



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1116

Appeal M-9800097

District School Board Number 3



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

NATURE OF THE APPEAL:

The District School Board Number 3 (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to a copy of all final examination questions, answers and instructions for a Grade 12 course in advanced mathematics offered at a Board secondary school in Sudbury for the terms ending June 1997 and January 1998. The requester's daughter is currently enrolled in the course and will take the final examination in the course on June 19, 1998. The Board located the requested records and denied access to them, claiming the application of section 11(h) of the Act (examination questions).

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

A Notice of Inquiry was provided to the Board and the appellant. Representations were received from both parties.

The records at issue in this appeal consist of two final examinations dated June 1997 and January 1998 which also contain instructions and the correct answers to the questions. The sole issue to be addressed in this appeal is whether the records are properly exempt from disclosure under section 11(h) of the Act.

DISCUSSION:

EXAMINATION QUESTIONS

The Board claims that the records are exempt from disclosure under section 11(h). This section states:

A head may refuse to disclose a record that contains,

questions that are to be used in an examination or test for an educational purpose;

The Board submits that, according to the school's examination policy, examinations for at least the previous three semesters are not made available to students. They are, however, allowed to review the examinations with their teachers but are not entitled to copy either the questions or the solutions. It goes on to indicate that the rationale for this policy is that the examination format and questions are deliberately kept the same or similar in order to provide the most consistent examination possible. With this policy, students who write this examination in one semester will be examined exactly the same as students in another semester. It states further that some questions have been developed and found to be perfectly suited for evaluating certain concepts.

The Board notes that disclosure to one student is disclosure to all and release of examination questions and answers that will be used on subsequent occasions will seriously impair the validity of the examination process. It argues that it is common practice that examinations be kept under wraps to ensure a fair and equitable evaluation of student achievement. Finally, the Board submits that it will be possible for a student to memorize the answers to the questions which would serve to skew the results. This would impair the ability of the school to determine whether the student has grasped the concepts and legitimately deserved to pass the course.

The Board also notes that the appellant's daughter is presently enrolled in the course and will take the final examination in the course on June 19, 1998.

The appellant submits that the Act is designed to make government more accountable, more open and more transparent to the public and that it should be the exception rather than the rule that institutions refuse to allow access to requested documents. He goes on to refer to two previous decisions of the Commissioner's office, Orders P-351 and P-422, made under the equivalent provision in the provincial Act to section 11(h).

The appellant argues that if the Board takes the position that only a limited number of questions are available for use on a Grade 12 mathematics examination, then the Board is correct in refusing to disclose them. This approach was adopted by Inquiry Officer Holly Big Canoe in Order P-1107 where she accepted that, because of the nature of the material studied in a course offered to police services in the operation of breathalyser machines, it would be extremely difficult to generate a new examination for each course session. In the appellant's view, however, the reason behind the Board's refusal to disclose the questions and answers is that it is reluctant to change the questions from year to year because of the time and effort required to do so and not because there are only a limited number of questions available. For this reason, the appellant suggests that I consider why the Board has decided to re-use the same questions.

The appellant goes on to indicate that I should determine whether there exists a "scarcity" in the number of potential questions or if the Board is re-using the examination questions for its own convenience. If the Board's motives are simply for expediency, the Act requires that section 11(h) only be upheld in those cases where the integrity of the test would be in question if the answers and questions were to be released.

The appellant also expresses his concern that the Board is the sole judge of the type of questions that will be used in evaluating students in the course. He states that he requires this information in order to review the questions and answers in order to form his own opinion as to their relevance to the course material and then to take whatever steps he deems necessary in the circumstances. He suggests that the Board must be accountable to the public for the examination questions which it uses and that the process be open and transparent.

Finally, in order to ensure that the appellant's daughter does not benefit from the premature disclosure of the examination questions and answers, the appellant states that he is prepared to agree to delay the disclosure of the records until after June 19, 1998.

In my view, the setting of a Grade 12 mathematics examination is not subject to the same restrictions as those present when setting the examination for breathalyser technicians which was the subject of the records in Order P-1107. The range of possible questions is not so similarly restricted as to make it difficult to restructure the examination using fresh questions which cover the same course material. Accordingly, I find that the decision in Order P-1107 is distinguishable on that basis.

In Orders P-351 and P-422, Assistant Commissioner Tom Mitchinson considered the application of section 18(1)(h) of the Freedom of Information and Protection of Privacy Act (which is the provincial equivalent to section 11(h) of the Act). In these two cases, which involved community colleges, the examination questions being sought were contained in a "test bank".

In both decisions, Assistant Commissioner Mitchinson found that the section 18(1)(h) exemption did not apply to the examination questions. He explained his reasoning in the following fashion:

In my view, the College has failed to establish the requirements for exemption under section 18(1)(h). The records all consist of questions used in examinations which have already been completed ... The fact that the College may, at some point in the future, choose to re-use the same questions on a subsequent examination is not, in my view, sufficient to satisfy the requirements of section 18(1)(h).

I have reviewed each of the examinations from June 1997 and January 1998 which form the records at issue in this appeal, as well as the examination which will take place on June 19, 1998, and find them to be nearly identical. The material being tested is essentially the same with some changes made to the figures contained in the questions which are posed. This confirms the position taken by the Board that examination questions are re-used from semester to semester, with only minor modifications, and that these questions are intended to be used in the June 19, 1998 examination.

Accordingly, I find that the records consist of questions to be used in an examination which has yet to be completed, unlike the situation in Orders P-351 and P-422. Because the records contain virtually the same questions which will be used for the June 19, 1998 examination, on a plain reading of section 11(h), they qualify for exemption under that section.

The wording of the exemption is clear. I find the suggestion by the appellant that I consider the appropriateness of the Board's re-use of examination questions to be outside the purview of my authority under the Act.

ORDER:

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

Original signed by: _____

_____ June 9, 1998

Donald Hale
Adjudicator
(formerly Inquiry Officer)