



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

ORDER M-654

Appeal M_9500513

**Metropolitan Separate School Board
[Toronto]**



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NATURE OF THE APPEAL:

The Metropolitan Separate School Board (the Board), received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to two specific documents:

- (a) a letter dated March 29, 1995 from the Executive Director, Ontario Separate School Trustees' Association, and
- (b) a memorandum dated April 18, 1995 from the Director of Education to "All Trustees".

The Board denied access to the two records based on the following exemption contained in the Act:

- closed meeting - section 6(1)(b)

The requester appealed the Board's decision to deny access to the record. During the initial stages of the appeal, the Board added the following exemptions:

- valuable government information - section 11(a)
- economic and other interests - sections 11(c) and (d)

During mediation of the appeal, the appellant narrowed the scope of his request to only the April 18, 1995 memorandum from the Director of Education. A Notice of Inquiry was sent to the Board and the appellant. Representations were received from both parties.

DISCUSSION:

CLOSED MEETING:

Section 6(1)(b) of the Act reads:

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.

The pivotal issue in this appeal is whether the Education Act authorizes holding the meeting in the absence of the public. The Board claims that the statute authorizing the Board to hold a meeting in camera is the Education Act and makes specific reference to section 207(2)(a), which reads:

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 security of the property of the board.

The appellant, a Trustee with the Board, had previously received access to these two documents as part of the agenda materials circulated to Trustees for a Private Session meeting of the Board. The appellant maintains that this section of the Education Act does not apply as the record deals with tax levy reconciliations. The appellant argues that it was improper of the Board to deal with the record in a closed session and that the record should be a document to which the public has access.

The Board's representations focus on the interpretation of the word "property" as it is used in section 207(2)(a) of the Education Act. The Board argues that the tax base and assessment revenue generated by that tax base is part of the "capital" used by the Board to carry on its business, and that this "capital" is the "property" of the Board. It further submits that any discussion around the security of this property may be held in Private Session of a Committee of the Board. The Board has not provided an interpretation of the word "security".

Having reviewed the record, the representations of both parties and the relevant section of the Education Act, I find that the record has nothing to do with "security" within the meaning of section 207(2)(a) of the Education Act. Further, I do not accept the Board's interpretation of the word "property" as true to the intent of section 207(2)(a) of the Education Act. As the Board has not shown that a statute authorizes holding a meeting relevant to this record in the absence of the public, I find that section 6(1)(b) does not apply.

VALUABLE GOVERNMENT INFORMATION

Section 11(a) of the Act reads:

A head may refuse to disclose a record that contains,

trade secrets or financial, commercial, scientific or technical information that belongs to an institution and has monetary value or potential monetary value;

The Board submits that the record contains financial information which belongs to the Board and has monetary value in that should the record become public, the Board would likely suffer financial losses, so its monetary value is subject to its confidentiality.

The use of the term "**monetary value**" in section 11(a) requires that the information itself have an intrinsic value. The purpose of section 11(a) is to permit an institution to refuse to disclose a record which contains information where circumstances are such that disclosure would deprive the institution of the monetary value of the information (Order 163). The institution has not provided sufficient evidence to convince me that the information itself has intrinsic value, and I find that section 11(a) does not apply.

ECONOMIC AND OTHER INTERESTS

Sections 11(c) and (d) of the Act read:

A head may refuse to disclose a record that contains,

- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;

With respect to section 11(c), the Board submits that the content of the record indicates that should the information or the Board's position become public, the Board would likely suffer financially, thus prejudicing the economic interests of the Board. With respect to section 11(d), the Board submits that the same rationale applies equally to this exemption.

The Board has not explained how or why the harms described by sections 11(c) and (d) could reasonably be expected to result from disclosure of this particular record and this connection is not apparent to me based on my review of the record. Accordingly, I find that sections 11(c) and (d) of the Act do not apply.

ORDER:

1. I order the Board to disclose the record to the appellant within twenty (20) days of 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

November 20, 1995