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

ORDER M-55

Appeal M-9200169

The Dufferin Peel Roman Catholic Separate School Board

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ORDER

The Dufferin Peel Roman Catholic Separate School Board (the School Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records related to a stone throwing incident which occurred at a school in Brampton in October 1991. The requester is acting as agent for the parents of a child who was hit by a stone and injured. The School Board responded by providing access to some records, denying access to others, and indicating that no responsive records existed for part of the request. The requester appealed the School Board's decision.

During mediation, the appellant narrowed his request to the names and addresses of the child who is alleged to have thrown the stone and the children who are reported to have witnessed the incident. The records which contain this information are an insurance incident form and one page of handwritten notes.

Further mediation was not possible, and notice that an inquiry was being conducted to review the decision was sent to the School Board, the appellant, and the parents of the children involved in the incident. During the course of the inquiry, the parents of one of the child witnesses consented to the disclosure of their child's name and address, and the School Board agreed to release this information to the appellant.

Therefore, what remains at issue in this appeal are the names and addresses of three children: one who is alleged to have thrown the stone; and two who are reported to have witnessed the incident. Representations were received from the School Board, the appellant, and the parents of all three children.

All parties are in agreement that the names and addresses of the three children qualify as "personal information", as defined in section 2(1) of the Act. The sole issue in this appeal is 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. One such circumstance is described in section 14(1)(f) of the Act, which states:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > if the disclosure does not constitute 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 another individual's personal privacy.

Section 14(3) lists the types of information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. In its representations, the School Board states that it considered sections

14(3)(a), (d), (f) and (g). These sections read as follows:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
>
> (d) relates to employment or educational history;
>
> (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
>
> (g) consists of personal recommendations or evaluations, character references or personnel evaluations;

In my view, the names and addresses of the three children do not fall within any of the types of information listed in sections 14(3)(a), (d), (f) and (g), or any of the other types of information listed in section 14(3). Therefore, I find that no presumption of an unjustified invasion of the children's personal privacy exists.

Section 14(2) provides some criteria for the School Board to consider in determining whether a disclosure of personal information would constitute an unjustified invasion of personal privacy. The School Board relies on sections 14(2)(f), (h) and (i) to support its decision to deny access. The parents of the children have submitted representations which concur with the School Board's position and, in addition, the parent of the child who is alleged to have thrown the stone identifies the considerations included in section 14(2)(g). The appellant, on the other hand, raises the type of considerations found in section 14(2)(d) in support of his position that the information should be released. These sections read 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,
>
> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(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.

Regarding section 14(2)(h), the School Board submits that the personal information of the children involved in the incident is collected in accordance with the School Board's procedure and is to be disclosed only to their insurer. The parent of the child who is alleged to have thrown the stone submits that "school files and records are completely personal and confidential". In my view, none of the parties have provided sufficient evidence to establish the requirements of section 14(2)(h). Although the School Board may be contractually bound to obtain the consent of the insurer before disclosing an incident form, it does not necessarily follow that the information about the children which is contained on the form was supplied by these children to the school in confidence. Therefore, I find that section 14(2)(h) is not a relevant consideration in the circumstances of this appeal.

In referring to section 14(2)(f), the School Board and the children's parents submit that the children's identities are highly sensitive because, if identified, they may be required to participate in a civil proceeding which may be an unsettling experience. Section 14(2)(f) requires that the information itself be highly sensitive, and, in my view, the children's names and addresses cannot accurately be considered "highly sensitive", in the circumstances of this appeal. Therefore, I find that section 14(2)(f) is also not a relevant consideration.

Regarding section 14(2)(g), the parent of the child who is alleged to have thrown the stone submits that some of the information contained in the records may not be accurate. However, she provides no credible evidence in support of this position, and I find that section 14(2)(g) is not a relevant consideration.

As far as section 14(2)(i) is concerned, the School Board merely cites the section number and does not explain how it might apply. I have considered this section and find that it is not relevant in the circumstances of this appeal.

Turning to section 14(2)(d), the appellant points out in his representations that his clients have commenced a civil action against the School Board and wish to add the child who is alleged to have thrown the stone as a

defendant. He submits that:

> ... one must distinguish between the child who actually threw the stone and the others who witnessed the incident. The reasons for finding that it is not an unjustified invasion are particularly compelling with respect to the child who threw the stone.
> ...
>
> Once the child has been identified, he will not be served directly with court proceedings. Steps will be taken to appoint a Litigation Guardian to instruct his or her lawyer on the child's behalf, and the [parents home owners or renters] insurer will be asked to step in to defend.

According to the appellant, failure to ascertain the identity of this individual could have "potential serious consequences" for his client in establishing liability.

In Order P-312, in discussing the provincial equivalent of section 14(2)(d), I stated:

> In my view, in order for section 21(2)(d) [section 14(2)(d) of the municipal Act] to be regarded as a relevant consideration, the appellant must establish that:
>
> (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; **and**
>
> (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; **and**
>
> (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; **and**
>
> (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

In the circumstances of this appeal, I find that the appellant has established that section 14(2)(d) is a relevant consideration, but only with respect to the name of the child who allegedly threw the stone. The appellant's clients have a legal right to add this child as a party to the existing civil action, and the child's name is required to do so. However, I find that the requirements of section 14(2)(d) have not been established with respect to the address of the child who allegedly threw the stone, or the names and addresses of the other children who were apparently witnesses to the incident.

In summary, I find that section 14(2)(d) is a relevant consideration which favours disclosure of the one child's name, and that this consideration outweighs the privacy interests of the child who allegedly threw the stone. I also find that none of the factors which weigh in favour of disclosure under section 14(2) are present with respect to the remaining personal information at issue in this appeal, and that the mandatory exemption provided by section 14(1) applies to prohibit disclosure of the address of the child who allegedly threw the stone and the names and addresses of the other children.

ORDER:

1. I uphold the School Board's decision not to disclose the names and addresses of the child witnesses and the address of the child who is alleged to have thrown the stone.

2. I order the School Board to disclose to the appellant the name of the child who is alleged to have thrown the stone within 35 days following the date of this order and **not** earlier than the thirtieth day following the date of this order.

3. The School Board is further ordered to advise me in writing within five days of the date on which disclosure of the information in Provision 2 was made. Such 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. 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 2, only upon request.

Original signed by: October 30, 1992
Tom Mitchinson
Assistant Commissioner