



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-1080**

**Appeal M-9700323**

**District Catholic School Board No. 55**

## **NATURE OF THE APPEAL:**

The appellant is a teacher at the District Catholic School Board No. 55 (formerly the Hastings-Prince Edward County Roman Catholic Separate School Board) (the Board). In the summer of 1997, the appellant was transferred from one school operated by the Board to another school (the school) within the Board's jurisdiction. Subsequent to the transfer decision, the Board received a package of materials regarding the appellant from a number of concerned parents. The parents requested that the appellant not be transferred to the school.

The appellant submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for two signed letters that formed part of the package of materials which was left at the school.

The Board denied the appellant access to the information at issue, claiming the exemptions found in sections 32, 38, 14(1)(f), 14(2) and 14(3) of the Act. The appellant appealed the Board's decision.

The Board subsequently advised this office that the specific exemptions relied upon to deny access are sections 38(b) and 14(1) (invasion of privacy) of the Act.

During mediation, the appellant confirmed with the Appeals Officer that the only records sought in this appeal are the two signed letters which formed part of the package left at the school. He indicated that he is not seeking access to any other part of the package.

This office provided a Notice of Inquiry to the Board, the appellant and the authors of the two letters. Representations were received from the Board, the appellant and the author of one of the letters. In his representations, the appellant indicates that the entire package which was given to the Board is at issue. This is apparently because he was supposed to have received this package and at the date of preparing his representations, it had not been received. The Appeals Officer contacted the Board and was advised that, as of February 6, 1998, with the exception of the two letters, the package of materials had been disclosed to the appellant. Accordingly, this appeal will only deal with the two letters requested by the appellant.

## **RECORDS:**

The records at issue are two signed letters which were left at the school. Specifically, Record 1 is a letter dated August 11, 1997 to a trustee of the Board. This letter has multiple signatures. Record 2 is a letter from a concerned parent dated July 14, 1997 addressed to the Secretary of the Board, the Superintendent of Education, Trustees of the Board and Senior Administration.

## **DISCUSSION:**

### **PERSONAL INFORMATION/INVASION OF PRIVACY**

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual, including the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

I find that both records contain the appellant’s personal information as these letters refer directly to him and describe an event concerning him. I find that both records also contain the personal information of the authors as the letters were written in the context of a complaint about the appellant.

However, once the names of the authors are removed from Record 1, I find that the remaining portions of this letter would not identify them or provide any information regarding them or anyone else. Accordingly, I find that, with the authors’ names removed, the body of the letter only contains the personal information of the appellant. As section 38(b) cannot apply to a record that contains only the personal information of the appellant, the body of Record 1 should be disclosed to him. The names of the authors of the letter remain at issue.

Record 2, on the other hand, in its entirety, contains information pertaining to the author and the appellant. Moreover, the appellant indicates that he knows who the author of Record 2 is and that this information was confirmed by the Board. In my view, the information pertaining to the appellant is so intertwined with that of the author that it cannot be severed.

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 a requester 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 deny the requester access to that information. In this situation, a requester is not required to provide that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since a requester has a right of access to his/her own personal information, the only situation under section 38(b) in which he/she can be denied access to the information is if it can be demonstrated that 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 found in section 14(3) applies, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information. The Board has not raised the application of any of the presumptions found in section 14(3), and I find that none apply.

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 that are relevant in the

circumstances of the case. The Board submits that sections 14(2)(f) (highly sensitive information) and (h) (information provided in confidence) are relevant considerations.

The author of Record 2 submits that this letter was sent to the Board in confidence and concerns a highly sensitive matter. In this regard, the author argues that she was told to put her concerns in writing and was told that this would be held in confidence. The Board confirms that the authors of both letters contacted an employee of the Board and asked that the letters be removed from the package of materials and handled with confidence.

The appellant indicates that the package of materials, including the letters, was taped to the door of the school and was addressed to "whom it may concern". Both the Board and the appellant agree that the package remained accessible to anyone who might have wanted to read the contents. The appellant argues that because of this, there could not be an expectation of confidentiality.

The records relate to concerns raised by parents about the activities of a teacher who will be teaching their children. In the circumstances, I find the identities of the authors of the letters to be highly sensitive information. Moreover, the body of the information in Record 2 is also highly sensitive as it describes the author's concerns as they affect her and her family.

I am also of the view that, despite the manner in which the letters reached the Board, the parties had an expectation of confidentiality. There is no evidence that anyone other than those intended to receive the letters did in fact obtain access to them. I am satisfied that the authors of the letters expected anonymity in providing them to the Board.

The appellant submits that the letters contain allegations directly aimed at him and states that he is entitled to this information. I find this to be a relevant consideration. Moreover, in my view, there is an element of fairness which requires that an individual against whom allegations or complaints have been made be entitled to know their basis. In my view, this consideration is relevant in the current appeal. However, I note that the appellant has received the bulk of the package which was left with the Board and he will, as a result of this order, receive a copy of one of the letters which contain information regarding the matter. I find that the appellant has sufficient information to know the case against him, and, therefore, this factor has very little weight.

Having weighed the factors favouring privacy protection against the appellant's right to access personal information about himself, I find that the factors favouring privacy protection are more compelling in the circumstances of this appeal. Accordingly, I find that the names of the authors of Record 1, and Record 2 in its entirety qualify for exemption under section 38(b) of the Act.

## **ORDER:**

1. I order the Board to disclose the body of Record 1 to the appellant with the names of the authors of the letter withheld. A copy of this record is to be provided to the appellant by **April 9, 1998** but not earlier than **April 6, 1998**.

2. I uphold the Board's decision to withhold the remaining information.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Board to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1 of this order.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ March 5, 1998