



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

ORDER M-684

Appeal M_9500510

Toronto Board of Education



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NATURE OF THE APPEAL:

The Toronto Board of Education (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to any investigation or staff reports pertaining to a situation at a named secondary school which resulted in the firing of several teachers. The requester represents a group of parents of students enrolled at the school.

The Board located ten records which were responsive to the request and denied access to them in their entirety, relying on the following exemptions contained in the Act:

- closed meeting - section 6(1)(b)
- advice or recommendations - section 7(1)
- economic or other interests - section 11(f)
- proposed policies of an institution - section 11(g)
- solicitor-client privilege - section 12
- invasion of privacy - section 14(1)

The requester appealed the Board's decision to deny access. Following the opening of the appeal and within the 35-day period prescribed by the Confirmation of Appeal, the Board advised the appellant and this office that it also intended to rely on the exemption provided by section 8(1)(f) of the Act (right to a fair trial).

The Appeals Officer forwarded to the appellant and the Board a Notice of Inquiry setting out the issues in the appeal and soliciting their representations. Submissions were received from both parties. The records at issue consist of nine staff reports and an investigation report submitted to the Board's counsel by independent consultants concerning the situation at the school.

DISCUSSION:

CLOSED MEETING

In order to qualify for exemption under section 6(1)(b), the Board must establish that:

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

The Board submits that on April 27 and May 25, 1995, the Committee of the Whole Board of Trustees met in camera to discuss the contents of the staff and consultants reports and to decide on a course of action to address the concerns raised in the reports. The Board indicates that section 207(2) of the Education Act authorizes the holding of a meeting of the Board in the absence of the public. I find that the first two parts of the section 6(1)(b) test have been satisfied

as the meetings of the Board's Committee of the Whole took place, in camera, and that this practice was authorized by section 207(2) of the Education Act.

The Board has provided the Minutes of the public portions of its meetings on those dates which indicate that the Committee of the Whole discussed and decided upon a course of action concerning the subject matter of the staff and consultants reports. The Board indicates that oral submissions were made to the in camera meeting based on the findings and advice contained in the consultant's report and that the nine staff reports were provided to each member of the Committee during its deliberations.

Previous orders have defined the term "deliberations" in the context of section 6(1)(b) to mean discussions which were conducted with a view toward making a decision on a particular subject. If the disclosure of a document would reveal the actual substance of the discussions conducted by the Board's Committee of the Whole or would permit the drawing of accurate inferences about the substance of those discussions, it meets the criteria for the third part of the test. If, however, the disclosure of the information contained in the records would not reveal the substance of the deliberations, they do not meet the criteria for the third part of the test.

I have reviewed the records at issue and the representations of the parties and I am satisfied that the disclosure of the records would reveal the actual substance of the Board's deliberations and the records are, accordingly, exempt from disclosure under section 6(1)(b) of the Act.

The appellant has raised the application of the "public interest override" provided by section 16 of the Act which states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

As I have found that the records are exempt from disclosure under section 6(1)(b), I am unable to apply section 16 to override the application of the exemption.

Because I have found that all of the records are exempt under section 6(1)(b), it is not necessary to analyse whether the other exemptions which were claimed by the Board apply to them. Similarly, it is not necessary for me to address the jurisdictional matters raised by the Board.

ORDER:

I uphold the Board's decision to deny access to the records.

Original signed by: _____ January 10, 1996
Donald Hale
Inquiry Officer