



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-1102

Appeal M-9800042

Peel District School Board



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NATURE OF THE APPEAL:

The Peel District School Board (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to information contained in the personnel records of a named Board employee (the affected person). In particular, the requester sought access to records which could confirm when and where he had co-habited with the affected person and that he had been named as a beneficiary on her life insurance policy. The Board advised the requester that it did not have records naming or containing the addresses of the persons covered by an employee's "family benefits". The Board clarified that life insurance beneficiary designations are maintained.

The Board contacted the affected person, who objected to the disclosure of any information. The Board denied access to the records on the basis that section 14(1) (invasion of privacy) of the Act applied. The requester appealed the denial of access.

During mediation, the requester, now the appellant, narrowed the scope of his request to the life insurance beneficiary designation forms completed by the affected person. The Board has provided five records, only three of which contain information responsive to the request. Therefore, I will consider these three records as the records at issue.

This office provided a Notice of Inquiry to the appellant, the affected person and the Board. Because the records appeared to contain the personal information of the appellant and other identifiable individuals, the parties were asked to comment on the application of section 38(b) of the Act. Representations were received from the Board and the appellant.

DISCUSSION:

PERSONAL INFORMATION AND INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined in part, to mean recorded information about an identifiable individual. I have reviewed the records at issue in this appeal and find that they contain the names of the appellant, the affected person and another individual. The records also contain the date of birth, social insurance number and other information relating to the affected person. I find that the records contain the personal information of the appellant, the affected person and another identifiable individual.

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 another individual 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 deny the appellant access to that information. In this situation, the appellant is not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of personal privacy of another person. Since the appellant has a right of access to his own personal information, the only

situation under section 38(b) in which he can be denied access to the information is if it can be demonstrated that the disclosure of the information **would** constitute an unjustified invasion of another individual's privacy.

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. Where one of the presumptions in section 14(3) applies to the personal information found in a record, the only way such a presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or if a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions contained in section 14(3) apply, the Board must consider the application of the factors listed in section 14(2), as well as all other considerations which are relevant in the circumstances of the case.

The Board submits that the records contain information which falls within the ambit of the presumption in section 14(3)(d). This section states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

relates to employment or educational history.

I have reviewed the information in the records and I find that it does not contain information that would qualify as "employment or educational history" for the purposes of section 14(3)(d).

I will therefore consider the application of the factors listed in section 14(2) of the Act together with all relevant circumstances of this appeal.

The Board states that the personal information in the records was provided by the affected person to the Board and that it cannot be released without her written consent. The Board has also indicated that the affected person has expressed concerns about her safety and pecuniary harms which may result from disclosure of the records. In this manner, the Board is raising sections 14(2)(h) (provided in confidence) and (e) (pecuniary or other harm) as factors which are relevant in the circumstances of this appeal.

The appellant submits that he needs the information in order to substantiate his application for "pension credits" under a Federal Government income security programme. The appellant argues that the records contain information that relates to him and is critical in obtaining benefits to which he is entitled. The appellant is therefore raising the application of section 14(2)(d) (fair determination of rights) as a relevant factor.

I have reviewed the records together with the representations of the parties. I find that section 14(2)(e), which favours non-disclosure of the records, is relevant, but I am unable to give it much weight. Neither

the Board nor the affected person has provided me with sufficient evidence in this regard. I find that section 14(2)(h) is relevant in that the name of a beneficiary under an insurance policy was provided by the holder of the policy in confidence and this factor weighs in favour of non-disclosure of the record. In the circumstances of this appeal, I find that section 14(2)(f) (highly sensitive) is also relevant and this factor also weighs in favour of privacy protection.

I find that the factor raised by the appellant (fair determination of rights) is relevant and this factor weighs in favour of disclosure of the records. Having considered all the factors listed in section 14(2) together with all the relevant circumstances of this appeal, I find that, on balance, the affected person's right to protection of her personal privacy outweighs the appellant's right to access to the records. I find that section 14(4) is not applicable to the records and the appellant has not raised the possible application of section 16 of the Act. Accordingly, the records are exempt from disclosure under section 38(b) of the Act.

ORDER:

I uphold the decision of the Board.

Original signed by: _____

Mumtaz Jiwan
Adjudicator
(formerly Inquiry Officer)

_____ May 12, 1998