



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

ORDER MO-1333

Appeal MA-000051-1

Lambton Kent District School Board



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection Privacy Act (the Act), from a decision of the Lambton Kent District School Board (the Board).

The appellant is a teacher formerly included on the Occasional Teachers' List (the List) of the Lambton Kent District School Board (the Board). In 1999, he was convicted of certain offences under the Criminal Code. He was informed by the Board by letter of November 29, 1999 that a motion removing him from the List had been approved by the Board at its meeting of November 23. He was also informed that in the same motion, the Board decided to report the appellant to the Ontario College of Teachers on the basis of his Criminal Code conviction. The appellant made a request to the Board for disclosure of the full minutes of the Board meeting held on November 23, 1999. During the processing of this request, it was determined that the appellant's situation had been the subject of discussion at a meeting of the Board on November 9, 1999; the records pertaining to this meeting are also being sought by the appellant.

In its decision, the Board denied access to the records at issue, relying on section 6(1)(b) (in-camera deliberations) of the Act.

A Notice of Inquiry was sent to the Board, in response to which it has submitted representations. Among other things, the representations refer to section 52(3)3 (labour relations matters) of the Act, in addition to section 6(1)(b). The Board submits in its representations that the records are excluded from the application of the Act under section 52(3)3.

The appellant was subsequently sent a Notice of Inquiry which, among other things, incorporated the issues raised by the Board, and was also sent a copy of the Board's representations in their entirety. The appellant has chosen not to submit any representations.

THE RECORDS:

As background, there are at least three types of Board meetings for which minutes are produced. The first are referred to as meetings of the Committee-of-the-Whole. The second are referred to as meetings of the Board Private Session. Lastly, there are Board Meetings held in Public Session.

The records at issue are contained on four pages, numbered as Record 11 [page 2 of 5], Record 11 [page 3 of 5], Record 11 [page 4 of 5] and Record 11 [page 5 of 5]. Although, at the start of this inquiry, Record 11 [page 1 of 5] was also at issue, the Board has disclosed the contents of that document to the appellant and thus it no longer forms part of this appeal.

Record 11 [pages 2 and 3 of 5] consists of a portion of the minutes of a Committee-of-the-Whole meeting held on November 9, 1999. Included in those minutes are references to a Report to the Board relating to the appellant, the text of a related motion, a summary of discussion on the motion, and the outcome of the motion. Record 11 [pages 4 and 5 of 5] consists of the aforementioned Report which was presented to the Committee-of-the-Whole. The Report reviews the circumstances relating to the appellant, provides an assessment and makes recommendations.

It should be noted that there are also minutes titled "Regular Board Meeting, Public Session", dated November 23, 1999, which have been provided to the appellant. Although these minutes do not contain a specific reference to the appellant's situation, they indicate that the Board approved a motion by which it adopted the actions of the Committee-of-the-Whole, Private Session.

To summarize, the records which remain at issue are the minutes of the Committee-of-the-Whole meeting of November 9, 1999, during which the appellant's circumstances were discussed and a motion approved, and the report presented to the Committee-of-the-Whole at that meeting.

CONCLUSION:

I find that the records are excluded from the Act by application of section 52(3)3. Because of this finding, it is unnecessary for me to consider the application of section 6(1)(b).

DISCUSSION:

Section 52(3) of the Act provides:

Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.

It is important to note that section 52(3) is record-specific and fact-specific. If this section applies to a specific record, and none of the exceptions listed in section 52(4) apply, section 52(3) has the effect of excluding that record from the scope of the Act: see, for instance, Orders P-1564 and PO-1772, discussing the provincial equivalent to section 52(3). It was not submitted that section 52(4) is relevant, and I am satisfied that it has no application here.

The Board has relied on section 52(2)3, and has submitted, among other things, that the records relate to a meeting during which there was deliberation about the appellant's continued employment with the Board. It states:

The members of the Committee of the Whole discussed the prospect of the Board terminating the appellant's employment and considered potential litigation issues arising out of such a decision. The Committee also considered the Board's obligations to report the appellant's criminal conviction to the College of Teachers. Ultimately, the Committee prepared a recommendation to the Board on these issues. This was clearly a labour relations matter in which the Board had an immediate legal interest, and in which the Board's legal obligations were at stake.

Further in the Board's representations, it is noted that following the Board's decision to terminate the appellant's employment, the appellant filed a grievance challenging his termination.

In order to fall within the scope of paragraph 3 of section 52(3), the institution must establish that:

1. the records were collected, prepared, maintained or used by the institution 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 institution has an interest.

I am satisfied that the records meet the first requirement specified above. As minutes of a Board meeting and a report prepared for discussion by the Board, they were "collected, prepared, maintained or used" by the Board.

I am also satisfied that the second requirement is met, insofar as the records are in relation to a discussion by the Board at one of its meetings. Record 11 [pages 2 and 3 of 5] are minutes of that discussion; Record 11 [pages 4 and 5 of 5] are a report prepared for the purpose of assisting in that discussion.

The third requirement looks to both the subject matter of the discussion (and whether it was about labour relations or employment-related matters) and whether it is established that the Board has an "interest" in those matters. It has been said in previous orders that an "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: see Orders M-1147, P-1242 and PO-1658 (upheld on judicial review in Ontario (Solicitor General and Correctional Services) v. Ontario (Information and Privacy Commissioner) (March 21, 2000), (Ont. Div. Ct.); leave to appeal granted (June 29, 2000), Doc.M25700 (Ont. C.A.)).

Further, there must be a reasonable prospect that this interest will be engaged. The passage of time, inactivity by the parties, loss of forum or conclusion of a matter have all been considered in arriving at a determination of whether an institution has a legal interest in the records; see, for instance, Order PO-1658, supra.

I conclude that the discussion at the meeting of November 9, as reflected in the records, was about labour relations or employment-related matters in which the Board has an interest. Among the topics of discussion was the question of whether the appellant's position with the Board ought to be terminated as a result of his Criminal Code conviction, and potential "litigation" issues arising out of such a decision. Further to the discussion, the Board took a decision to remove the appellant from the List, with the consequence that the appellant filed a grievance. By filing the grievance, the appellant has invoked a process which has the capacity to affect the Board's legal obligations. Also discussed at the meeting of November 9 were the Board's obligations under the Ontario College of Teachers Act. Section 47(2) of that Act requires a school board to notify the Ontario College of Teachers in certain circumstances, upon becoming aware that a teacher employed by it has been convicted of a Criminal Code offence. The result of the Board's discussion was its decision, communicated to the appellant in the same letter in which the Board notified him of his removal from the List, to report the charges to the College.

I am satisfied that the Board's legal interests, rooted in its statutory and legal obligations as an employer and a school board, are engaged by the circumstances relating to the appellant. Accordingly, it has been shown that the discussion reflected in the records was about labour relations or employment-related matters in which it has the Board has an interest.

In the result, the requirements for the application of section 52(3)3 of the Act have been met, and the records at issue are excluded from the operation of the Act.

Because of my finding, it is unnecessary for me to consider whether the records might have been exempt from disclosure under section 6(1)(b).

ORDER:

I uphold the Board's decision denying access to the records at issue.

Original signed by: _____
Sherry Liang
Adjudicator

September 1, 2000