



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-27

Appeal M-910075

Carleton Board of Education



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ORDER

BACKGROUND:

The Carleton Board of Education (the institution) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records that show standings of the institution's schools in provincial reviews for Grade 11 and 12 physics and chemistry (1987 to 1988) and Grade 9 geography (1986 to 1987); and the results, both school-by-school and board-wide, of all system-wide tests given since 1983 in English, mathematics and science courses for Grades 9 to 12 and Ontario Academic Credits (OAC).

In response to the request, the institution provided access to the following five records:

- (a) mathematics examination results for the years 1988-1990;
- (b) the system-wide results for Grade 12, general level English examinations, January 1988 - January 1990;
- (c) the system-wide results for OAC I English examinations, January 1988 - January 1990;
- (d) physics examination results, spring of 1988; and
- (e) chemistry examination results, spring of 1988.

The records indicate the average mark obtained in a given year from the examination results of the students attending the institution's schools. These records also indicate the average mark obtained after all the examination results of the individual schools were compiled for a given year. Where a particular school did not participate in examinations in a given year, this was indicated in an accompanying document that was sent to the appellant. However, the five records that were sent to the appellant identify each school not by name, but by an alphabetical code designation. The requester appealed the institution's decision not to identify each school by name.

According to the institution, it does not have a record which correlates a school to an alphabetical code for the chemistry and physics examination results of 1988. The institution submitted an affidavit in support of this contention. However, the institution acknowledged that it had two records which identify the alphabetical code that has been assigned to particular schools for the years January 1988-1990 regarding English examinations, and for the years 1988-1990 concerning mathematics examinations. The institution has denied access to these two records under sections 11(c) and 14 of the Act. The appellant has agreed to restrict her appeal to a determination of whether these two records are exempt from disclosure.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the information contained in the records 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. Whether the discretionary exemption provided by section 11(c) applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the records 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 "recorded information about an identifiable individual ..." The institution submits that, while no teacher or principal is named in the records, disclosure of the school names as they relate to the alphabetized coding system, together with the information disclosed or available to the appellant, would disclose that certain test results relate to a particular course in a particular school. This information would be used to measure the "efficiency" of the principal who has overseen the teachers of the school and, where there is only one teacher for the course in which the results were submitted, the "efficiency" of the teacher. Thus, the institution submits, the school name and its alphabetical code is the personal information of the principal and/or teacher.

The appellant submits that the information contained in the record does not constitute personal information because identifying the schools which participated in the testing "... would not reveal identities of individual teachers or students who wrote the test".

In my view, the records do not contain the personal information of any identifiable individual, and therefore, it is not necessary for me to address Issue B.

ISSUE C: Whether the discretionary exemption provided by section 11(c) applies.

Section 11(c) of the Act reads:

A head may refuse to disclose a record that contains,

information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

In its representations, the institution submits that disclosure of the records would invariably lead the public to compare individual schools on the basis of the test results. Because the test results in and of themselves do not take into account examination methodology or school demographics, the institution submits that a comparison on this basis is inappropriate. The institution submits that disclosure of the records would impact on the public perception of the schools and would harm the institution's ability to retain those persons qualified to be its resident pupils and may lead to a decrease in its tax support.

In Order P-229, dated May 6, 1991, I considered section 18(1)(c) of the Freedom of Information and Protection of Privacy Act, which is similar in wording to section 11(c) of the municipal Act. In that order, I indicated that the expectation of harm to an institution's economic interests or competitive position, should a record be disclosed, not be fanciful, imaginary or contrived, but based on reason. Further, I indicated that in order to support a claim under this section, the evidence provided must be detailed and convincing. An institution relying on the exemption bears the onus of providing sufficient evidence to substantiate the reasonableness of the expected harm(s) by virtue of section 42 of the Act.

Having considered the records and on the basis of the information provided by the institution, I am not convinced that the exemption provided by section 11(c) applies. In my opinion, the scenario described by the institution does not lead to the conclusion that it is reasonable to expect that the type or types of harms referred to in section 11(c) will result if the records are disclosed.

ORDER:

1. I order the institution to disclose the two records at issue to the appellant within fifteen (15) days of the date of this order.

2. The institution is further 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 records which are disclosed to the appellant pursuant to Provision 1, only upon request.

Original signed by: _____
Tom Wright
Commissioner

July 13, 1992