



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

ORDER M-526

Appeal M-9400720

Lanark County Board of Education



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Lanark County Board of Education (the Board) received a request for access to all contracts between the Board and its Director of Education (the Director).

The Board located one record, a five page contract dated May 19, 1993. The Board relies on the following exemption to deny access to the record:

- invasion of privacy - section 14

The parties have agreed to exclude Article 3 of the contract, entitled "Salary", from the scope of this appeal. A Notice of Inquiry was provided to the appellant, the Board and the Director. Representations were received from the appellant and jointly from the Board and the Director.

PRELIMINARY ISSUE:

THE RAISING OF ADDITIONAL DISCRETIONARY EXEMPTIONS LATE IN THE APPEALS PROCESS

Upon receipt of the appeal, this office provided the Board with a Confirmation of Appeal notice. This notice indicated that the Board had 35 days from the date of this notice (an expiry date was provided) to raise any additional discretionary exemptions not claimed in the decision letter. No additional exemptions were raised during this period.

Subsequently, in its representations, the Board raised the application of the discretionary exemption provided by section 6 of the Act. By this time the expiry date provided in the Confirmation of Appeal had passed by over two months.

It has been determined in previous orders that the Commissioner has the power to control the process by which the inquiry is undertaken (Orders P-345 and P-537). This includes the authority to set time limits for the receipt of representations and to limit the time during which an institution can raise new discretionary exemptions not claimed in its original decision letter.

In Order P-658, Inquiry Officer Anita Fineberg concluded that in cases where a discretionary exemption(s) is claimed late in the appeals process, a decision maker has the authority to decline to consider the discretionary exemption(s). I agree with Inquiry Officer Fineberg's reasoning and adopt it for the purposes of this appeal.

The Board has provided no explanation for the delay in raising the additional discretionary exemption. In my view, a departure from the 35-day time frame is not justified in the circumstances of this appeal and I will not consider the application of section 6 in this order.

DISCUSSION:

INVASION OF PRIVACY

The term "personal information" is defined in section 2(1) of the Act, in part, as recorded information about an identifiable individual. Having reviewed the record and the representations of the parties, in my view, the record contains the personal information of the Director, and not the requester.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 14(1)(f) of the Act 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.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates.

The Board has not addressed the application of section 14(4) of the Act in its representations. Section 14(4) of the Act identifies particular types of information where disclosure does **not** constitute an unjustified invasion of personal privacy. Simply stated, if section 14(4) applies, section 14 is not available as an exemption from disclosure. Section 14(4)(a) reads:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution;

The record is an employment contract entered into by the Board and the Director, an employee of the Board. Accordingly, disclosure of the classification, salary range and benefits, or employment responsibilities of the Director which are contained in the record does not constitute an unjustified invasion of his personal privacy.

Benefits

In Order M-23, Commissioner Tom Wright made the following comments regarding the definition of benefits within the meaning of this section:

Since the "benefits" that are available to officers or employees of an institution are paid from the "public purse", either directly or indirectly, I believe that it is consistent with the intent of section 14(4)(a) and the purposes of the Act that "benefits" be given a fairly expansive interpretation. In my opinion, the word "benefits" as it is used in section 14(4)(a), means entitlements that an officer or employee receives as a result of being employed by the institution. Generally speaking, these entitlements will be in addition to a base salary. They will include insurance-related benefits such as, life, health, hospital, dental and disability coverage. They will also include sick leave, vacation, leaves of absence, termination allowance, death and pension benefits. As well, a right to reimbursement from the institution for moving expenses will come within the meaning of "benefits".

I agree with the Commissioner. From a review of the record and in light of the above, I find that Articles 4, 6, 7, 10, and Schedule A, qualify as benefits for the purposes of section 14(4), and that their disclosure would not constitute an unjustified invasion of personal privacy.

Employment Responsibilities

In my view, Article 5 outlines the duties of the Director and, according to section 14(4)(a) of the Act, disclosure would not constitute an unjustified invasion of personal privacy.

Articles 1, 2, 8, 9, 11 and 12, Recitals and Execution

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(3) of the Act lists the types of personal information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

The Board and the Director raise the application of sections 14(3)(d), (f) and (g) of the Act, which state:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (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;

The Board's submissions in respect to these sections of the Act refer to part of Schedule A, which I have found is not exempt, and Article 8.02 of the contract. Article 8.02 relates to the impact of certain events on the Director's salary. The Director's exact salary is not at issue in this appeal and has not been publicly disclosed. As the salary information has not been disclosed, it cannot be said that this part of the record describes the type of information listed in section 14(3)(f) of the Act.

The events described in Article 8.02 are those which may occur in the future and relate to the Director in his current position. This part of the record does not relate to either the Director's employment history or his educational history, and section 14(3)(d) does not apply.

With respect to section 14(3)(g) of the Act, I do not agree that this part of the record even **refers** to personal or personnel evaluations, let alone contains them. I find that 14(3)(g) does not apply.

If none of the presumptions in section 14(3) apply, the Board must consider the application of the factors listed in section 14(2), as well as all other circumstances that are relevant in the circumstances of the case to determine whether disclosure of the record would constitute an unjustified invasion of personal privacy.

The Board, the Director and the appellant have not addressed any of the factors listed in section 14(2). After balancing the competing interests of public accountability and the privacy interests of the Director, I find that the considerations which favour disclosure of the remainder of the contract outweigh those which would protect the privacy interests of the Director. Therefore, I find that, in the particular circumstances of this case, disclosure of the personal information would not result in an unjustified invasion of personal privacy.

ORDER:

1. I order the Board to disclose the record to the appellant within thirty-five (35) days following the date of this order, but not earlier than the thirtieth (30th) day after the date of this order.
2. In order to verify compliance with this order, I reserve the right to require the Board to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ May 17, 1995