



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

ORDER MO-1272

Appeal MA-990102-1

Halton Catholic District School Board



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NATURE OF THE APPEAL:

The appellant, the president of a local teachers union, made ten requests to the Halton Catholic District School Board (the Board) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requests were for information relating to financing for new schools, personal service contracts of a number of senior staff at the Board, budget information, honoraria for trustees, federal or provincial grants to the Board, retirement gratuities for directors and superintendents, transfer of funds to the bishop's fund or diocese, Board reserve funds and any investments and all new teacher hires.

The Board granted access to some of the requested information, denied access to the information regarding new teacher hires pursuant to section 52(3) and informed the appellant that notice was being given to a number of individuals with respect to the requests for personal service contracts and retirement gratuities. The Board also informed the appellant that there were no records which responded to the request for transfer of funds to the bishop's fund or the diocese.

The Appellant appealed the decision of the Board with respect to the following five requests.

1. The personal service contract, including any and all compensation, benefits packages, professional fees, bonuses, incidental fees, honoraria and all expenses paid by the Board on behalf of the Director for the years 1994 to 1998 inclusive. (Request 2)
2. Retirement gratuities for the Directors and Superintendents for the years 1990-1998 inclusive. (Request 3)
3. Superintendents' personal service contracts for the years 1994-1998 inclusive. (Request 4)
4. All new teacher hires (Request 10).
5. Transfer funds to the bishop's fund or the diocese (Request 5).

During mediation, the appellant agreed to withdraw his appeal with respect to the new hires (Request 10) and the funds transferred to the bishop's fund or diocese (Request 5), leaving Requests 2, 3 and 4, for which no decision had been made, at issue.

The Board issued a decision letter dated March 18, 1999, received by the appellant on April 8, 1999, which stated:

- that the Board was providing access to one personal service contract in response to Request 2;
- that the Board was denying access to records responsive to Request 3 pursuant to section 14;

- that the Board was providing access, with the consent of one of the affected persons, to one contract responsive to Request 4 while denying access to three other contracts (Records 2, 3 and 4) pursuant to section 14.

The Board subsequently identified additional records responding to Request 4 and issued another decision letter granting access to three more superintendent contracts, Records 6, 7 and 9.

The appellant appealed the decision of the Board. The appellant states that information was severed from the record responsive to Request 2 but no exemptions were claimed. In addition, the appellant states that the Board did not respond to the part of Request 2 dealing with benefits, professional fees, bonuses, honoraria, etc. The appellant appeals the application of section 14 to exempt the records responsive to Request 3 and 4. The appellant also states that additional records should exist which are responsive to Requests 3 and 4.

This office sent a Notice of Inquiry to the Board, the appellant and five individuals whose interests may be affected by the outcome of this appeal (the affected persons). Representations were received from the Board and one of the affected persons, who consented to the disclosure of her personal service contract. In its submissions, the Board indicates that further searches for records responsive to the requests were undertaken and that additional records were located and will be disclosed.

It is unclear to me whether the Board has in fact released these records to the appellant. Accordingly, I will order the Board to disclose to the appellant the record which it has identified as a retirement gratuity to a superintendent and Records 1, 4, 5 and 8. As the individual to whom Record 2 relates has consented to its disclosure, I will also order that the Board release it to the appellant.

The only records remaining at issue in this appeal consist of the employment contract of a superintendent (Record 3) and the undisclosed portion of Record 4 relating to the salary of another superintendent.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, the term “personal information” is defined as recorded information about an identifiable individual, including information relating to the employment history of the individual or information relating to financial transactions in which the individual has been involved (paragraph (b) of the definition) and the individual’s name if 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 (paragraph (h) of the definition).

Record 3 contains the name of the affected person along with his/her salary and the terms of his/her employment with the Board, including entitlement to sick leave, vacation and expenses. I find that Record 3 contains the personal information of the affected person as it includes both the affected person’s name and other personal information about him or her, specifically this individual’s salary and other benefits. Similarly,

I find that the salary information which was not disclosed in Record 4 is the personal information of the affected person to whom it relates. The records do not contain the personal information of the appellant.

UNJUSTIFIED INVASION OF PERSONAL PRIVACY

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits disclosure of this information unless one of the six exceptions listed in the section applies. In these circumstances the exception at section 14(1)(f) may apply. That provision reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy;

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 the individual to whom the information relates. Section 14(2) provides some criteria for the head to consider in making this determination. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 14(2) (Order P-1456, citing John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767).

In its representations, the Board takes no position with respect to the disclosure of the information in Records 3 and 4.

In his initial appeal letter, the appellant submits that “these items should be public information given that the school Board is a public corporation.”

In response to the initial notification by the Board under section 21(1) of the Act, the affected persons objected to the disclosure of the personal information contained in their employment contracts. Neither of these individuals responded to the Notice of Inquiry forwarded to them by this office.

Section 14(4) of the Act states:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

- (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution; or

- (b) discloses financial or other details of a contract for personal services between an individual and an institution.

Having reviewed the contents of Record 3, I find that it is an employment contract between the Board and the individual named therein. Black's Law Dictionary (Sixth Ed.), defines the term employee as follows:

A person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed ... One who works for an employer; a person working for salary or wages ...

In my view, Record 3 describes an employment relationship between the superintendent and the Board whereby the superintendent was hired to work under the control and direction of the Board. This document is not, therefore, a contract for personal services and section 14(4)(b) has no application in the circumstances of this appeal. (Order M-373)

However, I find that the information contained in paragraphs 4 and 5 of Record 3 relate directly to the employment responsibilities of the affected person. As such, it falls within the exception in section 14(4)(a).

Similarly, the items contained in paragraph 7 of Record 3, referred to by the term "benefits", address certain entitlements received by the affected person as a result of his employment. "Benefits" for the purposes of section 14(4) include life, health, hospital, dental and disability insurance as well as sick leave, vacation, leaves of absence, termination allowance, death and pension benefits (Orders M-23, M-378 and MO-1026). In my view, the entitlements in paragraph 7 of Record 3, which refer to sick leave, vacation, and expenses, constitute "benefits" for the purpose of section 14(4)(a). Consequently, I find that the personal information relating to these entitlements contained in paragraph 7 of Record 3 fall within the ambit of section 14(4)(a) of the Act.

In addition, I find that the salary information contained in paragraph 1 of Records 3 and 4 refers to the exact salary of the affected persons. Because this information is not a "salary range", it does not fall within section 14(4)(a). (Order M-1026)

With respect to the information relating to the salaries of the affected persons in paragraph 1 of Records 3 and 4, in my view, the presumption in section 14(3)(f) is relevant. This section states:

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

describes an individual's finances, **income**, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.
[Emphasis added]

In the circumstances of this appeal, it is my view that disclosure of the salary information severed from paragraph 1 of Records 3 and 4 would describe the affected persons' finances and/or income as set out in

section 14(3)(f) and would, therefore, constitute a presumed unjustified invasion of personal privacy. The salary information is, therefore, exempt under section 14(1).

The remaining personal information in Record 3 (with the exception of paragraphs 4, 5 and 7) consists of the affected person's name, the duration of his/her contract with the Board, provisions relating to its termination and the superintendent's retirement. The appellant has not provided me with any factors under section 14(2) which weigh in favour of the disclosure of this information. I find, accordingly, that its disclosure would result in an unjustified invasion of the personal privacy of the superintendent. As previously noted, section 14(4) does not apply to this information, and the appellant has not raised the possible application of section 16. Therefore, I find that this additional personal information in Record 3 is also exempt from disclosure under section 14(1).

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he or she is seeking and the Board indicates that such a record does not exist, it is my responsibility to ensure that the Board has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Board to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Board must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

The appellant has not provided me with any information as to the reasons for his belief that additional records might exist. However, due to the protracted manner in which disclosure was made to him by the Board, I find this understandable. Additional records responsive to the requests continued to be identified by the Board up to the Inquiry stage of this appeal.

The Board has provided me with affidavits executed by the two staff members who conducted the searches for responsive records. Each of these individuals describes in detail the searches which were undertaken in the Board's personnel files and archives (for the employment contracts of the Director and Superintendents) and the accounts payable department (for records relating to retirement gratuities).

Based on the information provided to me by the Board with respect to the searches which it has undertaken to locate the records which are responsive to the request, I am satisfied that it has made a reasonable effort to identify and locate records responsive to the requests.

ORDER:

1. I am satisfied that the Board conducted a reasonable search for records responsive to the requests and I dismiss that part of the appeal.
2. I order the Board to disclose to the appellant the record which it has identified as a retirement gratuity to a superintendent, Records 1, 2, 4, 5 and 8 and paragraphs 4, 5 and 7 of Record 3 by March 9, 2000.
3. I uphold the Board's decision to deny access to the remaining undisclosed information in Records 3 and 4 under section 14(1).

Original signed by: _____
Donald Hale
Adjudicator

_____ February 3, 2000