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

ORDER MO-1753

Appeal MA-030081-1

Hamilton-Wentworth District School Board

80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

This is an appeal from a decision of the Hamilton-Wentworth District School Board (the Board), made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) sought information about her son, a student at a secondary school. The request arose out of the suspension of the appellant's son, based on allegations made by other students about the son's behaviour. Specifically, the request covered:

1. A copy of all notes, memoranda, writings or documents made by (named school principal), or caused to be made by (named school principal), concerning (requester's son), whether written by a staff member or a student. In the case of student statements, the identity of the writer may be concealed.

2. A copy of all notes, memoranda, writings or documents made by any teacher or staff person, or caused to be made by any teacher or staff person at (named secondary school), concerning (requester' son), whether written by a staff member or a student. In the case of student statements, the identity of the writer may be concealed.

3. A copy of all notes memoranda, writings or documents made by any member of the Hamilton Police with respect to (requester's son), which were left with (named school principal) or with any staff member at (named secondary school).

The Board provided partial disclosure of the records. In its decision letter denying access to certain records either in part or in their entirety, the Board relied on the exemptions in sections 38(a) and (b) of the *Act* (discretion to refuse requester's own information), in conjunction with sections 7 (advice or recommendations), 8 (law enforcement), 12 (solicitor-client privilege), 13 (danger to safety or health) and 14 (unjustified invasion of personal privacy).

In responding to the access request, the Board treated it as being made by the student, represented by his mother. The appeal from the Board's decision was filed by the student, with his mother representing him throughout. Both the student and his mother can be considered as the appellant and for ease of reference, particularly in referring to the representations, I will call the mother the "appellant" in this decision.

As indicated, an appeal was filed from the Board's decision. I sent a Notice of Inquiry to the Board, initially, inviting it to submit representations on the facts and issues raised by the appeal. I also sent the Notice of Inquiry to the Ontario College of Teachers (the College) whose investigation the Board is relying on for the application of section 8(2)(a) and (c) of the *Act*. The Board's representations were shared in their entirety with the appellant, who has also submitted representations. I did not find it necessary to share the representations of the College with the appellant; nor did I find it necessary to send the appellant's representations to the Board for reply.

RECORDS:

The records are described in an index provided to the appellant and to this office. There are 25 records to which access has been denied in part or in full, numbered 1 to 40. Records 3, 9, 17, 18, 19, 24, 26, 27, 28, 30, 32, 33, 34, 35 and 36 are not in issue. The records consist of handwritten notes, email and other correspondence, and other notes, statements or memoranda. Some of the handwritten or typewritten notes contain information provided by teachers or other staff at the appellant's son's secondary school (Records 1, 2, 10, 20, 21, 22, 23, 29). Some of the handwritten notes contain information provided by students at the school (Records 4 to 8, 11 and 12). Some of the records are notes of meetings (Records 14, 15, 25, 31). Records 13 and 16 are email messages. Records 37 to 40 are typewritten memoranda of the principal or vice-principal.

Contrary to the appellant's understanding, there are no "police notes" in the records. Record 14 consists, however, of the principal's handwritten notes of a meeting conducted by police officers.

The Board denied access to Records 1 and 2, 4 to 8, 10 to 12, 14, 25, 31 and 37 to 40 in their entirety. It released parts of Records 13, 15, 16, 20, 21, 22, 23 and 29, and denied access to other parts.

During mediation, the Board withdrew its reliance on section 12 of the *Act*. Further, in its representations, the Board indicated that it no longer relies on section 7 with respect to most records. Because of my findings under sections 14/38(b) below, it is unnecessary to consider the application of section 7 in any event.

DISCUSSION:

LAW ENFORCEMENT

In its decision, the Board relied on section 8 to deny access to records or portions of records. In its representations, it clarifies the parts of section 8 at issue, which are as follows:

> (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> (a) interfere with a law enforcement matter;
>
> (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
>
> (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

> (e) endanger the life or physical safety of a law enforcement officer or any other person;
>
> (2) A head may refuse to disclose a record,
>
> (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;
>
> (b) that is a law enforcement record if the disclosure would constitute an offence under an Act of Parliament;
>
> (c) that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or

In order for a record to qualify for exemption under these sections, the matter to which the record relates must first satisfy the definition of the term "law enforcement" found in section 2(1) of the *Act*. This definition states:

> "law enforcement" means,
>
> (a) policing,
>
> (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
>
> (c) the conduct of proceedings referred to in clause (b)

Further, an institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Goodis* (May 21, 2003), Toronto Doc. 570/02 (Ont. Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

The Board submits that it is responsible for law enforcement. It refers to amendments to the *Education Act* under the *Safe Schools Act, 2000* (Bill 81), addressing behaviour, discipline and safety issues in schools and the *Student Protection Act, 2002,* addressing the protection of students. The Board submits that it is responsible for law enforcement in meeting its statutory safe school requirements, akin to a municipality's investigation into a possible violation of a municipal by-law, or a children's aid society investigation under the *Child and Family Services*

Act. It submits that all of the records are documents prepared in the course of law enforcement, inspection or investigation by the Board and its employees to enforce and regulate compliance with the *Education Act* and which may result in the imposition of sanctions.

In addition, the Board submits that section 8 is applicable because of the complaint filed by the appellant against the principal, with the College. The College was notified of this appeal and also made representations on the application of section 8.

The appellant disputes that the Board is a "law enforcement agency". In part, it is submitted that no proceeding taken on suspension or expulsion of a student can lead to a court or tribunal. The suspension appeal is to the Board of Trustees, which is elected, not appointed. The decision of the Trustees is final and cannot be reviewed by a court. The appellant also submits that the complaint to the College is irrelevant to this appeal.

Analysis

In M-258, the Toronto Board of Education claimed that investigations conducted on its behalf by a forensic accountant constituted law enforcement matters within the meaning of section 8. As a result of the investigations, some employees were discharged from their employment. Former Inquiry Officer Anita Fineberg concluded:

> In my view, none of the three investigations conducted by the affected party on behalf of the Board can be characterized as "law enforcement" as this term is defined in section 2(1) of the Act. The Board investigations did not and could not lead to proceedings in a court or tribunal where a penalty or sanction could be imposed.
>
> Past orders of the Commissioner's office have held that internal institution investigations conducted by the institution as an employer do not constitute "law enforcement" investigations (Orders 157 and 192). This is so even where grievance hearings may result, as was the case with respect to Investigation 3 in this appeal. In Order 192, Commissioner Tom Wright commented on the relationship between the investigation at issue in that appeal and the subsequent proceedings:
>
> > ... the institution's internal investigation was not conducted with a view to proceedings in a court or tribunal where a penalty or sanction could be imposed. The investigation which generated the records at issue in this appeal was conducted by employees of the institution in order to determine whether or not the appellant was in a conflict of interest position. The fact that the appellant subsequently filed grievances and those grievance have come before the Crown employees Grievance Settlement Board does not alter my view of the nature of the institution's original

> investigation. **This investigation was not conducted by or on behalf of the Crown Employees Grievance Settlement Board**. [my emphasis]

> In the present appeal, the investigations were not conducted by the Police. References are made throughout the records to "our" investigation, that conducted by the accounting firm on behalf of the Board. At the conclusion of its investigation, the Board could not lay any charges. In my view, the mere involvement or interest of the police in the alleged offences does not transform the Board's internal investigation into a "law enforcement" investigation.

In Order 157, cited in Order M-258, former Commissioner Sidney Linden stated, in finding that an internal investigation by the Ontario Securities Commission into alleged employee misconduct was not a law enforcement investigation:

> The investigation or inspection was not conducted with a view to providing a court or tribunal with the facts by which it would make a determination of a party's rights, but rather, was conducted with a view to providing the employer with information respecting its employee. In this latter instance, the employer can go on to impose an employment penalty without recourse to a court or tribunal.

I find the above principles applicable to the appeal before me. The investigation by the Board in this appeal is akin to an internal investigation into alleged employee misconduct. Both types of investigations may be taken pursuant to statutory responsibilities and may result in action being taken against a student or an employee, as the case may be. However, as is apparent from above, the discharge of statutory responsibilities alone does not engage the law enforcement exemption in section 8. In order to qualify as a law enforcement investigation, it must be conducted "with a view to proceedings in a court or tribunal where a penalty or sanction could be imposed". In the case of alleged employee misconduct, the investigation is conducted with a view to the possibility of disciplinary action. In the case of alleged student misconduct, it is conducted with a view to the possibility of suspension or expulsion. In neither case are these measures imposed through proceedings in a court or tribunal but, rather, through internal decision-making by Board officials.

The examples relied on by the Board are distinguishable. In the case of municipal by-law investigations, charges may be laid under the *Provincial Offences Act*, resulting on court proceedings in which penalties or sanctions may be imposed (see M-4). Likewise, a children's aid society investigation can also lead to court proceedings in which penalties or sanctions are imposed (see MO-1416).

As to the complaint before the College, on reviewing the representations of the Board and the College, I am not convinced that they provide "detailed and convincing" evidence of a "reasonable expectation of harm" under this section. Although it is stated that disclosure of the records "may interfere" with the principal's right to a fair hearing before the College and

interfere with the College's investigation process, no evidence is offered in support of this broad assertion. I find that any interference is hypothetical and speculative.

Finally, the Board has submitted that the police are partners in ensuring safe schools with law enforcement officials investigating certain alleged incidents. It is not apparent whether the Board relies on any part of section 8 in relation to the involvement of the police but, in any event, there is no evidence to support its application in this regard.

In conclusion, I find that section 8 does not exempt the records from disclosure. I will therefore turn to consider whether the records are exempt under the other sections at issue.

PERSONAL INFORMATION

In this next section I will discuss, firstly, whether the records contain personal information, and if so, to whom that personal information relates, for the answer to these questions determines which parts of the *Act* may apply.

The application of the section 14 personal privacy exemption, as well as the application of the section 38(a) and (b) exemptions (relied on in conjunction with sections 7 and 13 in this appeal), depends on a finding that the records contain "personal information", as defined in section 2(1) of the *Act*. "Personal information" is defined, in part, to mean recorded information about an identifiable individual, 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)].

Previous decisions of this Office have held that information about an individual in his or her professional or employment capacity does not constitute that individual's personal information where the information relates to the individual's employment responsibilities or position (see Reconsideration Order R-980015 and Order PO-1663). However, where information about the individual involves an evaluation of his or her performance as an employee or an investigation into his or her conduct as an employee, then these references are considered to be the individual's personal information (see Orders P-721, P-939, P-1318 and PO-1772).

In Order PO-2225, Assistant Commissioner Tom Mitchinson reviewed the distinction between information about an individual in a personal capacity, and information associated with an individual in a professional or business capacity. After summarizing a number of orders in this area, Assistant Commissioner stated the following:

> Based on the principles expressed in these orders, the first question to ask in a case such as this is: "*in what context do the names of the individuals appear*"? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?

After considering the first question, the Assistant Commissioner then stated:

> The analysis does not end here. I must go on to ask: "*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual*"? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

Turning to the facts of this appeal, it is not in dispute that the records contain the personal information of the appellant's son and, to a lesser degree, of the appellant. The records also contain the personal information of other students. On this issue, the appellant submits that the records containing statements made by other students about her son are the personal information of her son, but not of the other students. She refers to section 2(1) which defines "personal information" to include "the personal opinions or views of the individual *except if they relate to another individual*" [subsection (e); emphasis added]. She also refers to subsection (g) of section 2(1) which provides that "personal information" includes "the views or opinions of another individual about the individual".

The appellant states that she is not interested in access to information such as the names, addresses or telephone numbers of the other students. She is content to have that information severed from the records.

On my review of the records, I find that the statements given by other students about the appellant's son contain personal information about the son as well as about these and other students. The statements contain more than just personal opinions or views of the individuals about the son; they also contain information about the students providing the statements, such as their actions and states of mind, and about other students. The information about the appellant's son and about other students is intertwined in the statements. Further, although the appellant has suggested that the identity of the students can be concealed through the severances of any names, addresses or telephone numbers, I am not satisfied that this is the case. I find that, even with such severances, the students could reasonably be identified from the information contained in the statements.

Many of the records also contain information about Board personnel, such as teachers and other staff at the secondary school. With the exception of the principal and vice-principal, whom I will discuss separately below, I am satisfied that the information about these individuals is not their personal information. Applying the principles referred to above, the information was gathered or provided in their professional capacities and is not about them in a personal sense.

In relation to the principal and vice-principal, their information also arises out of their professional positions with the Board. In answer to the first question posed in Order PO-2225, above, it is not a context that is inherently personal. However, the second question requires some further discussion. Following on the suspension of the appellant's son, the appellant and her son initiated a civil suit against these individuals and against the Board, alleging breaches of

rights under the *Canadian Charter of Rights and Freedoms* and various legal duties. Further, as indicated above, the appellant has filed a complaint against the principal to the College. The issue raised by these events is whether, given the allegations of wrongdoing, information about the actions and thoughts of the principal and vice-principal during the investigation of the appellant's son reveals something of a personal nature about them.

As indicated above, information involving an evaluation of an individual employee's performance or an investigation into his or her conduct as an employee is considered to be the individual's personal information. In other decisions of this office, information originally created as part of an individual's professional duties have been treated as the personal information of that individual, where professional wrongdoing is alleged. In Order PO-1912, for example, the Assistant Commissioner considered whether information in Use of Force Reports, completed by police officers in relation to an incident in which an individual was pursued and apprehended, was the personal information of the officers. In a context where the incident led to allegations of excessive use of force by the police officers, an investigation of their conduct, and a civil suit, the Assistant Commissioner concluded that the notes and Use of Force reports originally created as part of the officers' professional duties were now properly considered their personal information.

Applying these principles to the appeal before me, I find that information about the principal and vice-principal revealing their thoughts and actions during these events, as contained in the severed portions of Records 13, 15 and 16 and in Records 25, 31 and 37 to 40, is properly considered their personal information, given the allegations of misconduct against them. Although the principal also authored Record 14, I do not find that it contains her personal information in that it consists of her notes of a meeting conducted by police officers.

In sum, and applying the above to the records in the appeal, I find that Records 1, 2, 14, 20 and 21 contain the personal information of the appellant and/or her son only, and of no other individual. I find that Records 4 to 8, 10 to 12, 22, 23 and 29 contain the personal information of the appellant and/or her son, and other students. Records 37 to 40 contain the personal information of the appellant and/or her son, of other students, and of the vice-principal or principal. Records 13, 15, 16, 25 and 31 contain the personal information of the appellant and/or her son, and of the principal.

Because Records 1, 2, 14 and the severed portions of 20 and 21 do not contain the personal information of individuals other than the appellant or her son, they do not qualify for exemption under sections 14/38(b). Above, I have found section 8 inapplicable. No other exemption has been claimed for Records 1, 2, 20 and 21, and I will accordingly order their disclosure. The Board relies on section 13 to deny access to Record 14, and I will consider this exemption below.

With respect to Records 22, 23 and 29, the only severances consist of the names of Board personnel and students. The names of Board personnel are not, in keeping with the above discussion, their personal information and this information does not therefore qualify for exemption under sections 14/38(b). As I have found section 8 inapplicable and no other

exemptions have been claimed for these records, I will order this information disclosed. The appellant has indicated that she does not seek the names of the students and it is therefore unnecessary to consider these records further.

Although I have found that Records 4, 10 and 12 contain the personal information of the appellant and/or her son and others, each of these contains a portion that is about the appellant's son only and not others. As such, these portions do not qualify for exemption under the personal privacy exemption, although I will discuss them in relation to section 13 below.

UNJUSTIFIED INVASION OF PERSONAL PRIVACY

Records 4 to 8, 10 to 12, 13, 15, 16, 25, 31, 37, 38, 39 and 40 contain personal information of the appellant and/or her son, and of other individuals. Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38(b) provides an exception to the general right to have access to one's own personal information. Under section 38(b) of the *Act*, where a record contains the personal information of both the requester and other individuals and an institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Section 38(b) of the *Act* introduces a balancing principle. The institution must look at the information and weigh the requester's right of access to his or her own personal information against another individual's right to the protection of their privacy. If the institution determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the institution the discretion to deny access to the personal information of the requester.

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. Section 14(4) refers to certain types of information whose disclosure 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].

Representations

The Board submits that while it recognizes that there cannot be a complete guarantee of confidentiality for information provided during harassment investigations, there should be a strong inference in favour of maintaining confidentiality of personal information of third parties

who are minors (in this case, the students). It is in the public interest that such investigations be encouraged and that minors have some assurance of confidentiality, especially during the investigative stage, save and except any disclosure which might be ordered in the context of a proceeding before an administrative tribunal or a Court having regard to the principles of natural justice.

The Board relies on the factors in sections 14(2)(e), (f) and (h), which provide:

> 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,
>
> (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
>
> (f) the personal information is highly sensitive;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence

The Board submits that the information is highly sensitive and disclosure would reasonably be expected to cause excessive personal distress to minors who came forward with concerns about the conduct of the appellant's son. It is imperative that students freely express good faith views in confidence during an investigation without fear of reprisal. It is submitted that this office has denied access to information which could identify witnesses in harassment investigations. Balancing the interests of the appellant's son and the witnesses, disclosure of records which might reasonably disclose the identity of the witnesses would constitute an unjustified invasion of their personal privacy.

With respect to section 14(2)(h), the Board further submits that in ensuring the safety of its student and investigating concerns, its supervisory officers, principals and teachers have statutory obligations vis-à-vis protecting the confidentiality of student information. The Board refers to provisions in the *Ontario College of Teachers Act, 1996* and the *Education Act* which protect the confidentiality of student information.

With respect to section 14(2)(e), the Board relies on the civil action brought by the appellant and her son, but provides no elaboration.

The appellant disagrees that the records contain the personal information of any individual but her son, given her agreement to have the names of students concealed. On this basis, the appellant disputes that sections 14(2)(e), (f) and (h) have any bearing on the appeal.

The appellant also refers to the provisions of the *Education Act*, and submits that the Board has violated that Act in gathering and maintaining the information about her son. If the records are

part of her son's "pupil records" under the *Education Act*, it is submitted that she ought to have immediate, unqualified access to them. If they are not, then the personal information in them was collected outside the authority of the *Education Act*. The appellant contends that the Board is "trying to keep these records as a secret file" on her son.

In submitting that the release of the records would not constitute an unjustified invasion of personal privacy, the appellant refers to the following factors in section 14(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,
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
>
> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
>
> (g) the personal information is unlikely to be accurate or reliable;
>
> (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

The appellant submits that the release of the records is desirable for the purpose of subjecting the activities of the institution to public scrutiny, particularly where the information was collected outside any authority in the *Education Act* and its regulations and not in accordance with any published policy or procedure of the Board.

With respect to section 14(2)(d), the appellant submits that her son has a fundamental right to defend himself against the accusations said to be in the records. This cannot be done until the appellant and her son are in possession of all of her son's personal information in the possession of the Board.

The appellant submits that the personal information is probably inaccurate or unreliable, should not have been collected and should not have been relied upon to remove her son from school. Finally, the appellant submits that non-release of the records has damaged her son's reputation and relies on section 14(2)(i) to support release.

Analysis

I find section 14(2)(e) inapplicable to this appeal. No basis has been provided for its application, other than the fact of the lawsuit brought by the appellant and her son. There is no reason to conclude that the existence of the lawsuit in and of itself means that disclosure of the records would expose any individuals to pecuniary or other harm.

I conclude that section 14(2)(f) is a strong consideration in this appeal, at least with respect to the information about other students. I accept that disclosure of this information could reasonably be expected to cause excessive personal distress to minors who came forward with concerns about the conduct of the appellant's son (see MO-1379). I also accept that information provided by other students was supplied in confidence, and that section 14(2)(h) is accordingly also a relevant consideration in assessing this information.

I find section 14(2)(f) of no relevance, however, in assessing the information of the principal and vice-principal, and the Board has not suggested that it applies to their information. Section 14(2)(h) is of some relevance to this information, in that the records were supplied to the Board in a context where the conduct of these individuals had been called into question, leading to the complaint to the College and then to the lawsuit. In this context, it is reasonable to conclude that they were provided to the Board in confidence, in the course of responding to these questions and allegations.

Turning to the factors relied on by the appellant, in Order M-84, former Adjudicator Holly Big Canoe considered the application of section 14(2)(a) to records of a police investigation into an alleged assault, stating:

> In order to establish the relevance of section 14(2)(a), the appellant must provide evidence demonstrating that the activities of the Police have been publicly called into question, necessitating disclosure of the personal information of the affected person and the witnesses in order to subject the activities of the Police to public scrutiny (Order P-273). In my view, the appellant's personal concerns about the actions of one police officer are not sufficient to establish the relevance of section 14(2)(a), and I find that this section is not relevant in the circumstances of this appeal.

Likewise, in the circumstances of this appeal, I am not satisfied that the events have given rise to the sort of public questioning of the activities of the Board that leads to the application of this factor. Section 14(2)(a) is thus not relevant to this information.

As to section 14(2)(d), I accept that this is a relevant factor. In MO-1579, former Adjudicator Laurel Cropley found, in considering the relevance of this factor, that an appellant must establish:

> (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.

Applying above to the circumstances of this case, the appellant has met the first three parts of the above test. She states that she wishes to use the records in her son's suspension appeal before the Board of Trustees. I find that the personal information in the records has some bearing on the determination of the issues in those proceedings, to the extent that it provides details of the allegations against the appellant's son.

The Board has stated that it has attempted to provide reasonable disclosure in response to the appellant's request on behalf of her son. It also states that where sanctions are imposed, an accused student can access "statutory or administrative proceedings to seek preliminary records if same are relevant and admissible." Although there may well be some measure of disclosure otherwise available to the appellant, the evidence is not clear as to the extent of the Board's obligations under its appeals processes in this regard. I find that some of the personal information in the records is required in order to prepare for the appellant's son's suspension appeal, in that it contains the detailed allegations which formed the basis of the Board's decision to suspend the appellant's son. The appellant has been provided with some information about the allegations made by students against her son, albeit not in the level of detail she seeks and, in the circumstances, I find that section 14(2)(d) is a moderate consideration weighing in favour of disclosure of this information.

I find that section 14(2)(d) of less weight in relation to the information of the principal and vice-principal.

I do not accept the appellant's submission that sections 14(2)(g) or (i) are relevant. The evidence does not support a conclusion that the personal information in the records is unlikely to be reliable or accurate. With respect to section 14(2)(i), this is a factor usually cited in opposing disclosure. I find the appellant's submissions on this factor insufficient to support its application in favour of disclosure in this appeal.

Applying the above findings to the records before me, section 14(2)(f) is a factor weighing strongly against the disclosure of the personal information of the students, in Records 4 to 8, 10 to 12 and 37 to 40. Section 14(2)(h) also weighs against the disclosure of the student's information in these records. On the other side of the equation, section 14(2)(d) is a factor weighing moderately in favour of disclosing this same information. Balancing these factors, I am satisfied that disclosure of the personal information of the students would constitute an unjustified invasion of their personal privacy.

Turning to the personal information of the principal and vice-principal in the severed portions of Records 13, 15 and 16 and Records 25, 31 and 37 to 40, 14(2)(d) is relevant but of little weight in favour of disclosure, and section 14(2)(h) of more significant weight against disclosure. On balance, I conclude that disclosure of their information would also constitute an unjustified invasion of their personal privacy.

In arriving at my conclusions, I have considered the appellant's submissions as to the Board's authority under the *Education Act* to collect and maintain information about her son, beyond that in his Ontario School Record. The appellant has not stated directly how this issue affects the application of sections 14/38(b) of the *Act*. Clearly, there are matters in contention between the appellant and the Board about the actions of its officials which will, eventually, be the subject of determinations by the courts or another tribunal. However, the issues before me are about access to information, and in particular, access where the personal information of other individuals is involved. I am not convinced that the appellant's arguments under the *Education Act* affect my determinations on her rights of access.

Exercise of Discretion

The records under consideration all contain the personal information of the appellant and/or her son. As I indicated above, section 38(b) of the *Act* gives a discretion to institutions to deny access to a requester's personal information, where disclosure of the information would constitute an unjustified invasion of another individual's personal privacy. This discretion may also be exercised in favour of disclosure. In this appeal, it is open to me to consider whether the Board either failed to exercise its discretion, or erred in the exercise of its discretion.

The appellant submits that the Board has not told how its discretion was exercised or what factors were considered. Further, it is submitted that the information was collected in bad faith and has been used and continues to be used in bad faith.

I do not agree with the appellant. On my review of the Board's representations, I am satisfied that it did exercise its discretion, and that some of the factors it took into account in deciding against the release of the information were:

- the impact of disclosure on the complaint before the College
- the impact of disclosure on the willingness of students to provide information to school officials
- the higher degree of sensitivity to be given to information provided by minors
- the nature of the incidents and the sensitive nature of the information provided
- the availability of other mechanisms for disclosure

The allegation that the Board has acted in bad faith in the exercise of its discretion is not substantiated.

In sum, I find no error in the Board's exercise of discretion under section 38(b).

Given my findings above, it is not necessary to consider the application of section 7 to the severed portion of Record 13 and the entirety of Record 25. The only outstanding issue is the application of section 13 to the portions of Records 4, 10 and 12 that contain the personal information of the appellant's son only, and to Record 14.

THREAT TO SAFETY OR HEALTH

Section 13 states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

For this exemption to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

On reading the Board's representations, it is apparent that its concern is with the disclosure of information of students. I find section 13 inapplicable as Record 14 and the portions of Records 4, 10 and 12 under consideration here do not contain the personal information of any students. Since no other exemptions apply to these records or portions of records, I will order that they be disclosed.

ORDER:

1. I order the Board to disclose Records 1, 2, 14, the severed portions of 20 and 21, and certain portions of Records 4, 10, 12, 22, 23 and 29. For greater certainty, I have sent to the Board with this order a copy of Records 4, 10, 12, 20, 21, 22, 23 and 29, indicating in highlighting the portions to be disclosed.

2. I order disclosure to be made by sending the appellant a copy of the records, severed according to my directions, no later than **March 11, 2004**.

3. In order to verify compliance with the provisions of this order, I reserve the right to require the Board to provide me with a copy of the information disclosed to the appellant pursuant to this order

Original signed by: February 12, 2004
Sherry Liang
Adjudicator