



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

ORDER MO-1420-I

Appeal MA_000274_1

Halton District School Board



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NATURE OF THE APPEAL:

The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Halton District School Board (the Board) for a list of self-contained special needs classes for Halton elementary schools. In particular, the appellant requested that the list include the number of students enrolled in each class for the academic year 1999/2000 and the projected numbers for the academic year 2000/2001. The appellant indicated that the list should also contain the division of exceptionalities.

In responding to the request, the Board provided the appellant with pages from the Special Education Guide (2000 edition) which it indicated was information responsive to the portion of her request for a list of self-contained classes and a division of exceptionalities. The Board also provided the appellant with a chart of the numbers of students across the Board as the only information responsive to the portion of her request for the number of students enrolled in each class. The Board indicated that no record exists which lists the number of students in each class and that it is not prepared to create such a record.

In appealing the Board's decision, the appellant stated that the Ministry of Education (the Ministry) requires that each board submit a report containing the requested statistics for each special education class. She provided a copy of this report, known as the "September Report" for the 1997/98 school year to this office during mediation in support of her position that responsive information exists.

The appellant explained that she is seeking access to a list of classes offered by the Board, with their exceptionalities. She does not require information with respect to male/female breakdowns. She clarified that she is not seeking access to the teachers' or students' names. Rather, she indicated that she is seeking access to a list(s) containing the name of the school, the class designation and the exceptionalities in each class, for the school years 1999/2000 and 2000/2001. She stated that she is prepared to accept raw data, if that is all that is available.

The Board advised that it no longer uses the form that the appellant attached to her correspondence with this office. The Board noted, however, that although it no longer collects information in the form requested, it can obtain raw data that would be responsive to the request.

The Board subsequently issued a revised decision in which access was denied to information relating to exceptionalities by school, class and number of students with specific exceptionalities per class based on the exemptions found in sections 14(3)(a) and 14(3)(d) of the *Act* as disclosure of this information would reveal the identities of the students in these classes.

I sent a Notice of Inquiry seeking representations to the Board, initially. The Board submitted representations in response and requested that I withhold portions of them from the appellant, including all of the appendices that it attached to its representations (Tabs A through I). I accepted this request with respect to certain portions of the Board's representations, including Tabs A, B and H on the basis that sharing them would reveal the contents or substance of a record. Based on my own independent review of the Board's representations, I decided to withhold other portions of them for the same reason. I also decided to withhold one page from

Tab I as this record is not relevant to the issues in this appeal. Finally, I decided to withhold a portion of the Board's submissions relating to one issue as I have decided that it is not necessary to seek representations from the appellant on that issue.

ISSUE:

The Board initially requested that I withhold all of its submissions under the heading "2.2 Right of Access - Severability". The Board later asked that I withhold only specific portions of these submissions. The purpose of this interim order is to rule on this latter confidentiality request.

DISCUSSION:

Sharing of representations procedure

In the Notice of Inquiry cover letter to the Board, I stated:

The representations you provide to this office may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in the attached document entitled *Inquiry Procedure at the Adjudication Stage*. Please refer to this document when preparing your representations.

The *Inquiry Procedure* document states:

In its representations, the first party must indicate clearly, and in detail:

- which information in its representations, if any, the party wishes the Adjudicator to withhold from the second party; and
- its reasons for this request (see confidentiality criteria below).

The document later sets out the criteria for withholding representations, as follows:

The Adjudicator may withhold information contained in a party's representations where:

- (a) disclosure of the information would reveal the substance of a record claimed to be exempt or excluded;
- (b) the information would be exempt if contained in a record subject to the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*; or
- (c) the information should not be disclosed to the other party for another reason.

For the purposes of paragraph (c) above, the Adjudicator will apply the following test:

- (i) the party communicated the information to the IPC in a confidence that it would not be disclosed to the other party; and
- (ii) confidentiality must be essential to the full and satisfactory maintenance of the relation between the IPC and the party; and
- (iii) the relation must be one which in the opinion of the community ought to be diligently fostered; and
- (iv) the injury to the relation that would result from the disclosure of the information would be greater than the benefit thereby gained for the correct disposal of the litigation.

The Board's confidentiality request

Initially, the Board simply asked that I keep the information confidential. In amending its request for confidentiality, the Board stated:

We submit that, for the purposes of responding to our submissions, it is sufficient for the Appellant to know that deduction is possible. We submit that it is not necessary for the methodology of that deduction to be released in order for the Appellant to make a full response.

During subsequent discussions with this office, the Board expressed concern that the appellant could, using information that she already has plus the records at issue if they are disclosed to her, apply the methodology described by the Board and thus be able to identify individual students.

Findings

The portions of the representations that the Board wishes to remain confidential refer to an approach that the appellant (or any knowledgeable individual) could take which would permit her, through a process of elimination and deduction, to determine the identity of a class within a particular school and thereby reveal personal information about the students within that class. In its submissions, the Board applied this methodology to a particular portion of the records at issue in order to highlight its position. I have agreed to withhold all portions of these submissions that make reference to or would permit the drawing of accurate inferences with respect to this record.

In my view, none of the remaining information is information which itself would be exempt under any exemption in the *Act*. Further, none of this information would reveal the substance of a record claimed to be exempt, or is otherwise confidential based on the four part "Wigmore" test for confidential communications set out above.

I accept that the information at issue is very specific and detailed and I would not dismiss the Board's concerns in this regard. However, this information is also directly relevant to the Board's position that disclosure of the records at issue would reveal personal information of the students in these classes. Contrary to the Board's position, I am of the view that fairness requires that the appellant be made aware of the basis for its argument, not just the fact that there is some methodology available to her, and that she be given an opportunity to address the particulars of this argument.

For the above reasons, I have decided that the portions of the Board's representations which have not been highlighted in yellow in the attached material should be shared with the appellant. The remaining portions of the material will not be shared with the appellant due to confidentiality concerns.

PROCEDURE:

I have attached to the copy of this interim order which is being sent to the Board a copy of the Board's representations. The portions that I have highlighted in yellow indicate the passages which I will withhold from the appellant. I intend to send the attached material, with the exception of the yellow highlighted information, together with the information in Tabs C through G and all but the last page of Tab I to the appellant, together with a Notice of Inquiry, no earlier than **May 2, 2001**.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ April 18, 2001