



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

ORDER M-987

Appeal M_9700102

Metropolitan Separate School Board



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NATURE OF THE APPEAL:

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Metropolitan Separate School Board (the Board). The request was for access to a copy of all records which address or comment on eight specific items identified by the appellant, including meetings, interviews, agreements, evaluations, concerns or complaints involving the appellant and another identified individual.

The Board informed the appellant that these records were not accessible as they fall outside the scope of the Act, pursuant to sections 52(3) of the Act.

The appellant appealed the Board's decision. A Notice of Inquiry was sent to the Board and the appellant. Representations were received from both parties.

DISCUSSION:

APPLICATION OF THE ACT

The Board claims that sections 52(3)1 is applicable in the circumstances of this appeal. In order for a record to fall within the scope of section 52(3)1, the Board must establish that:

1. the record was collected, prepared, maintained or used by the Board or on its behalf; **and**
2. this collection, preparation, maintenance or usage was in relation to proceedings or anticipated proceedings before a court, tribunal or other entity; **and**
3. these proceedings or anticipated proceedings relate to labour relations or to the employment of a person by the Board.

(Order M-815)

Each of the records to which access has been denied was either written by an employee or agent of the Board or was received by an employee or agent of the Board. All were secured from the files of the Personnel Department, the local Superintendent of Education, the Principal of the School and the Employee Relations Department. Accordingly, I am satisfied that all were collected, prepared, maintained or used by an employee of the Board, and I find that the first part of the test has been met.

The Board submits that each of the records has been collected, prepared, maintained or used in relation to either a grievance or arbitration process established under the Board's collective agreement with the Ontario English Catholic Teachers' Association (OECTA) or in relation to a complaint filed with the Ontario Human Rights Commission (the OHRC) established under the Ontario Human Rights Code.

In Order M-815, former Assistant Commissioner Tom Mitchinson developed a number of interpretations respecting the wording of section 52(3)1. Applying these various interpretations, I make the following findings under the second requirement of section 52(3)1:

- The arbitration process under the collective agreement between the Board and OECTA is a dispute or complaint resolution process conducted by a court, tribunal or other entity which has, by law, binding agreement or mutual consent, the power to decide grievances or complaints. As such, hearings before an arbitrator are properly characterized as “proceedings”.
- An arbitrator has the authority to conduct “proceedings”, and the powers to determine matters affecting rights, and is properly characterized as an “other entity” for the purpose of section 52(3)1.
- The records are being maintained and/or used by the Board in protecting the interests of the Board in the various proceedings related to the incidents involving the appellant. This maintenance or usage is for the purpose of and/or substantially connected to the arbitration, and therefore properly characterized as being “in relation to” it.

Accordingly, I find that the requirements of the second part of the test have been met.

In the circumstances of this appeal, the Board has established that the appellant, who was a member of OECTA at the time, filed the grievance in accordance with the collective agreement between the Board and OECTA. Therefore, I find that the grievance arbitration is a proceeding relating to labour relations, and the third requirement of section 52(3)1 has been established.

In summary, I find that the records at issue in this appeal were and will be used by the Board in relation to proceedings before an “other entity”, the arbitrator, and that these proceedings relate to labour relations. All of the requirements of section 52(3)1 of the Act have thereby been established by the Board. None of the exceptions contained in section 52(4) are present in the circumstances of this appeal, and I find that the records are, therefore, excluded from the scope of the Act.

ORDER:

I uphold the Board’s decision.

Original signed by: _____
Holly Big Canoe

_____ August 19, 1997

Inquiry Officer