



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1664**

**Appeal MA-030070-1**

**Toronto Catholic School Board**



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## **NATURE OF THE APPEAL:**

The Toronto Catholic District School Board (the Board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for access to the date of birth of a student enrolled with the Board who had been involved in an ongoing conflict with the requester's daughter. The Board identified a record entitled "Student Information" as being responsive to the request and denied access to it, initially relying on sections 31 and 32 of the *Act*.

The requester, now the appellant, appealed the Board's decision. During the mediation stage of the appeal, the Board issued a revised decision in which it claimed the application of the mandatory invasion of privacy exemption in section 14(1) of the *Act* to the information contained in the record.

As mediation was not possible, the appeal was moved to the adjudication stage of the process. I decided to seek the representations of the appellant, initially. The appellant made submissions in response to the Notice. Because of the manner in which I have addressed the disposition of the appeal in this order, it was not necessary for me to obtain the submissions of the Board.

## **RECORDS:**

The information sought by the appellant includes only the date of birth of the student contained in the document entitled "Student Information".

## **DISCUSSION:**

### **PERSONAL INFORMATION**

The section 14 personal privacy exemption applies only to information which qualifies as personal information. This term is defined in section 2(1) of the *Act* to mean, in part, recorded information about an identifiable individual, including information relating to the age of the individual [paragraph (a)] and the individual's name where 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)].

I have reviewed the contents of the record at issue and find that the personal information contained in it relates only to the student who is the subject of the appellant's request and the boy's father. The record does not contain any personal information relating to the appellant or her daughter. The personal information includes the student's date of birth, the information sought by the appellant.

### **INVASION OF PRIVACY**

Where a requester seeks personal information of another individual, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies.

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 institution to consider in making this determination. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) of the *Act* refers to certain types of information the disclosure of which does not 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) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

A section 14(3) presumption can be overcome if the personal information at issue falls under section 14(4) or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record that contains personal information which clearly outweighs the purpose of the section 14 exemption. [See Order PO-1764]

If none of the presumptions in section 14(3) applies, the institution must consider the application of the factors listed in section 14(2), as well as all other considerations that are relevant in the circumstances of the case.

In its decision letter, the Board relied on the factors listed under sections 14(2)(e) and (h) of the *Act*. In her submissions, the appellant relies on the provisions of sections 14(1)(b), (c) and (f), as well as sections 14(2)(a) and (b), which read:

- (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
  - (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
  - (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
  - (f) if the disclosure does not constitute an unjustified invasion of personal privacy.
- (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
  - (b) access to the personal information may promote public health and safety;

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

### **The appellant's representations**

#### ***Section 14(1)(b)***

The appellant argues that there are compelling circumstances present in this case that affect the health or safety of her daughter, within the meaning of section 14(1)(b). In my view, section 14(1)(b) speaks to compelling circumstances where the health or safety of an individual is at risk unless that individual is notified of the existence of certain information. In this appeal, the appellant is seeking information about another individual in order to initiate a criminal prosecution against him. In my view, these are not the type of "compelling circumstances" addressed by section 14(1)(b).

#### ***Section 14(1)(c)***

The appellant indicates that the personal information contained in the record was requested in order to enable her to lay a private information against the student in the appropriate criminal court, and that this action would lead to the creation of public record under section 14(1)(c).

In my view, the information contained in the record at issue is not "personal information collected and maintained specifically for the purpose of creating a record available to the general public". The record is a school record maintained by the Board and is not available publicly. I find that the information contained in the record does not fall within the scope of the types of personal information captured by section 14(1)(c).

#### ***Section 14(2)(b)***

The appellant also submits that the consideration listed in section 14(2)(b) is relevant. The appellant states that:

access to the personal information will protect and promote public health and safety of another child that this student may bully and harass at the student's new school. Persistent, negative behaviour and complete disregard of previous warnings by the school and the police need to be professionally assessed.

In my view, the appellant has failed to demonstrate that the disclosure of the information sought in the record will promote public health or safety in any real or demonstrable way. This section

is intended to address records that contain information about public health or safety issues rather than personal information about a particular individual who the appellant may view as being a risk to public safety. I find that section 14(2)(b) has no application in the circumstances of this appeal.

***Section 14(2)(d)***

The appellant further submits that the consideration listed in section 14(2)(d) is a relevant factor favouring the disclosure of the personal information of the student. In order for section 14(2)(d) to be regarded as a relevant consideration, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

[See Orders P-312 [upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.)] and PO-1764]

The appellant indicates that she is seeking information as to the age of the student in order to initiate a private prosecution in the criminal courts on the basis that he has threatened her daughter's safety. In Order MO-1436, former Adjudicator Dawn Maruno addressed a similar situation where a requester sought access to the name and address of an individual in order to initiate both a civil action against that person and a private prosecution before the criminal courts. She stated:

With respect to the contemplated criminal prosecution, I find that section 14(2)(d) is not a relevant factor. For this factor to apply, the determination of rights must be those "affecting the person who made the request". By definition, the prosecution of an alleged offence under the *Criminal Code* engages the rights of the accused and "Her Majesty the Queen" or the Crown. In contrast to the proposed civil action, the criminal proceedings do not involve a determination of the rights of the party who initiates the prosecution, whether that party is the police, the alleged victim or any other individual. On this basis, I find that the appellant is not sufficiently affected by the proposed determination of rights in the criminal proceedings, and thus section 14(2)(d) cannot apply in this regard.

I adopt the reasoning expressed in that decision and find that the appellant has failed to establish that she is “sufficiently affected by the proposed determination of rights”. Accordingly, the factor favouring disclosure listed in section 14(2)(d) does not apply in the present circumstances.

**Findings**

I find that the appellant has not demonstrated that any of the considerations from section 14(2), listed or otherwise, are relevant to the circumstances of this appeal. As a result, I find that the disclosure of the personal information of the student contained in the record would constitute an unjustified invasion of the personal privacy of that individual. Therefore, the record is exempt under section 14(1).

**ORDER:**

I uphold the decision of the Board to deny access to the record under section 14(1).

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_  
July 2, 2003