



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

ORDER M-143

Appeal M-9200159

York Region Board of Education



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ORDER

BACKGROUND:

The York Region Board of Education (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all reports or written communication concerning "the attack on a student which took place at Aurora High School on or about February 19, 1992" which were received by or referred to specific personnel of the York Region Board of Education.

The Board denied access to the records responsive to the request under section 14 of the Act. The requester appealed the Board's decision.

Mediation was not successful, and notice that an inquiry was being conducted to review the Board's decision was sent to the appellant, the Board, and five individuals named in the records (the affected persons). Written representations were received from the Board, the appellant, and two of the affected persons.

The Board identified four reports, a letter, and three pages of notes as responsive to the request.

ISSUES/DISCUSSION:

The issues in this appeal are:

- 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.

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 his representations, the appellant indicates he would be content to receive access to the records with the names and addresses of victim(s), participants and witnesses severed. Accordingly, in my view, these

names and addresses are no longer within the scope of the appeal and will not be considered further in this order.

Section 2(1) of the Act states, in part:

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

The four reports, the letter, and the three pages of notes which are responsive to the request describe an incident involving two individuals who are not employees of the Board, and relate to subsequent events stemming from the incident. Given the level of detail provided in the records and the profile of the incident in the community, I am not satisfied that removing the names and addresses of victim(s), participants and witnesses would render these individuals unidentifiable. In my view, the records contain recorded information about identifiable individuals and qualify as personal information as defined in section 2(1) of the Act. The records do not contain personal information of the appellant.

The appellant submits that information in the records which is not considered to be the personal information of the affected persons should be disclosed. In its representations, the Board submits that the personal information of the affected persons could be severed but it considers that the amount of severing necessary to protect personal privacy would not leave sufficient information to make any sense. I have reviewed the records and in my view the records cannot reasonably be severed without disclosing the personal information of one or more of the affected persons.

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 to any person other than the individual to whom the information relates, except in certain circumstances listed under the section. In my view, the only exception to the section 14(1) mandatory exemption which has potential application in the circumstances of this appeal is section 14(1)(f) of the Act, which reads:

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.

Because section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 14(1)(f) applies, I must find that disclosure of the personal information would **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 constitute an unjustified invasion of personal privacy. Section 14(2) of the Act provides a list of criteria for the head to consider in making his determination, and section 14(3) identifies types of personal information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

The appellant submits that sections 14(2)(a) and (b) of the Act are relevant and weigh in favour of disclosure of the records. These sections read:

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;

The appellant submits that disclosure of the information contained in the records will permit the public to scrutinize the activities of the Board. In support of his position, the appellant has provided two newspaper articles. One of the articles describes reports of the incident, and the other calls for proactive measures to improve safety and security at schools and for courts to deal with young offenders more stridently.

In order to establish the relevance of section 14(2)(a), the appellant must provide evidence demonstrating that the activities of the Board have been publicly called into question, necessitating disclosure of the personal information of the affected persons in order to subject the activities of the Board to public scrutiny (Order M-84). In my view, concerns about the actions of individuals who are not employees or representatives of the Board and concerns about the prevention of future incidents are not sufficient to establish the relevance of section 14(2)(a). I have been provided with no evidence which would indicate that the public has questioned the Board's activities in relation to the particular incident described in the records and, in my view, the relevance of section 14(2)(a) has not been established in the circumstances of this appeal.

The appellant submits that disclosure of the records will promote public health and safety, but has provided no evidence to support this submission. The public was made aware of the incident through descriptive

newspaper articles, and I am not satisfied that disclosure of the personal information of the individuals involved will promote public health and safety in any way. Accordingly, I find that section 14(2)(b) is not relevant in the circumstances of this appeal.

The appellant also submits that there are two additional unlisted factors which are relevant in this appeal, and weigh in favour of disclosure of the records. First, disclosure of the records will promote informed choice in the selection of a school or school board by parents and students. Second, disclosure of the record will enable school board employees to make informed decisions about refusing work under sections 23(3) and 23(6) of the Occupational Health and Safety Act (R.S.O. 1980, c.321). I have reviewed the information contained in the records and, in my view, these factors are not relevant considerations in the circumstances of this appeal.

In summary, I am not satisfied that any factors weighing in favour of disclosure of the personal information contained in the records are present in the circumstances of this appeal. The Board and the two affected persons have provided representations which raise factors weighing in favour of not disclosing the personal information contained in the records. Having found that the records contain personal information, and in the absence of any factors weighing in favour of finding that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy, I find that the exception contained in section 14(1)(f) does not apply, and the records are properly exempt from disclosure under section 14(1) of the Act.

ORDER:

I uphold the Board's decision.

Original signed by: _____
 Holly Big Canoe
 Inquiry Officer

_____ June 11, 1993