

## **DIE Board Ruling 2012-5**

Hearing Details:

Style of Cause: Kelly (GSJS) re: Bylaw 500

Hearing Date: January 31<sup>st</sup>, 2013

Hearing Number: Ruling # 05 2012/2013

DIE Board Panel Members: Sean Wallace, Chief Tribune

Eve Coppinger, Tribune

Roy Ho, Tribune

### **Issues:**

[1] What is the definition of a “record” with respect to Bylaw 500?

[2] What time limit does the SU have to respond to information requests under Bylaw 500?

[3] Is there an underlying assumption in Bylaw 500 that all records are public and the SU needs to prove that they're confidential, or is the underlying assumption that all records are confidential and the applicant needs to prove that they're public?

[4] If there is a dispute whether the release of a record reveals *in camera* proceedings or compromises the SU's legal position, will the SU need to prove their claims if it is challenged in a DIE Board hearing?

[5] If a record contains personal or otherwise confidential information, does the SU have an obligation to redact that information from said record and release it, or can the SU issue a blanket refusal to release a record because of the confidential information contained in it?

[6] May requestors pre-emptively submit Bylaw 500 requests to DIE Board?

[7] Do receipts and invoices resulting from unbudgeted spending approved *in camera* have protection from disclosure under Bylaw 500?

[8] In other areas where Bylaw 500 is silent, may the SU and information requestors rely on the following documents for guidance (a) Part 1 of Alberta's *Freedom of Information and Protection of Privacy Act*: "Freedom of Information"; (b) Orders of the Information and Privacy Commissioner of Alberta?

**Relevant Legislation:**

[9] From Bylaw 0500(1)

"1. (1) Every Students' Union document or record that has been specifically designated as such in the Standing Orders of Students' Council is strictly confidential.

(2) Every Students' Union document or record is confidential that has not been designated strictly confidential and that

- . (a) relates to the employment of any Students' Union employee;
- . (b) includes the minutes or otherwise reveals the proceedings of any *in camera* portion of a meeting of Students' Council, the Executive Committee, the Discipline, Interpretation, and Enforcement Board, or any committee thereof; or
- . (c) if divulged, could compromise the legal position or business competitiveness of the Students' Union.
- . (d) personal information of volunteers

(3) Every Students' Union document or record is public that is neither strictly confidential nor confidential."

[10] From Bylaw 0500(4)

“4. Any member of the Students’ Union requesting a copy of a public Students’ Union document or record shall be provided such a copy, at a cost to that member not exceeding the cost of the document or record’s retrieval and reproduction.”

[11] From DIE Board Protocols s 21 (Burden of Proof)

“With respect to any alleged infringement of Students’ Union legislation or rules, the burden of proof of any facts lies on the Applicant.”

**Decision:**

The Panel made the decision below unanimously.

[12] For the purposes of Bylaw 500, the Panel is comfortable using the definition of “record” as found under the *Personal Information Protection Act*. Under this statute, a “record” means a record of information in any form or in any medium, whether in written, printed, photographic, or electronic form or any other form, but does not include a computer program or other mechanism that can produce a record.

[13] The Panel sets only a *reasonable* time limit for the SU to respond to information requests. The issue in specifying a specific time frame is that it is entirely dependent on the nature of the record requested. If the requestor feels that the SU is taking an unreasonable amount of time to respond to an information request, they may submit a challenge to DIE Board.

[14] The Panel agrees that when the SU responds to information requests, it is their responsibility to label information as public or confidential. If the information is confidential, it is also the SU’s responsibility to specify why the document is confidential under Bylaw 500(1)(2). For example, when replying to an information

request, the SU must state that the information is confidential because it relates to the employment of any SU employee, or it could compromise the business competitiveness of the Students' Union. No further details are necessary.

[15] If the requester disagrees with the SU's assertion that the information is confidential, they may bring a challenge to DIE board. Since the information is allegedly confidential, the hearing will be *in camera* between the SU and DIE Board, where the latter will assess the record to determine if it is valid for the information to remain confidential, pursuant to Bylaw 500.

[16] While DIE Board Protocol s 21 states that the burden of proof of any facts lies on the Applicant (in this case the information requestor), this is impractical in these circumstances, as the Applicant does not have permission to view the allegedly confidential documents to determine relevant facts.

[17] Consistent with the above reasoning, if there is a dispute whether the release of a record reveals *in camera* proceedings or compromises the SU's legal position, and that dispute results in a DIE Board hearing, the SU will need to prove their claims to the Panel in an *in camera* hearing.

[18] If a record contains personal or otherwise confidential information, there is nothing in Bylaw 500 that obliges the SU to redact that information from said record and release it. As such, the SU is not required to redact information, although they are certainly able to redact should they choose. However, in recognizing the importance of redacted documentation, the DIE Board does have the power to redact information from a record and deem the redacted record public. Further recognizing that this authority might unnecessarily burden the DIE Board should it become the only authoritative "redacting body," the Panel

***strongly recommends to Bylaw committee to add to Bylaw 500 regarding the redaction of information.***

[19] Requestors may not pre-emptively submit Bylaw 500 requests to DIE Board. The Applicant argued that this was necessary to prevent information from being altered or destroyed once requested. The Panel does not agree with this reasoning, as such a fear would not be resolved by a DIE Board request that a record be preemptively frozen. Instead, the Panel recommends that any requestor first attempt to request a record directly from the SU, and if rebutted by reason of confidentiality, raise a challenge with DIE Board if they feel the rebuttal was unjust.

[20] Receipts and invoices resulting from unbudgeted spending approved *in camera* do have protection from disclosure under Bylaw 500. However, the requestor still has the power to raise a challenge with DIE Board if they feel the rebuttal by reason of confidentiality was unjust.

[21] Where Bylaw 500 is silent, discretion lies solely with DIE Board. The Panel recognizes that provincial privacy laws may be helpful interpretive aids that can be brought to DIE Board. However, the provisions of these laws might apply differently to the Students' Union relative to other government entities & companies, and thus will be dealt with on a case-by-case basis.