



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-1156**

**Appeal MA-980158-1**

**Peel District School Board**



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## **NATURE OF THE APPEAL:**

The Peel District School Board (the Board) received an eleven-part request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for records relating to the requester, as well as a number of other specified individuals and organizations. The requester was employed by the Board as a teacher until August 1997. The Board located a number of records responsive to the request and denied access to them, claiming that pursuant to section 52(3) of the Act, they fell outside the ambit of the Act.

The requester, now the appellant, appealed the Board's decision.

Subsequent to the filing of the appeal, and within the 35-day period prescribed by this office, the Board provided the appellant with a second decision letter in which it claimed, in addition to the exclusion in section 52(3), the application of the following exemptions contained in the Act to the records:

- closed meeting - section 6(1)(b)
- law enforcement - sections 8(1)(b) and (d)
- third party information - section 10(1)(b)
- solicitor-client privilege - section 12

The decision letter also indicated that no records exist in response to a portion of part 3 and to all of parts 9 and 11 of the request.

During the mediation of the appeal, the appellant agreed not to pursue access to records responsive to those portions of the request for which the Board has indicated that no records exist.

A Notice of Inquiry was provided to the appellant, the Board and to four individuals whose rights may be affected by the disclosure of the information contained in the records (the affected persons). Some of the records appear to contain the personal information of both the appellant and other identifiable individuals. As a result, the parties to the appeal were asked to consider the possible application of sections 14(1) and 38(a) and (b) of the Act (invasion of privacy) to the records. Representations were received from the appellant only.

There are 32 pages of records at issue in this appeal. These consist of correspondence, a news release, magazine and newspaper articles, a Professional Development plan, a pamphlet, a book list and a legal account.

## **DISCUSSION:**

### **JURISDICTION**

In its original decision letter, the Board submitted that the records at issue in this appeal are outside the ambit of the Act as a result of the operation of section 52(3). If section 52(3) applies, and none of the exceptions found in section 52(4) apply, section 52(3) has the effect of excluding records from the scope of the Act, which removes such records from the Commissioner's jurisdiction.

As the Board has not made any submissions, I must rely on the records themselves, the representations of the appellant and the Board's earlier correspondence with the appellant and this office in order to determine whether the records contain information which falls within the ambit of section 52(3).

### **Section 52(3)3**

In order 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.

Again, if the preparation (or collection, maintenance, or use) of a record was for the purpose of, as a result of, or substantially connected to an activity listed in sections 52(3)3, it would be "in relation to" that activity.

[Order P-1223]

### **Parts 1 and 2 of the Test**

In accordance with my findings above, based on my review of the records, the Board's correspondence and the submissions of the appellant, I am able to conclude that the records were collected, maintained and used by the Board. I am also able to determine that this collection, maintenance and use was in relation to various meetings, consultations, discussions or communications about the appellant's activities which took place within the Board. Accordingly, I find that parts 1 and 2 of the section 52(3)3 test have been satisfied.

### **Part 3 of the Test**

The records at issue consist of various correspondence received by and sent from the Board to several organizations with respect to the appellant and other individuals with whom he was alleged to have been associated. Included with the correspondence are a number of press releases, newspaper and magazine articles and other material which relate to efforts by these organizations to bring the activities of the appellant to the Board's attention. The records themselves indicate that the matters raised in the correspondence and accompanying material were considered by the Board at the staff and the trustee levels. This review was undertaken with a view to evaluating how this information might affect the

appellant's ability to perform his teaching duties and his continued suitability for employment as a teacher with the Board.

In my view, these meetings, consultations, discussions and communications were about employment-related matters, specifically, the appellant's continued suitability for the position he occupied with the Board. This issue is, therefore, an employment-related matter within the meaning of section 52(3)3.

I must also determine whether this employment-related matter is one in which the Board "has an interest" for the purposes of section 52(3)3. In Order P-1242, Assistant Commissioner Tom Mitchinson addressed the meaning of the term "has an interest" in the context of section 52(3)3. He found that:

[A]n "interest" is more than mere curiosity or concern. An "interest" must be a legal interest in the sense that the matter in which the institution has an interest must have the capacity to affect the institution's legal rights or obligations.

In my view, the Board has a legal obligation under the Education Act and at common law to ensure that its teachers are competent and suitable to the positions for which they are hired. In addition, the Board has a legal obligation to the appellant under the Ontario Human Rights Code (the ORC) and the collective agreement under which he was employed to address the concerns expressed about his suitability in a non-discriminatory manner. Finally, the Board indicates that the appellant's dismissal from its employment is the subject of a grievance proceeding pursuant to the terms of the collective agreement between the Board and the bargaining agent representing secondary school teachers. It is clear from the contents of the records that the information which they contain was relied upon by the Board, at least in part, in reaching its decision to dismiss the appellant.

As such, I find that the Board's response to the issue of the appellant's continued employment created a legal obligation on the part of the Board. The Board's legal interest arises from its obligations to the public under the Education Act and from those owed to the appellant under the ORC and the collective agreement. I find, therefore, that the Board has the requisite "legal interest" in the matter, within the meaning of section 52(3)3.

Accordingly, I find that the records meet all three requirements of section 52(3) and they are, therefore, excluded from the jurisdiction of the Act. In addition, none of the exceptions in section 52(4) apply in the circumstances of this appeal. Because I have found that the records do not fall within the ambit of the Act, it is unnecessary for me to determine whether they are exempt from disclosure under the exemptions in sections 6(1)(b), 8(1)(b) and (d), 10(1)(b), 12, 14(1) and 38(a) and (b).

## **ORDER:**

I uphold the Board's decision to deny access to the records.

Original signed by: \_\_\_\_\_

Donald Hale  
Adjudicator

\_\_\_\_\_ October 23, 1998