



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-8**

**Appeal M-910080**

**Halton Board of Education**



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I N T E R I M     O R D E R

BACKGROUND :

On February 12, 1991, a request was made to the Halton Board of Education (the "institution"), for the following:

Copy of the list of persons identified as Key Communicators for the Halton Board of Education from March 1988 to [the] Present

Copy of the school or geographical area each Key Communicator represents or in which geographical area they are located.

Copy of all correspondence/memos/invitations/questionnaires/surveys sent to Key communicators since March 1988 from the Board, trustees or administration.

Copy of all responses to the Halton Board/administration from Key Communicators re correspondence/memos/invitations/questionnaires/surveys.

Copy of the analysis of questionnaires or surveys responded to by Key Communicators and public literature prepared from this analysis.

Copy of all expenses incurred to date for the Key Communicator program.

Copy of documentation authorizing the Key Communicator program.

Dates and places or meetings with Key communicators from March 1988 to present.

The institution denied access to the requested information under sections 14 and 22 of the Municipal Freedom of Information and

Protection of Privacy Act (the "Act") and the requester appealed the institution's decision.

The Appeals Officer assigned to the case obtained clarification from the institution that the section 14 exemption was being applied to the records responsive to items 1, 3, 4, 5, and 6 of the appellant's request. The institution further clarified that section 22 was being applied to item 2 of the appellant's request.

Clarification was also obtained from the appellant that what she was seeking in item 1 of her request was the names of the Key Communicators and nothing more. During the course of mediation, the Appeals Officer sought the consent of all Key Communicators to the disclosure of their names. Twenty of the 46 Key Communicators contacted gave their consent.

As a result of mediation efforts, it appeared to the Appeals Officer that the issues surrounding items 2 to 8 of appellant's request had been resolved. Since it was clear that further mediation efforts would not be successful in resolving the first item of the appellant's request, notice that an inquiry was being conducted to review the head's decision was sent to the institution and the appellant. Notice was also given to the 26 Key Communicators who had not provided their consent.

An Appeals Officer's Report, which is intended to assist parties in making any representations to the Commissioner concerning the subject matter of the appeal, accompanied the Notice of Inquiry. The Appeals Officer's Report indicated that items 2 to 8 of the request were settled during mediation and that the only issue to

be addressed in the inquiry was whether the names of the Key Communicators should be disclosed.

Representations were received from the institution and the appellant. In response to the Appeals Officer's Report, three additional Key Communicators gave their consent to the release of their names, and one other submitted representations opposing disclosure. Representations had previously been received from two other Key Communicators who had not given consent to disclosure of their names.

The appellant responded to the Appeals Officer's Report by stating that she disagreed with the statement contained in the Report which indicated that the issues surrounding items 2 to 8 of her request had been settled. As a result, settlement of the issues surrounding items 2 to 8 of the appellant's request was not achieved. However, the appellant and the institution agreed to proceed by way of an interim order which would deal only with the issue of whether the names of the Key Communicators should be disclosed. I remain seized of the issues surrounding items 2 to 8 of the appellant's request.

In its representations, the institution provided some background to the Key Communicator program. It explained that the Key Communicator Program was established in February 1988 for the purpose of establishing a dialogue between the Halton Board of Education and representative members of the community. The institution indicated that the Key Communicators are volunteers who are nominated by principals, superintendents and other Key Communicators. The institution also explained that Key Communicators are asked to review and comment upon advance copies of the institution's publications, share facts about

public education with others in the community, and attend sessions where they provide feedback on Board policies and directions.

The record at issue in this appeal is the list of names and addresses of persons identified as Key Communicators for the Halton Board of Education from March 1988 to the present. As I mentioned earlier, the appellant is only interested in the names of the Key Communicators.

**ISSUES:**

The issues arising in this appeal are as follows:

- A. Whether the information contained in the requested record qualifies as "personal information", as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies.
- C. If the answer to Issue B is yes, whether there is a compelling public interest in disclosure of the record which clearly outweighs the purpose of the section 14 exemption.

**SUBMISSIONS/CONCLUSIONS:**

**Issue A: Whether the information contained in the requested record qualifies as "personal information", as defined in section 2(1) of the Act.**

In part, personal information is defined in section 2(1) of the Act as follows:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The appellant submits that the information contained in the record does not constitute personal information because the appellant is not seeking other personal information relating to the Key Communicators, only disclosure of their identities.

The institution claims that the information contained in the record constitutes personal information because disclosure of the names would reveal other personal information about the individuals (ie. the fact that they have volunteered to serve, and do serve as Key Communicators for the Board) within the meaning of subparagraph (h) of the definition of personal information.

I have reviewed the information contained in the record at issue and, in my view, the names of the Key Communicators are properly considered personal information within the meaning of subparagraph (h) of the definition of personal information.

**Issue B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies.**

Section 14(1) of the Act prohibits the disclosure of personal information except in certain circumstances. Two such circumstances are contained in sections 14(1)(a) and (f) of the Act, which state:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

As previously mentioned, the Appeals Officer sought the consent of all Key Communicators regarding the disclosure of their names and 23 of the 46 individuals contacted gave their consent. Of the remaining 23 individuals, three expressly refused to consent to disclosure of their names and submitted representations giving reasons why they did not wish to have their names disclosed. The other 20 individuals did not respond.

The institution in its representations submits that the names of the 23 persons who have provided their consent should not be disclosed because the exception contained in clause (a) of section 14(1) does not make disclosure mandatory. According to the institution, even when a consent is given to disclose personal information, the institution still has the discretion not to disclose it.

I do not accept the institution's position. In my view, the purpose of section 14 is to protect the personal information of individuals which is contained in records maintained by the institution. Section 14 is not intended to protect the interests of the institution. Where consent is given by an individual to disclose his\her personal information to which he\she is entitled to have access, and in the absence of any other exemption applying to the information, in my opinion, there is no residual discretion that can be exercised by the head to refuse disclosure of the personal information of this person. Simply stated, if the exception contained in section 14(1)(a) applies, the mandatory exemption from disclosure does not.

I have examined the consents of the 23 people who have consented to the disclosure of their names and I am satisfied that the names of these 23 Key Communicators should be disclosed by the institution in accordance with section 14(1)(a) of the Act.

Turning to section 14(1)(f), in my view, in order for the head to comply with the requirements of the introductory wording of section 14(2) of the Act, the head has the obligation to consider all the relevant circumstances and to make a determination as to whether a disclosure of personal information constitutes an unjustified invasion of personal privacy.

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of an individual's personal privacy.



I have reviewed the record and conclude that none of the factors listed in section 14(3) apply to the information contained in the record.

With respect to section 14(2) of the Act, the institution raised clauses (e), (f), (h) and (i) in support of its position that disclosure of the names of the Key Communicators would constitute an unjustified invasion of personal privacy. Only three of the Key Communicators who did not consent to disclosure of their names made representations. One refused to give her consent because she claimed that she had not been a Key Communicator for a number of years. The other two Key Communicators were not specific in their reasons for resisting disclosure, pointing out only that they did not know who was asking for the information nor the purpose for which disclosure was being requested.

Section 14(2) of the Act reads as follows:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights

affecting the person who made the request;

- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

The institution in its representations has raised section 14(2) (e) and states that "release of this information to the public could trigger an invasion of the volunteers' privacy whether resulting from contact with them by the media, critics of the program, or others". According to the institution, given the publicity surrounding the Key Communicator Program, the potential for such an invasion of privacy would be "unfair" and should qualify as "other harm" within the meaning of section 14(2) (e).

The institution in its representations acknowledges that "the Key Communicator Program is a matter of public record which has been, and continues to be, the subject of debate within the community".

I note that it is in the context of public debate that the Key Communicators have been characterized as "spies", "secret police" and "informants".

In my view, the fact that disclosure of the names of the Key Communicators might result in questions to them about the Key Communicator Program by the media, critics of the program, or others, does not qualify as "other harm" within the meaning of section 14(2)(e).

The institution has also submitted that the information contained in the record should be considered as "highly sensitive" within the meaning of clause 14(2)(f) in light of public accusations that Key Communicators are "spies", "secret police" and "informants". According to the institution, "disclosure of the fact that someone serves as a 'key communicator' could subject him or her to embarrassment and therefore would be 'highly sensitive' within the meaning of clause 14(2)(f)".

I am of the view that disclosure of the names of the Key Communicators would only indicate that these individuals acted as Key Communicators and nothing more. Since this fact, in and of itself cannot be characterized as "sensitive information" and certainly not "highly sensitive" information, I am of the view that clause (f) is not a relevant consideration.

The institution also submitted that section 14(2)(h) is applicable because there was an implicit understanding that the information provided by the Key Communicators was supplied in confidence and relies on the fact that at no time were the Key Communicators informed that their participation in the Key Communicator Program would be made public.

None of the Key Communicators have made representations to the effect that their names were supplied in confidence and I do not consider clause (h) to be a relevant consideration.

Finally, section 14(2)(i) was claimed by the institution. In its representations the institution took the view that disclosure of the names of the Key Communicators could unfairly damage their reputation because according to the institution, "damage to a person's reputation may result if it is revealed that he or she belongs to a group of persons who have been publicly denounced as spies, secret police and informants".

In my view, the mere disclosure of the names of persons who are volunteering or have previously volunteered as Key Communicators will not unfairly damage their reputations and, therefore, I do not consider clause (i) to be a relevant consideration in influencing the determination as to whether the disclosure of the names of the Key Communicators would constitute an unjustified invasion of personal privacy.

In its representations concerning section 14(2)(a), the institution submits that the Key Communicators do not make decisions on behalf of the institution, nor do they perform any official Board function, consequently, release of the names of the Key Communicators would not further public scrutiny of the institution's activities. Furthermore, the institution points out that it has already agreed to release documentation related to the establishment of the Key Communicator Program. According to the institution, "the desirability of subjecting [the institution's] activities to public scrutiny is adequately served by such disclosure and therefore release of the volunteers' names is unnecessary".

The institution in its representations also states that scrutiny of Board activities is ensured by statutory guarantees that Board meetings will be public and that trustees will be democratically elected. Furthermore, according to the institution, the Key Communicator program is a matter of public record and of public debate and nothing would be gained by extending such scrutiny to the names of the volunteers.

I note that in Order P-256, dated November 27, 1991, a provincial institution submitted that public scrutiny concerns were negated because there were internal policies and procedures in place to ensure accountability. That submission was rejected by Assistant Commissioner Tom Mitchinson who stated:

The actions which are necessary to ensure that the activities of a particular government institution are subjected to an adequate level of public scrutiny will vary depending on a wide range of circumstances. In my view, simple adherence to established internal procedures will often be inadequate, and institutions should consider the broader interests of public accountability in considering whether disclosure is desirable for the purposes outlined in clause (a).

I also note that the Key Communicators are volunteers and that their role and influence with the Halton Board of Education is not defined by statute, nor are they publicly accountable. One of the Key Communicators who consented to the disclosure of her name in a letter addressed to this office stated:

... While the main function, from my perspective, of Key Communicators so far has been to vet Board brochures, according to the nomination brochure (Mar. 91) we also 'provide input on Board policies, decisions and publications.' Since the Board returns repeatedly to this group (whose turnover is

low) for input and dissemination of opinion, the impact of the relationship

on Board policy is greater than if the Board simply surveyed fifty people at random. True, we don't make as a group, recommendations to the Board--we are simply expressing personal opinion but because of selection procedures, some group coherence and greater communication with the Board we must have more clout somewhere or what would be the point of the programme anyway? As such the public, in my opinion should have a right to know who we are and how one gets nominated, what opinions we have put forward as a group and how they've been used ....

At present there is no formal mechanism available for the public to find out the names of the Key Communicators nor is there any mechanism available to the public to ascertain the influence, if any, that Key Communicators exert on Halton Board of Education policy.

The Halton Board of Education is a public institution and accordingly, the public should be able to ascertain who the institution is relying on for input as well as for dissemination of opinion. In my view, this is particularly important where there are suggestions of conflict of interest and inappropriate influence on Board policy. However, I wish to emphasize that I make no comment as to the validity or otherwise of these suggestions.

In view of the above, I believe that the disclosure of the names of the Key Communicators is desirable for the purpose of subjecting the activities of the institution to public scrutiny,

and I am of the opinion that disclosure of the names of the Key Communicators would not constitute an unjustified invasion of personal privacy under section 14(1)(f) of the Act.

As a result of this conclusion, it is unnecessary for me to consider Issue C.

**ORDER:**

1. I order the institution to disclose to the appellant the portion of the record which contains the names of the Key Communicators.
  
2. I also order that the institution not make that disclosure until thirty (30) days following the date of the issuance of this Order. This time delay is necessary to give any party to the appeal sufficient opportunity to apply for judicial review of my decision before the record is finally disclosed. Provided that notice of an application for judicial review has not been served on the Information and Privacy Commissioner/ Ontario and/or the institution within this thirty (30) day period, I order that the parts of the record referred to in Provision 1 of this Order be disclosed within thirty-five (35) days of the date of this Order. The institution is further ordered to advise me in writing within five (5) days of the date on which disclosure was made.
  
3. Any notice should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1

4. I remain seized of this appeal respecting items 2 to 8 of the appellant's request.

Original signed by: \_\_\_\_\_  
Tom Wright  
Commissioner

\_\_\_\_\_ March 5, 1992