



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

ORDER M-1047

Appeal M-9700215

Peterborough 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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellant is a teacher at a school operated by the Peterborough County Board of Education (the Board). He submitted a request to the Board under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for the appellant's personnel file held at the Board offices as well as a file containing complaints about the appellant kept by the school principal. With respect to the file containing complaints, the appellant specified that he had no objection to the deletion of names, addresses, or ages of any students or other individuals that appear in the files.

The Board identified the records responsive to the request and provided partial access to them. Access to the remaining records was denied on the basis of sections 38(b) and 14(3)(b) (invasion of privacy) of the Act. The appellant appealed the Board's decision to deny access to the remaining records.

This office provided a Notice of Inquiry to the Board and the appellant. In this Notice, the Appeals Officer raised the possible application of section 52(3) to the records. Representations were received from both parties.

RECORDS:

There are five records at issue which consist of handwritten notes containing students' accounts of incidents involving the appellant.

DISCUSSION:

JURISDICTION

The first issue in this appeal is whether the records fall within the scope of sections 52(3) and (4) of the Act. These provisions read:

- (3) Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
 1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
 2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.

3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.
- (4) This Act applies to the following records:
1. An agreement between an institution and a trade union.
 2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.
 3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.
 4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment.

The interpretation of sections 52(3) and (4) is a preliminary issue which goes to the Commissioner's jurisdiction to continue an inquiry.

Section 52(3) is record-specific and fact-specific. If this section applies to a specific record, in the circumstances of a particular appeal, and none of the exceptions listed in section 52(4) are present, then the record is excluded from the scope of the Act and not subject to the Commissioner's jurisdiction. As a result, if I find that I do not have jurisdiction to deal with the records, it will not be necessary for me to deal with the substantive exemptions claimed by the Board.

The Board submits that the records fall within the parameters of paragraphs 52(3)1 and 3 of the Act. I will begin with paragraph 52(3)3.

Section 52(3)3

In order for a record to fall within the scope of paragraph 3 of section 52(3), 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 meetings, consultations, discussions or communications; **and**
3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the Board has an interest.

(Order P-1242)

In this regard, the Board submits that the records were prepared, maintained and used as part of an investigation relating to the actions of the appellant and whether possible discipline might be imposed, and these are clearly employment-related matters in which the Board has an interest.

Requirements 1 and 2

In his representations, the appellant points out that the matters arising from the complaints made by students were dealt with informally by the principal of the school and were not elevated to the Board level. Consequently, the appellant argues, the records do not pertain to an employment-related matter in which the **Board** has an interest.

I do not agree with the appellant's position. In my view, regardless of whether the records reached the level of the Board, the principal of a school is, for the purposes of employment-related matters, acting on behalf of the Board and is accountable to that Board for any decisions taken in this regard.

I find that the records were prepared for and were maintained and used by the principal of the school on behalf of the Board.

The Board indicates that there were ongoing consultations, discussions and/or communications with other representatives of the Board to determine whether discipline should be imposed and what follow-up, if any, would be appropriate. Accordingly, I am satisfied that the first two requirements of section 52(3)3 have been met.

Requirement 3

I am satisfied that the appellant was an employee of the Board at the time the records were created. I am also satisfied that complaints about the actions of a teacher during the school day made by a student and any actions taken as a result of these complaints are employment-related matters.

The question remains, does the Board have an interest in these matters? An "interest" is more than mere curiosity or concern. An "interest" must be a legal interest in the sense that the matter in which the Board has an interest must have the capacity to affect the Board's legal rights or obligations (Order P-1242).

In its representations, the Board refers to the mechanisms available to a teacher under the Education Act and the collective agreement should any disciplinary action be taken against the teacher or should his employment with the Board be terminated.

The appellant indicates that the Board was not even informed of this file and had no knowledge or involvement in the matters referred to in the file. The appellant maintains that these were minor incidents, resolved by the principal at the school, and could not be said to "affect the institution's legal rights or obligations."

I do not agree with the appellant. In my view, the Board's obligations toward the appellant under the Education Act and pursuant to the collective agreement are not obviated simply because the matter was addressed at the school level. The matter has the potential of escalating at any time to the Board level or in such a way as to affect the Board's responsibilities. Accordingly, I find that the Board does have an interest in the matters which form the subject of the students' complaints. Therefore, I find that the third requirement has been met.

All of the requirements of section 52(3)3 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 fall within the parameters of section 52(3)3, and therefore are excluded from the scope of the Act.

Because of the way in which I have decided the jurisdictional issue under sections 52(3) and (4), it is not necessary for me to consider the other exemption claims and, in fact, I am precluded from doing so.

ORDER:

This appeal is dismissed.

Original signed by: _____
 Laurel Cropley
 Inquiry Officer

 December 9, 1997