



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

ORDER M-1031

Appeals M-9700211, M-9700212 and M-9700213

Durham Region Roman Catholic Separate School Board

NATURE OF THE APPEALS:

The requester made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Durham Region Roman Catholic Separate School Board (the Board). The request was for access to a court document relating to the requester's daughter.

The Board located the records responsive to the request and determined that the interests of three individuals (the requester's daughter and her custodial parents) would be affected by the disclosure of the information. The Board notified the three individuals of the request, and asked for their comments with respect to disclosure of the information contained in the court documents.

The three individuals objected to the disclosure of the records to the requester. In the Board's view, however, the exemptions in the Act did not apply. Accordingly, the Board decided to grant the requester access to the records and notified the three individuals of its decision. The three individuals (now the appellants) appealed the Board's decision to disclose the records.

This office sent a Notice of Inquiry to the requester, the appellants and the Board. As the records at issue appear to contain personal information, section 38(b) and section 14 of the Act are at issue. Representations were received from the requester only.

RECORDS:

The same records are at issue in all three appeals. They consist of two court orders dated November 1, 1996 and February 5, 1997, each two pages, relating to court file number D1117/96.

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. Having reviewed the records, I find that they contain the personal information of the appellants and the requester.

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 Board determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Board has the discretion to grant or deny the requester access to that information.

Section 38(b) introduces a balancing principle. The Board must look at the information and weigh the requester's right to his/her own personal information against another individual's right to the protection of his/her privacy. Although the Board may determine that release of personal information would

constitute an unjustified invasion of the other individual's personal privacy, section 38(b) gives the Board the discretion to grant or deny access to the information to the requester.

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of an individual other than the requester. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

In my view, section 14(3) does not apply in the circumstances of this appeal. As well, I find that the records at issue in this appeal also do not contain information relevant to section 14(4).

I have carefully considered the provisions of section 14(2) and, in my view, none of the listed factors are relevant. However, I find that it is relevant that the personal information is part of a public record and is kept on file at the court office. This factor, in my view, weighs in favour of disclosure of the information to the requester.

I find that the appellants have not established that disclosure of the record would be an unjustified invasion of their personal privacy and section 38(b) does not apply.

Even if I had found that section 38(b) did apply, as I have stated, section 38(b) is a discretionary exemption. Section 38(b) gives the Board the discretion to grant or deny access to the requester, even if doing so would constitute an unjustified invasion of another individual's personal privacy.

As noted by former Commissioner Tom Wright in Order M-54, when dealing with a similar situation under section 38(b) of the Act:

The result in this appeal highlights an important aspect of section 38 of the Act. Section 38 is a discretionary exemption and even if, as in this case, the disclosure of the information would be an unjustified invasion of another individual's privacy, discretion can be exercised in favour of disclosure. In my view, the availability of discretion under section 38 is consistent with one of the purposes of the Act which is to "... provide individuals with a right of access to (their own) information".

ORDER:

1. I uphold the decision of the Board to disclose the records to the requester.
2. I order the Board to disclose the records referred to in Provision 1 to the requester by **December 15, 1997** but **not** earlier than **December 10, 1997**.
3. In order to verify compliance with this order, I reserve the right to require the Board to provide me with a copy of the records which are disclosed to the requester pursuant to Provision 2.

[IPC Order M-1031/November 10, 1997]

Original signed by: _____

_____ November 10, 1997

Holly Big Canoe
Inquiry Officer