



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-47

Appeal M-910358

The Espanola Board of Education



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ORDER

BACKGROUND:

The Espanola Board of Education (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to minutes of meetings which were held "in camera" to discuss the departure of a former employee of the Board (the affected person).

The Board denied access to the responsive records, claiming sections 6(1)(b) and 14 of the Act. The requester appealed the decision.

The records consist of the minutes of four "in camera" meetings of the committee of the whole Board.

Attempts to mediate the appeal were not successful, and notice that an inquiry was being conducted to review the Board's decision was sent to the Board, the appellant and the affected person. Written representations were received from the Board only.

PRELIMINARY ISSUES:

Before I consider the application of the exemptions to the records, I will address two preliminary issues.

First, in reviewing the records, I have determined that some of the information contained in the minutes of two of the meetings is not responsive to the appellant's request and, therefore, falls outside the scope of this appeal. I have identified this information by "highlighting" and marking it as "not responsive to the request" on the copy of the records which are being sent to the Board with this order.

Secondly, during the course of this appeal, the appellant indicated that he believes it is important that the sort of information he has requested should be made available to the public, without disclosing any particular individual's personal information, because it relates to costs which are passed on to the taxpayer. I have interpreted these views as relating to the so-called "public interest override" found in section 16 of the Act, which states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

It should be noted that section 16 does not apply to records which qualify for exemption under section 6 of

the Act, and I am precluded from considering the possible application of section 16 if the records are properly exempt by the Board under section 6(1)(b).

ISSUES/DISCUSSIONS:

The issues arising in this appeal are as follows:

- A. Whether the discretionary exemption provided by section 6(1)(b) of the Act applies to any parts of the records.
- B. Whether any of the information contained in the records qualifies as "personal information", as defined in section 2(1) of the Act.
- C. If the answer to Issue B is yes, whether the mandatory exemption provided by section 14 of the Act applies to any parts of the records.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the discretionary exemption provided by section 6(1)(b) of the Act applies to any parts of the records.

Section 6(1)(b) of the Act reads as follows:

A head may refuse to disclose a record,

that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

The Board claims that section 6(1)(b) applies to the records because the meetings of the committee of the whole board were authorized to be held "in camera" under what is now section 207(2) of the Education Act. This section reads as follows:

- (2) A meeting of a Committee of a board, including a committee of the whole

board, may be closed to the public when the subject-matter under consideration involves,

- (a) the security of the property of the board;
- (b) the disclosure of intimate, personal or financial information in respect of a member of the board or committee, an employee or prospective employee of the board or a pupil or his or her parent or guardian;
- (c) the acquisition or disposal of a school site;
- (d) decisions in respect of negotiations with employees of the board; or
- (e) litigation affecting the board.

I have reviewed the records and, in my view, parts of them do contain a discussion of personal or financial information of an employee of the Board, as defined by section 207(2) of the Education Act. I find that these parts of the records satisfy the requirements of section 6(1)(b) of the Act.

I must now determine whether section 6(2)(b) of the Act applies to these parts of the records. This section reads as follows:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,

in the case of a record under clause (1)(b), the subject-matter of the deliberations has been considered in a meeting open to the public;

I have not been provided with any evidence to indicate that the subject-matter of these parts of the records has been considered in a meeting open to the public, and I find that section 6(2)(b) does not apply to the parts of the records which satisfy the requirements of section 6(1)(b).

Accordingly, I find that the parts of the records which deal with personal or financial information of an

employee qualify for exemption under section 6(1)(b) of the Act. I have identified these parts by "highlighting" and marking them as "exempt section 6(1)(b)" on the copy of the records which is being sent to the Board with this order.

The head has provided representations regarding the exercise of discretion in favour of claiming exemption under section 6(1)(b). I have reviewed these representations and find nothing improper in the circumstances of this appeal.

I must now determine if the remaining parts of the records contain information which qualifies as personal information.

ISSUE B: Whether any of the information contained in the records qualifies as "personal information", as defined in section 2(1) of the Act

In its representations, the Board restricts its claim for exemption under section 14 to the information contained in the parts of the records which I have found qualify for exemption under section 6(1)(b). Because section 14 is a mandatory exemption, it is my obligation to determine whether any of the remaining information qualifies as "personal information" as defined by section 2 (1) of the Act, and if so, whether section 14 applies.

The remaining parts of the records consist of the headings of the minutes, date, time, etc., the list of Board members present and absent, a list of the names and titles of Board employees present at the meetings, and notations as to the time of adjournment and date of approval of the minutes.

The names of all individuals which appear in the remaining parts of the records appear in their professional or official capacities and, as such, I find that they do not qualify as personal information (Order M-25). The notations as to the time and place of meetings, time of adjournment and date of approval of minutes also do not qualify as personal information. Therefore, the remaining parts of the records do not contain information which qualifies as "personal information" as defined by section 2(1) of the Act, and should be released to the appellant.

Because I have found that the remaining parts of the records do not contain personal information, it is not necessary for me to consider Issue C.

ORDER:

1. I order the Board to disclose to the appellant the parts of the record which are **not** highlighted in the

copy of the records which is being forwarded to the Board with this order within fifteen days of the date of this order.

2. The Board is ordered to advise me in writing within five (5) days of the date on which disclosure was made. This notice should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.
3. In order to verify compliance with the provisions of this order, I order the head to provide me with a copy of the record which is disclosed to the appellant pursuant to provision 1, only upon my request.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ October 7, 1992