilitate" something occurring which would indirectly qualify this information under s. 21(1)(b). As I found in Order 01-20, and as I discuss further in the next section of this order, I find that it has not been established that the information in sections 25 and 26 of the exclusive sponsorship agreement has been "supplied" within the meaning of s. 21(1)(b) of the Act.

[42] With respect to the item of information addressed in para. 31 of the Jordan *In Camera* Affidavit, Len Jordan deposed that the information was not contained in CCB's proposal document, but that it was subsequently supplied by CCB to IDEA. Having examined this item of information in the context of the entire exclusive sponsorship agreement and the Jordan *In Camera* Affidavit as a whole, I have concluded that the information referred to in para. 31 is an extension of negotiated information in the agreement and was not supplied within the meaning of s. 21(1)(b).

[43] In para. 33 of the Jordan *In Camera* Affidavit, Len Jordan deposed that Schedule J to the exclusive sponsorship agreement was not contained in CCB's proposal document, but was subsequently supplied in confidence to CCB by IDEA. Considering the nature of the information in Schedule J, its relationship to the exclusive sponsorship agreement and also all of the affidavit evidence before me, I have concluded that this item of information was supplied by IDEA to CCB and was not a negotiated term of the agreement. The supply criterion of the s. 21(1) exception is made out for this information.

[44] Some information withheld from the exclusive sponsorship agreement is not addressed, on the supply issue, in the Jordan *In Camera* Affidavit or elsewhere in the evidence. I refer here to the items of information withheld from the following sections or schedules: sections 12.1.1(a), 12.7, 28, 32 and Schedules C and E. I have examined these items of disputed information and find that they have not been established to have been "supplied" within the meaning of s. 21(1)(b) of the Act.

[45] I turn now to the information withheld by Capilano College from the funding administration agreement. The information in issue concerns the term, or length, of the exclusive sponsorship agreement. In para. 34 of the Jordan *In Camera* Affidavit, this information is addressed with reference to the "supply" issue in the same manner as the

information referred to in paras. 13 to 28 of that affidavit. Len Jordan deposed that CCB supplied the information in confidence or, alternatively, that its disclosure would permit an accurate inference to be drawn about information which was supplied in confidence. I have already found the term of the exclusive sponsorship agreement to be negotiated information which was not "supplied" under s. 21(1)(b). I likewise find that the "supply" requirement has not been established with reference to the exclusive sponsorship agreement term information withheld from the funding administration agreement. As I said above, the fact that CCB may have proposed contractual terms in identical or similar form to that form in which they subsequently were incorporated into both agreements does not change the fact that they were negotiated by the parties or mean that such items were supplied by CCB within the meaning of s. 21(1)(b) of the Act. Further, the proposal of contractual terms (or some form of them) by CCB during the course of negotiation with Capilano College and IDEA does not constitute the supply of confidential information which could be disclosed, by inference, by disclosure of the contractual terms.

[46] As was the case in Order 01-20, one alleged reasonable expectation of harm relied on here is under s. 21(1)(c)(ii), harm resulting from "similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied." As I found in Order 01-20, I conclude that the disputed information – except that in Schedule J, which I have already found was supplied – does not qualify under s. 21(1)(c)(ii). Because it was not supplied in the first instance, any harm resulting from similar information no longer being supplied does not arise. As regards the supplied Schedule J information, I am not persuaded that a reasonable expectation has been established for the purposes of s. 21(1)(c)(ii). I therefore find that Capilano College is not required by that section to withhold that Schedule J information.

Evidence of Reasonable Expectation of Harm

[47] The same evidence and arguments were made in this inquiry as in the inquiry in Order 01-20 with respect to the relevance of non-confidential exclusive sponsorship agreements between various U.S. universities and cold beverage companies. I adopt here my analysis of this issue in Order 01-20. I conclude that the U.S. agreements provided by the applicant lend weight to the contention that the non-confidentiality of agreements similar to the exclusive sponsorship agreement in question here has not caused cold beverage companies to stop entering into such agreements. I also conclude that it has not been established in this inquiry that disclosure of the disputed information could reasonably be expected to harm the financial or economic interests of Capilano College (or IDEA) under s. 17(1) by virtue of cold beverage companies no longer entering into lucrative exclusive sponsorship agreements. To the extent that the same risk of harm was also argued to constitute a reasonable expectation of harm to CCB or another party under s. 21(1)(c), I find that this has also not been established.

[48] The remaining analysis in Order 01-20 of the general evidence and arguments on harm under s. 17(1) and s. 21(1) is also pertinent to the evidence and arguments in this inquiry. Briefly stated, I adopt it here in relation to the evidence and argument before me in this case.

[49] Schedule C to the exclusive sponsorship agreement is a list of facilities excluded from the deal with CCB. It has been withheld for much the same reason as that advanced for withholding the comparable information in Order 01-20. The Vernon *In Camera* Affidavit, para. 14, states that disclosure of facilities excluded from the exclusive sponsorship agreement

> … could permit opponents of the Cold Beverage Agreement to undercut it and jeopardize its continuance. Opponents … could simply concentrate their marketing efforts … and undercut the prices of counterpart beverages sold at facilities that are not excluded from the Cold Beverage Agreement.

[50] As I said in Order 01-20, the potential for some financial loss or other competitive impact as a result of CCB's competitors knowing the boundaries of the facilities covered by the exclusive sponsorship agreement – a negotiated term of the agreement – does not constitute a reasonable expectation of harm to Capilano College under s. 17(1) nor an undue financial loss or gain or significant competitive harm as contemplated by s. 17(1)(d) or s. 21(1)(c) of the Act. Further, even assuming that the claimed concentration of marketing efforts by competitors could be such a risk, it is one that already exists, as I explain in more detail in Order 01-20. For this reason as well, I find that the evidence in relation to disclosure of excluded facilities does not discharge the onus of establishing a reasonable expectation of harm under s. 17(1) or s. 21(1) of the Act.

[51] Schedule E to the exclusive sponsorship agreement is a list of vending machines and their locations on the various campuses of IDEA member institutions. As in Order 01-20, it is argued here that disclosure of this information presents a reasonable expectation of harm to Capilano College, CCB and IDEA member institutions because a guide to the location of vending machines would increase the risk of their being vandalized. This is spoken to in the Vernon *In Camera* Affidavit, at para. 15. I reject this submission for the same reasons as are given in Order 01-20. Similarly, I also find that the information in Schedule E is not commercial, financial or technical information within the meaning of s. 21(1)(a). I also note here that I have already found this information was not supplied to Capilano College within the meaning of s. 21(1)(b) of the Act.

[52] As in Order 01-20, some information has been withheld from the exclusive sponsorship agreement on the basis that disclosure would present a reasonable expectation of harm by "ambush marketing." See the Vernon *In Camera* Affidavit, paras. 7 to 10, 13 and 16, which relate to information withheld from the following sections and schedules of the exclusive sponsorship agreement: sections 1.1 (definition of "Cold Beverage Products"), 4.10, 8.2, 12.7, 28 and Schedule J. For the same reasons as I gave on this point in Order 01-20, I have concluded that the evidence does not establish a reasonable expectation of harm by ambush marketing under s. 17(1) or s. 21(1) of the Act.

[53] Sections 25 and 26 of the exclusive sponsorship agreement between IDEA and CCB are similar to sections 26 and 27 of the agreement in question in Order 01-20. They have also been withheld on the basis of substantially similar specific evidence and arguments. In this regard see, for example, the Jordan *In Camera* Affidavit, paras. 29 and 30, and the Vernon *In Camera* Affidavit, paras. 11 and 12. I adopt my reasoning on this issue in Order 01-20. I conclude that harm under s. 17(1) or s. 21(1)(c) has not been established by Capilano College in relation to this information.

4.0 CONCLUSION

[54] For the reasons given above, I find that Capilano College is not required by s. 25(1) of the Act to disclose all or part of the information it has withheld from the records requested by the applicant. I therefore decline to make an order directing disclosure under s. 25(1).

[55] For the reasons given above, I find that Capilano College is not authorized by s. 17(1) or required by s. 21(1) to refuse to disclose all or part of the information it has withheld from the requested records and, under s. 58(2)(a) of the Act, I order Capilano College to give the applicant access to the records.

May 25, 2001

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia

Appendix A
to Order 01-21

List of Affidavits Filed by Capilano College,
CCB, IDEA, Douglas College and Kwantlen University College

This appendix lists affidavits filed by Capilano College, CCB, IDEA, Douglas College and Kwantlen University College in this inquiry and provides the terms used in this order to refer to particular affidavits.

	Sworn by	**Sworn on**	**Description**
1.	Peter Greenwood	April 10, 2000	Greenwood Affidavit
2.	Ronald B. Keuhl	April 11, 2000	Keuhl Trinity Western Affidavit
3.	Ronald B. Keuhl	April 11, 2000	Keuhl IDEA Affidavit
4.	Greg F. Lee	April 10, 2000	Lee Affidavit
5.	Beverly Bassman	April 18, 2000	Bassman Affidavit
6.	Carol Ann Simpson	April 17, 2000	Simpson Affidavit
7.	Len Jordan	April 11, 2000	Jordan Open Affidavit
8.	Len Jordan	April 11, 2000	Jordan *In Camera* Affidavit
9.	Mark C. Vernon	April 10, 2000	Vernon Open Affidavit
10.	Mark C. Vernon	April 10, 2000	Vernon *In Camera* Affidavit