



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-486

Appeal M-9400468

**Metropolitan Separate School Board
[Toronto]**



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Metropolitan Separate School Board (the Board) received a request for access to "all correspondence and briefs containing complaints of any nature with respect to the principal or teaching staff" at a named school for the period from September 1991 to the date of the request. The requester is the parent of a student enrolled at the school. The Board located 86 records comprising approximately 300 pages which were responsive to the request. The records consist of correspondence to and from the parents of several students at the school and a solicitor acting on their behalf, as well as letters and memoranda from school and Board officials. The Board denied access to the all of the responsive records under the following exemption contained in the Act:

- invasion of privacy - section 14(1)

The requester appealed the Board's decision to deny access. A Notice of Inquiry was provided to the appellant, the Board, the ten parents whose correspondence is included in the records and their solicitor, the principal and three teachers at the school. Representations were received from five parents, one teacher, the principal, the appellant and the Board.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence.

I have reviewed in detail the records at issue in this appeal, along with the representations of the parties. I find that the following records do not contain information which meets the definition of personal information found in section 2(1) of the Act:

Records D-55, D-91 to D-117, D-119, D-120, D-121 to D-129, D-171 to D-178, D-188 & D-189, D-190 & D-191, D-192, D-249, D-250 & D-251, D-252 to D-254, D-255 & D-256, D-257 to D-261 and D-270.

As these 15 records do not contain personal information within the meaning of the Act, section 14 is not available to prevent their disclosure. As no other exemptions have been claimed to apply to these records, they should be disclosed to the appellant.

In addition, Records D-137 & D-138, D-139 and D-140 are correspondence between the appellant and the Board. These records contain only the personal information of the appellant and should, therefore, be disclosed as to do so would not result in an unjustified invasion of the personal privacy of an individual. None of the remaining records contain information which relates to the appellant.

Record D-39 is a report to the school's Parent Teacher Association from the Chair of its Constitution Committee. The Chair has consented under section 14(1)(a) to the disclosure of this record, which contains only his own personal information, to the appellant. This record should, accordingly, be disclosed.

The remaining 67 records consist of correspondence from a group of parents in which they express their views and opinions about school-related issues along with the written responses to these letters by Board and school staff. The parents' letters raise questions as to the competence, integrity and abilities of some staff members.

The appellant submits that, as the records relate to matters which have arisen in an employment setting, the information concerning complaints against the school staff was received in the context of the employee's professional capacity and in the course of his or her employment responsibilities. He indicates that, in his view, such information cannot be considered to be the personal information of the Board employees. It has been established in a number of previous orders that information provided by an individual in a professional capacity or in the execution of employment responsibilities is not "personal information" within the meaning of section 2(1).

I find that the information at issue was not provided by the employees in their professional capacity or in the course of the execution of their employment. Rather, the information consists primarily of the opinions of other individuals about the employees' job performance. As such, I find that much of the information contained in these records goes beyond what would normally be considered to be employment-related information and, accordingly, is properly characterized as the personal information of the staff members.

I also find the correspondence which comprises the remaining records at issue in this appeal, both to and from the Board, to be implicitly of a private or confidential nature. Accordingly, the information falls within the definition of "personal information" contained in section 2(1). Further, I find that the personal information contained in the remaining 67 records relates to the parents who wrote the letters and, in some cases, their children.

Once it has been determined that a record contains personal information, sections 14(2), (3) and (4) of the Act provide guidance in determining whether its disclosure would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions contained in section 14(3) apply, the Board must consider the application of the factors listed in section 14(2) of the Act, as well as all other factors which are relevant in the circumstances of the case.

While not specifically referring to the consideration listed in section 14(2)(a), the appellant argues that disclosure is necessary in order for him to determine whether the Board has taken appropriate steps in dealing with the situation at the school.

The Board claims the application of five of the factors listed in section 14(2) which favour the protection of privacy. These considerations are:

- the individual to whom the information relates will be exposed unfairly to pecuniary or other harm - section 14(2)(e)
- the information is highly sensitive - section 14(2)(f)
- the information is unlikely to be accurate or reliable - section 14(2)(g)
- the information has been supplied in confidence - section 14(2)(h)
- the information, if disclosed, may unfairly damage the reputation of anyone referred to - section 14(2)(i)

Several of the parents who made representations have raised the application of the presumption contained in section 14(3)(d) of the Act to Records D-9, D-10 & D-11, D-36 to D-38, D-41, D-42, D-43, D-44, D-47 to D-52, D-68 & D-69, D-70 & D-71, D-118, D-157 & D-158 and D-159 & D-160 as the information contained therein relates to their child's educational history.

Having reviewed the records at issue and the representations of the parties, I make the following findings:

- (1) The disclosure of the personal information contained in Records D-9, D-10 & D-11, D-36 to D-38, D-41, D-42, D-43, D-44, D-47 to D-52, D-68 & D-69, D-70 & D-71, D-118, D-157 & D-158 and D-159 & D-160 would constitute a presumed unjustified invasion of personal privacy under section 14(3)(d). These 13 records contain information which relates to the educational history of the individuals referred to therein. None of the information contained in these 13 records falls within section 14(4), nor does section 16 have any application to this appeal. Accordingly, they are exempt from disclosure under section 14(1) of the Act.
- (2) With respect to the remaining 54 records, in order for section 14(2)(a) to apply, it must be established through evidence provided by the appellant and following a review of the records at issue that the disclosure of the personal information found in the records is desirable for the purpose of subjecting the activities of the Board to public scrutiny.

While it is clear from the records that the activities of the school's Parent Teacher Association have been called into question by certain members of the school community, I have not been provided with any evidence that the Board's response to those allegations has been the subject of public concern. Further, I find that the disclosure of the personal information of the individuals which is contained in the remaining 54 records would not materially assist the appellant in subjecting the Board's activities to public scrutiny. I find that an adequate level of public scrutiny respecting the

activities of the Board in this matter can be achieved without the disclosure of the personal information contained in these records.

Accordingly, I find that the consideration provided by section 14(2)(a) is not relevant in the circumstances of this appeal.

- (3) I have not been provided with sufficient evidence to enable me to find that the disclosure of the remaining 54 records would result in the individual to whom the information relates being exposed unfairly to pecuniary or other harm. I find, therefore, that the consideration provided by section 14(2)(e) is not relevant in the circumstances of this appeal.
- (4) I find that the information contained in the remaining 54 records may properly be characterized as "highly sensitive" within the meaning of the Act. Accordingly, I find that section 14(2)(f) is a relevant consideration weighing in favour of privacy protection.
- (5) I am satisfied that much of the information contained in the remaining 54 records consists of the personal opinions of certain individuals about school staff. In light of all of the information provided to me in the context of this appeal, I find much of this information is unlikely to be accurate or reliable. The consideration provided by section 14(2)(g) which favours privacy protection is, therefore, a relevant factor in weighing all of the circumstances of this appeal.
- (6) Following my examination of all of the records and the representations of the parties, I find that there existed an implicit expectation of confidentiality on the part of the authors of some of the complaint letters. In others, copies were provided to the subjects of the complaints. I find that the factor provided by section 14(2)(h) is a relevant consideration in respect only of those letters which were not copied to the individual who was the subject of the complaint.
- (7) I further find that the disclosure of the remaining 54 records may unfairly damage the reputations of the school staff who are the subject of the complaints contained therein. Accordingly, section 14(2)(i) is a relevant consideration in the circumstances of this appeal.
- (8) In the absence of any relevant factors weighing in favour of the disclosure of the remaining 54 records, I find that they are properly exempt from disclosure under section 14(1).

ORDER:

1. I order the Board to disclose to the appellant Records D-39, D-55, D-91 to D-117, D-119, D-120, D-121 to D-129, D-137 & D-138, D-139, D-140, D-171 to D-178, D-188 & D-189, D-190 & D-191, D-192, D-249, D-250 & D-251, D-252 to D-254, D-255 & D-256, D-257 to D-261 and D-270 to the appellant within twenty-one (21) days of the date of this order.

2. I uphold the Board's decision to deny access to the remaining 67 records.
3. In order to verify compliance with this order, I reserve the right to require the Board to provide me with copies of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ March 13, 1995