



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-482 (Revised)

Appeal M-9400555

Peterborough County Board of Education



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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 requester, who is a newspaper reporter, asked the Peterborough County Board of Education (the Board) for information relating to a particular motion passed by the Board during a public meeting held on August 25, 1994. This motion pertained to a series of recommendations made to the Board by its Committee of the Whole (the Committee) which formulated these proposals in a meeting closed to the public. In particular, the requester sought access to any "minutes, written records of motions or any recorded statements" made during the Committee meeting which lead to the passage of the motion.

The Board agreed to provide the requester with the formal title and text of the motion which was voted upon during the public meeting. The Board decided, however, to deny access to three pages of minutes compiled by the Committee and to an audiotape of the session. This decision was based on the following exemptions contained in the Act:

- closed meetings - section 6(1)(b)
- invasion of privacy - section 14(1)

The requester appealed the Board's decision to the Commissioner's office. A Notice of Inquiry was provided to the parties to the appeal. Representations were received from the appellant and the Board through its legal counsel.

DISCUSSION:

CLOSED MEETINGS

The main concern expressed by the appellant relates to the nature of the motion which was placed before the Board. This resolution is entitled "Motion 7.1.3 Personnel Issue" and proposes "That the personnel issue considered in the Committee of the Whole Board on Thursday, August 25, 1994 be approved". The nub of the appellant's position is that this motion does not indicate what subject the Board actually voted upon and that, as a result, the public is unable to scrutinize the Board's decision. This is an issue to which I shall return.

The first question for me to address in this appeal is whether the Board is entitled to rely on the closed meetings exemption found in section 6(1)(b) of the Act to withhold the contents of the minutes and the tape from disclosure. In order for the Board to apply this provision, it must establish that:

1. a meeting of a board or one of its committees took place; **and**
2. a statute authorizes the holding of this meeting in the absence of the public; **and**
3. disclosure of the record at issue would reveal the actual substance of the deliberations of this meeting.

There is no dispute among the parties that a meeting of the Board's Committee took place on August 25, 1994 and that the public was excluded from this session. On this basis, the first part of the section 6(1)(b) test has been satisfied.

The next question is whether there exists a statute which authorizes the holding of this type of meeting in the absence of the public. The Board submits that such authority is conferred under section 207(2)(b) of the Education Act. This provision states, in part, 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 ... the disclosure of intimate, personal or financial information in respect of a member of the board or committee [or] an employee or prospective employee of the board ...

Based on the evidence before me, I am satisfied that the matters discussed during the August 25, 1994 Committee meeting fell within the ambit of section 207(2)(b) of the Education Act. On this basis, I find that the second part of the section 6(1)(b) test has been met.

I will now consider whether the disclosure of the minutes would reveal the actual substance of the deliberations of the committee meeting. In Orders M-184 and M-196, I defined the term substance as the "theme or subject of a thing" and the word deliberations to mean "discussions conducted with a view towards making a decision".

Following a review of the Board's representations in conjunction with the minutes and audio tape, I find that the "theme or subject" of the Committee's in camera meeting was how the Board should deal with a series of allegations raised against a named teacher. I also find that the Committee discussed this topic with a view towards deciding how this matter should be resolved. On this basis, I have concluded that the disclosure of the three pages of minutes and the tape recording would reveal the actual substance of the discussions conducted by the Board and, hence, its deliberations. The Board has, therefore, met the third and final part of the section 6(1)(b) test.

The result is that the Board is entitled to rely on the closed meetings exemption to withhold the minutes of the Committee meeting and the tape recording from disclosure.

Since I have found that these two records are properly exempt from disclosure under section 6(1)(b) of the Act, it is not necessary for me to determine whether the invasion of privacy exemption also applies to the information in question.

THE PARTICULARITY OF THE BOARD'S MOTION

[IPC Order M-482/March 7, 1995]

As indicated previously, the appellant's main concern relates to how the Board described the motion which it voted upon during its August 25, 1994 public meeting. This resolution is entitled "Motion 7.1.3 Personnel Issue" and recommends "That the personnel issue considered in the Committee of the Whole Board on Thursday, August 25, 1994 be approved". The appellant believes that the motion adopted by the Board ought to have contained further detail. He feels that when a school board transacts public business, the public must be advised of the decision which the organization has actually made.

In his representations, counsel for the Board states that the wording of the public motion was modelled on the approach outlined in Investigation Report I91-70M which the Commissioner's office issued to the Board in August 1992. That report indicated that when a board puts forward a public resolution which deals with the recommendation of a committee which has met in closed session, the resolution "need only refer to the recommendation of the committee (for example, by number and date) and need not contain any personal information".

While the investigation report does indicate that a public resolution may refer to a committee resolution by number and date only, this represents only one of several approaches which a board can take to describe the subject matter discussed in an in camera meeting. Moreover, there is nothing contained in this report which precludes an institution from describing the subject matter of such a meeting in greater detail provided that personal information regarding an identifiable individual is not disclosed.

In my view and consistent with the tenets of open government, it is desirable for public motions to contain as much information as possible without negating the legitimate and legislatively sanctioned reasons for considering certain matters in the absence of the public.

In the case where information about one or more identifiable individuals is discussed in a closed meeting, school boards should endeavour by public motion to disclose as much information as possible about the general nature of the matter considered without disclosing the personal information of the individuals in question. This approach, which is consistent with the philosophy taken in section 55(7) of the Municipal Act as amended by Bill 163, the Planning and Municipal Statute Law Amendment Act, 1994 (S.O. 1994, c.23, s.51)¹, should assist institutions to balance the dual objectives of open government and the protection of personal privacy.

Having made these general comments, I will now return to the facts of the present appeal. At the outset, it is important to point out that the Commissioner's office is not an open meetings commission and that I do not have the authority to order that the Board expand upon the nature of its motion. My jurisdiction in this

1. While section 55(7) does not specifically apply to school boards, this provision represents the most recent legislative pronouncement on the degree of disclosure which should accompany decisions to discuss issues in the absence of the public.

appeal is rather to determine whether the Board can rely on the provisions of the Act to withhold the responsive records (in this case the Committee minutes and the tape recording) from disclosure.

As previously indicated, I have found that these records are exempt from disclosure under section 6(1)(b) of the Act. It necessarily follows, therefore, that the Board's decision to rely on this exemption must be upheld.

ORDER:

I uphold the decision of the Board.

Original signed by: _____
Irwin Glasberg
Assistant Commissioner

_____ March 7, 1995