



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1508**

**Appeal MA-010146-1**

**Durham District School Board**



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## **NATURE OF THE APPEAL:**

The Durham District School Board (the Board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the minutes of an expulsion hearing held by the Board.

The Board identified two responsive records, but denied access to them, pursuant to the exemption in section 6(1)(b) of the *Act* (closed meeting).

The appellant appealed the Board's decision.

During mediation of this appeal, the appellant narrowed the request to those portions of the hearing that relate to the issue of her child's expulsion. She also confirmed that a two-page administrative report and a one-page consolidated student summary are no longer at issue since she has been provided with these.

The Board subsequently agreed to disclose those portions of the hearing when the appellant, her husband, and her son were present.

I initially sent a copy of a Notice of Inquiry that set out the facts and issues in this appeal to the Board. In its representations, the Board agreed to disclose a one-page letter sent from the Durham Regional Police Service to a named principal that had been discussed at the hearing. Accordingly, this letter is no longer in dispute.

I then sent the appellant a copy of the Notice together with the non-confidential portions of the Board's representations. The appellant responded with submissions.

## **DISCUSSION:**

### **CLOSED MEETING**

Section 6(1)(b) of the *Act* states:

A head may refuse to disclose a record,

that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

In order to rely on section 6(1)(b), the Board must establish that:

1. A "closed" or "in camera" meeting of a council, board, commission or other body or a committee of one of them took place; and
2. A statute authorizes the holding of such a meeting in the absence of the public; and

3. The disclosure of the record at issue would reveal the actual substance of the deliberations of this meeting.

[Orders M-64, M-98, M-102 and M-219]

Each part of the section 6(1)(b) test must be established.

### **Requirements 1 and 2**

The first and second parts of the test for exemption under section 6(1)(b) require the Board to establish that a meeting was held by the Board and that it was properly held *in camera* (M-102).

The Board submits that the record at issue is part of the minutes of a meeting of the Committee of the Whole Board that was held *in camera*, pursuant to section 207(2) of the *Education Act*.

Section 207(2)(b) of the *Education Act* provides:

A meeting of a committee of a board, including a committee of the whole board, may be closed to the public when the subject-matter under consideration involves,

the disclosure of intimate, personal or financial information in respect of a member of the board or committee, an employee or prospective employee of the board or a pupil or his or her parent or guardian.

As discussed above, the Board meeting dealt with the issue of the possible expulsion of the appellant's son. Since the subject of that meeting involved the disclosure of personal information about a pupil, I find that the meeting was properly closed to the public, pursuant to section 207(2)(b) of the *Education Act*.

It is clear from the minutes that a meeting of the Committee of the Whole Board took place, and that part of this meeting was held in the absence of the public. Since I have found that the Board held an authorized *in camera* meeting, therefore the first and second parts of the section 6(1)(b) test have been established.

### **Requirement 3**

To satisfy the third requirement of the test, the Board must establish that the disclosure of the record would reveal the actual substance of the deliberations of this *in camera* meeting.

Former Assistant Commissioner Irwin Glasberg defined the term "substance" as the "theme or subject of a thing" and the word "deliberations" to mean, "discussions conducted with a view towards making a decision" (Orders M-184 and M-196).

In Order MO-1344, Assistant Commissioner Tom Mitchinson dealt with a record similar to that being considered in this appeal, the minutes of an *in camera* Board of Education meeting. In that Order, the Assistant Commissioner reviewed the meaning of the phrase, "substance of the

deliberations ” and concluded that information about the content of a motion and the outcome of the motion would not reveal the substance of any deliberations of the Board and would therefore not qualify for exemption under section 6(1)(b). However, he found that disclosure of the names of the persons who moved and seconded the motion before the Board would reveal the position these people took on the motion and that would be sufficient to bring this information within the exemption in section 6(1)(b).

Having reviewed the Board's representations and the record, I find that the "subject" of the Board's *in camera* meeting was the expulsion hearing of the appellant's son. I also find that the Committee discussed this issue with the intention of making a decision on how to deal with this matter.

The record at issue contains two relevant motions. The first motion was to table the decision about the proposed expulsion to a different part of the meeting. As such, this motion deals with a procedural matter and not the substance of the Board's deliberations. Accordingly, I find that the names of the persons who moved and seconded the Board's motion, the information relating to the content of the motion, and the outcome of the motion would not be exempt under section 6(1)(b) and should be disclosed to the appellant.

The second motion deals with the decision relating to the proposed expulsion. I agree with Assistant Commissioner Mitchinson's reasoning in Order MO-1344 and find that the information relating to the content and outcome of the motion in this appeal would not reveal the substance of the Board's deliberations and would therefore not be exempt under section 6(1)(b). I should note that the appellant is aware of the content of the motion since the motion was contained in an administrative report that had been released to the appellant by the Board. It is also clear that the appellant is aware of the outcome of the motion.

I am also satisfied that the names of the persons who moved and seconded the Board's second motion are exempt under section 6(1)(b) since disclosure of their names would reveal the position these people took on this motion.

The record also contains two sentences that relate to the expulsion hearing, but do not reveal the substance of the Board's deliberations on this issue. Accordingly, I find that these sentences are not exempt under section 6(1)(b) and should be disclosed to the appellant.

## **ORDER:**

I order the Board to disclose the record to the appellant except for the names of the persons who moved and seconded the motion related to the Board's expulsion decision by **March 18, 2002**, but not before **March 13, 2002**.

Order signed by: \_\_\_\_\_  
Dawn Maruno  
Adjudicator

February 11, 2002 \_\_\_\_\_