



Information and Privacy
Commissioner/Ontario

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

ORDER M-184

Appeal M-9200237

Leeds and Grenville County Board of Education



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ORDER

The Leeds and Grenville County Board of Education (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to certain information about the costs of a grievance filed by an employee of the Board. The requester subsequently agreed to limit his request to a copy of the Minutes of Settlement which the Board signed to resolve this grievance. The Board denied access to this record under section 14(1) of the Act on the basis that the release of the information would constitute an unjustified invasion of the personal privacy of the employee/grievor. The requester appealed the Board's decision.

During the course of mediation, the Board sent a second decision letter to the appellant, in which it claimed that section 6(1)(b) of the Act also applied to the Minutes of Settlement. At the same time, the Board decided to notify the employee and the employee's union as affected persons to the appeal and, thereby, to solicit their views on whether the Minutes of Settlement should be released. Both affected persons, through their lawyer, took the position that the document should not be disclosed. The lawyer also indicated that he planned to rely on the exemptions contained in sections 7(1), 8(1)(f) and 10(1)(d) of the Act as further grounds for not releasing the document.

Where an institution has made a decision that a record should not be released to an appellant and where this matter is subsequently taken to appeal, the institution may often wish to maintain a dialogue with other parties to the appeal on the outstanding issues. It is, however, the responsibility of the Commissioner's office, rather than the institution, to identify persons whose interests may be affected by the outcome of the appeal and to afford these parties the opportunity to participate in the mediation process and to make representations to the Commissioner or his designate (see sections 39(3) and 41(13) of the Act).

The further mediation of this appeal 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 to the two affected persons. Representations were received from all parties except the appellant.

I will first consider the application of section 6(1)(b) of the Act to the Minutes of Settlement.

The Board and the two affected persons submit that section 6(1)(b) of the Act applies to exempt the record from disclosure. This provision 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.

In order for an institution to rely on section 6(1)(b), it must establish that:

1. A meeting of a council, board, commission or other body or a committee of one of them took place; **and**
2. A statute authorizes the holding of such a meeting in the absence of the public; **and**
3. The disclosure of the record at issue would reveal the actual substance of the deliberations of this meeting.

[Orders M-64, M-98 and M-102]

In its representations, the Board indicates that the Minutes of Settlement were approved by the Committee of the Whole Board during an in camera meeting held on April 21, 1992. The Board then states that, later the same evening, the Board by public motion confirmed this decision without further comment. Based on the evidence provided to me, I am satisfied that the Board did hold a meeting and that this session took place in camera.

The Board then relies upon sections 207(2)(b), (d) and (e) of the Education Act (formerly sections 183(1a)(b), (d) and (e)) as the basis for its statutory authority to hold meetings in camera under certain circumstances. These provisions state that:

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,

- (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;
- (d) decisions in respect of negotiations with employees of the board; or
- (e) litigation affecting the board.

Based on the evidence provided to me, I find that the Board had the requisite authority under section 207(2) of the Education Act to hold an in camera meeting in order to discuss the terms of the Minutes of Settlement. That was the case because the record involved decisions in respect of negotiations with an employee of the Board, in the context of an outstanding grievance arbitration.

In order for me to address the third part of the test (the disclosure of the record at issue would reveal the actual substance of deliberations of this meeting), I will need to define the term "deliberations". In my view, deliberations, in the context of section 6(1)(b), refer to discussions which were conducted with a view towards making a decision. Having carefully reviewed the contents of the Minutes of Settlement, I am satisfied that the disclosure of this document would reveal the actual substance of the discussions conducted by the Board, hence its deliberations, or would permit the drawing of accurate inferences about the substance of those discussions. On this basis, I find that the institution has established that the third part of the section 6(1)(b) test applies in this case.

Since all three components of the test have been satisfied, I find that the Minutes of Settlement are properly exempt from disclosure under section 6(1)(b) of the Act.

I must now determine whether the mandatory exception contained in section 6(2)(b) of the Act applies to the facts of this case. 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.

In its representations, the Board has stated that the in camera approval of the Minutes of Settlement was subsequently confirmed by public motion without further comment. Since I have not been provided with any evidence to indicate that the subject-matter of the deliberations was considered in a meeting open to the public, I find that section 6(2)(b) does not apply in the present case.

Section 6(1)(b) is also a discretionary exemption. On this basis, the Board has provided specific representations regarding its exercise of discretion in favour of claiming the exemption. I have carefully reviewed these representations and find nothing improper in the determination which was made.

Since I have found that section 6(1)(b) of the Act applies to exempt the Minutes of Settlement from disclosure, it is not necessary for me to address the other issues raised in this appeal.

ORDER:

I uphold the Board's decision.

Original signed by:
Irwin Glasberg
Assistant Commissioner

September 10, 1993