



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

ORDER M-642

Appeal M_9500338

Ottawa 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 Ottawa Board of Education (the Board) received a request from the parents of a student at one of the Board's elementary schools for access to:

- [1] guidelines for teachers to follow in disciplining students;
- [2] investigation guidelines for complaints involving a teacher's use of discipline;
- [3] documentation concerning an investigation into an incident involving the requesters' son and his former teacher (the teacher); and
- [4] records supporting a statement contained in a letter from the Board's Superintendent (the superintendent) to the requesters.

The Board found no records responsive to Part [1] of the request. In response to Part [2], the Board released its policy and procedure regarding investigations into allegations of physical abuse of students. The Board denied access to all records responsive to Parts [3] and [4] of the request, relying on the following section of the Act:

- invasion of privacy - section 14

The requesters appealed the Board's decision with respect to Parts [3] and [4] of the request.

A Notice of Inquiry was provided to the Board, the appellant, the teacher, and the superintendent. Because the records appeared to contain the personal information of the appellants, the Notice of Inquiry raised the possible application of section 38(b) of the Act. Representations were received from the appellant only. The Board indicates that it wishes to rely on information provided in previous correspondence. Neither the teacher nor the superintendent responded to the Notice.

PRELIMINARY MATTER

The request was made by both parents. However, section 54(c) of the Act provides that:

- Any right or power conferred on an individual by this Act may be exercised,
 - if the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

In the circumstances of this case, I find that the parents were exercising the right to make a request on behalf of both themselves and their son, who is approximately eight years of age.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual.

The only record which is responsive to Part [3] of the request is six pages of handwritten notes made by one of the Board’s social workers during an interview with the appellant’s son. These notes relate to an incident involving the son and the teacher.

I have reviewed this record and find that it contains the personal information of the appellants’ son. Because the record was created in response to allegations of improper conduct on the part of the teacher, I find that it also contains her personal information.

Eleven of the 12 Part [4] records consist of handwritten notes located in the files of the school principal and the superintendent. These notes deal with meetings and conversations held between the principal and the superintendent and various parents, concerning ongoing relations between the staff and parents at the school. The remaining Part [4] record is a six-page typed note with a one-page attachment headed “Briefing/Discussion Notes - December 13, 1994.” This record was prepared by the school principal and summarizes a number of topics which were being addressed by the school at that time, including some issues which involved the appellants.

I find that portions of these records contain the personal information of the appellants, their son, other parents and students, and the teacher. My finding that the records contain the personal information of the teacher is based on the fact that they pertain to allegations of improper conduct on her part. For the same reason, I find that one portion of the typed note contains the personal information of certain other teachers who are the subject of allegations made by other parents, which are unrelated to the appellants’ situation.

As far as other references to teachers and Board staff contained in the Part [4] records are concerned, I find that their names and other identifying information is properly characterized as professional in nature, and does not meet the definition of personal information under section 2(1) of the Act. This finding is consistent with many previous orders of the Commissioner’s Office.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that disclosure of the information would constitute an unjustified invasion of another individual’s personal privacy, the institution has the discretion to deny the requester access to that information.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. If none of the presumptions contained in section 14(3) apply, the institution must consider the application of the factors listed in section 14(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The Board claims that sections 14(3)(b) and (d) are applicable to the Part [3] record, and that sections 14(3)(d) and (g) apply to the Part [4] records. Neither the Board nor the teacher have provided representations in support of the application of these presumptions. Having reviewed the records, I find that the requirements of these sections have not been established, and the presumptions provided by section 14(3) of the Act do not apply.

As far as section 14(2) is concerned, the Board indicates that the considerations under sections 14(2)(e), (h) and (i) of the Act, which favour non-disclosure, are relevant with respect to both the Part [3] and Part [4] records. Again, no representations have been provided in support of these claims. Having reviewed the records, in my view, section 14(2)(f) may also be a relevant consideration with respect some portions of the typed Part [4] record.

The appellants raise sections 14(2)(a) and (d) in support of their position that the records should be disclosed to them.

Sections 14(2)(a), (d), (e), (f), (h) and (i) read as follows:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

The appellants submit that the Part [3] record should be disclosed in order to allow them to more fully understand the circumstances of the Board's investigation of the incident involving their son. As far as the Part [4] records are concerned, the appellants feel that disclosure of these records is necessary in order to ensure that the Board is open and accountable for its behaviour.

Having reviewed the Part [3] record, I find that the personal information of the teacher contained in the record was supplied by the appellants' son, not the teacher, so section 14(2)(h) is not a relevant consideration in the circumstances of this appeal. In addition, neither the Board nor the teacher have provided any evidence to suggest that the teacher will be exposed unfairly to pecuniary or other harm, or that disclosure of this personal information will unfairly damage the teacher's reputation. Therefore, having considered and weighed all of the circumstances, I find that the disclosure of the personal information of the teacher contained in the Part [3] record would not constitute an unjustified invasion of her personal privacy, and that the record does not qualify for exemption under section 38(b).

As far as the Part [4] records are concerned, in my view, it is reasonable to conclude that certain portions of the records contain information which is highly sensitive and/or was supplied in confidence. I have considered and weighed all of the circumstances of this appeal, and I find that disclosure of those portions which contain the personal information of the other parents and students would constitute an unjustified invasion of their personal privacy and satisfy the requirements for exemption under section 38(b) of the Act. I also find that disclosure of the portions of the typed Part [4] record which contain the personal information of the other teachers, or refer to issues raised by individuals other than the appellants, would constitute an unjustified invasion of their personal privacy and qualify for exemption under section 38(b). Finally, I find that disclosure of the remaining portions of the Part [4] records would not be an unjustified invasion of the personal privacy of any individual, and should be disclosed to the appellants.

I have attached a copy of the Part [4] records with the copy of my order which has been sent to the Board's Freedom of Information and Privacy Co-ordinator in which I have highlighted those portions which should not be disclosed.

ORDER:

1. I order the Board to disclose the Part [3] record in its entirety, and those portions of the Part [4] records which are **not** highlighted on the copy of the records which have been provided to the Freedom of Information and Privacy Co-ordinator of the Board with a copy of this order, within thirty-five (35) days of the date of this order, but not earlier than the thirtieth (30th) day after the date of this order.
2. I uphold the decision of the Board not to disclose those portions of the Part [4] records which are highlighted on the copy of the records which I have provided to the Board's Freedom of Information and Privacy Co-ordinator.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Board to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____ November 9, 1995
Tom Mitchinson
Assistant Commissioner