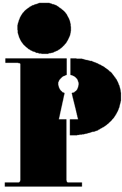

ORDER MO-1955

Appeal MA-040248-1

Conseil Des Écoles Catholiques De Langue Francaise Du Centre-Est

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NATURE OF THE APPEAL:

A request was submitted to the Conseil Des Écoles Catholiques De Langue Francaise Du Centre-Est (Conseil) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information by a mother, exercising her son's access rights under the *Act*. The request was for information about her son relating to matters that took place at a school (the school).

Specifically, the request was for the following:

1. A police report dated May 14, 2004 by [the school principal]

2. All the personal notes relating to [son's name], his file and all notes taken by the school's principal, teachers, school bus patrol and social worker, over the last two years (2002-2003, 2003-2004). [Translation]

Subsequently, the requester's husband filed an appeal, acting as a representative of the requester.

In its decision letter, the Conseil advised with respect to the first part of the request that, "with respect to the Police report dated May 14, 2004, we cannot comply with your request because this document does not exist at the Conseil." [Translation] The Conseil also identified records responsive to the second part of the request and provided partial access to them, relying on section 14(1) of the *Act* (personal privacy) to sever certain information.

The requester (now the appellant) appealed the decision.

During the mediation stage of this appeal, the appellant advised that portions of the records that were disclosed were illegible. The appellant also asserted that, in addition to the police report referenced above, the Conseil did not disclose reports from social workers and psychiatrists pertaining to the appellant's son nor a letter that the appellant alleges the school principal gave to the Ottawa Police Service (the Police). The appellant asserted that these other documents would be responsive to the second part of the request.

The Conseil agreed to conduct further searches for responsive records. After locating notes from social workers and reports from a psychologist and other professionals, the Conseil issued a supplementary decision letter granting access to these records, but again relying on section 14(1) of the *Act*, severing the names of parents and other students. This letter was accompanied by more legible copies of the records the Conseil had previously released, and it stated that the Conseil "has been unable to locate any documents created by [the school principal] that would have been, according to you, given to the Police".

Also during mediation, the mediator was advised that in addition to the meaning of a certain word and the identity of an individual who is represented only by an initial on the record, the only personal information that the appellant is seeking is the severed name of a student, all of which appear on the third page of handwritten notes dated June 10, 2004. As a result, the other severances to the various documents that the Conseil provided are not at issue in this appeal.

Mediation did not resolve all of the issues, and this appeal was transferred to the inquiry stage of the process. In addition to the matters arising from the third page of the handwritten notes, as set out in the Revised Report of the Mediator, the appellant believes that other responsive records exist. The appellant identifies these records as being the letter the appellant alleges was sent from the school principal to the Police, referred to above, and a Police report dated May 14, 2004.

I sent a Notice of Inquiry to the Conseil, initially. The Conseil provided representations in response to the Notice of Inquiry. The representations included an affidavit from the school principal. I sent the Notice, along with a copy of the Conseil's representations, to the appellant, who also provided representations.

RECORDS

The record at issue is a portion of the third page of handwritten notes dated June 10, 2004.

PRELIMINARY ISSUE

Section 54(c) of the *Act* permits the exercise of rights under the *Act* on behalf of minors, in the following terms:

> Any right or power conferred on an individual by this *Act* may be exercised,
>
> > if the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

There is no dispute that the appellant's son is under the age of sixteen, and based on the information before me, I am satisfied that she has lawful custody of her son. Accordingly, in light of the wording of the request, I find that the appellant is entitled to rely on section 54(c) of the *Act* and exercise her son's right of access to the records. As set out above, I am also satisfied that the father acts as representative for the appellant.

PRELIMINARY MATTERS

At paragraph 10 of her affidavit, the school principal deposes that she is the author of the handwritten notes dated June 10, 2004 which are the focus of the appellant's request. The appellant seeks clarification of the third word on the third page of the handwritten notes, which the appellant asserted was "tué". The appellant alleges that the uttering of the word in the context of the incident constituted a threat against her son. The school principal explains in her affidavit that the word at issue is not "tué", but "tiré".

The appellant also requested the identity of an individual represented by the initial "M", again on the third page of the handwritten notes dated June 10, 2004.

The Conseil refuses to identify the individual and submits that:

> [It] granted access to the record in question. The letter "M" is in the record: nothing was hidden or omitted from the text. The appellant is not seeking access to a record, but rather asks a question about the record. She wants [the school principal] to identify the person represented by the letter "M". [Translation]

It is the position of the Conseil that they met their obligations under the *Act* by providing the handwritten notes, and that the definition of "Record" in section 2(1) of the *Act* "refers to information … and not to any explanations arising from the information". [Translation]

While the Conseil submits that the appellant is free to ask the school principal the identity of the person represented by the initial "M", relying on the decision of former Commissioner Wright in Order M-33, it says there is no obligation under the *Act* to provide this information to the appellant.

I agree. In the circumstances of this case, while the appellant remains free to pursue other avenues to obtain this additional information, the Conseil has no obligation under the *Act* to provide it to the appellant in the context of this access request. I find, in the circumstances of this appeal, that the Conseil has complied with any obligation it may have had under the *Act* with respect to the word in question on the third page of the school principal's handwritten notes dated June 10, 2004, and the initial "M" that appears on that same page.

The appellant has also raised issues regarding the propriety of actions of certain identified individuals, and the manner in which the incident involving the appellant's son was addressed. Many of these issues fall outside the scope of my review under the *Act* as to whether the Conseil's search for records was reasonable or whether the exemptions claimed by the Conseil apply. Unless these issues directly affect the questions of whether the Conseil's search for records was reasonable, or the exemptions claimed by the Conseil apply, they are not addressed in this order.

DISCUSSION:

REASONABLE SEARCH

Where a requester claims that records or additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act* [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [P-624].

The appellant maintains that the school principal provided a letter to the Police and that the Police subsequently prepared a report pertaining to an incident involving the appellant's son. The appellant states that this is the case because a report number was obtained from an Ottawa police officer.

Along with its representations, the Conseil provided an affidavit sworn by the school principal in which she deposes that, "following the incident I recorded the testimony of … and I prepared a list of the names … and the witnesses with their contact information. These were given to the police officer when he came to the school." [Translation] She goes on to state, "I also began preparing a report of behaviour relating to the incident … at the request of the superintendent. This document was only sent to the office of the superintendent and not to the police officer." [Translation]

She further deposes that she has no recollection of preparing or delivering a letter to the Police. She says she would have remembered had she been asked to prepare such a letter. She also deposes that, with the assistance of the school secretary, she conducted a diligent and exhaustive search for responsive records and did not find any such letter.

She also deposes that she has no knowledge of whether or not such a Police report regarding the incident exists and that the school never received a report from the Police.

In all the circumstances, and based on the representations of the parties, I am satisfied that the Conseil conducted a reasonable search for records within its custody or control, including any letter from the school principal to the Police and for any Police report. I therefore dismiss this part of the appellant's appeal.

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. Under section 2(1), personal information is defined, in part, to mean recorded information about an identifiable individual, including information relating to the education or the medical history of the individual [paragraph (b)] or the individual's name where it appears with other personal information relating to the individual [paragraph (h)].

In its representations, the Conseil explains that the severance at the third page of the school principal's handwritten notes is the name of the student that was involved in the incident with the appellant's son.

I find that the record at issue contains the personal information of the appellant's son and this other student, within the meaning of paragraph (h) of section 2(1) of the *Act*.

INVASION OF PRIVACY

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exceptions to this general right of access.

Under section 38(b) of the *Act*, where a record contains the personal information of both the requester and other individuals, and the 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.

If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the Conseil may exercise its discretion to disclose the information to the appellant. This involves a weighing of the appellant's son's right of access to his personal information against the other individual's right to protection of their privacy.

Sections 14(2), (3) and (4) 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 Conseil 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 under section 14(3), 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] though it can be overcome if the personal information at issue falls under section 14(4) of the *Act* or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the exemption.

Representations of the Parties

The Conseil has referred to sections 14(2)(e), (f), (h), (i) and the presumption in 14(3)(d) as relevant factors in this appeal. The appellant has identified that her interest in the severed information stems from her concern that the Conseil may not have properly dealt with the situation involving her son, especially when the Conseil severed the name of the student whom she alleges made a threat against him. This indirectly raises the factor in section 14(2)(a).

These sections read as follows:

> 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;
>
> (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; and
>
> (i) the disclosure may unfairly damage the reputation of any person referred to in the record.
>
> 14(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> (d) relates to employment or educational history.

Findings

I find that the factor set out in section 14(2)(f) is an extremely relevant consideration that favours the non-disclosure of the records remaining at issue. In my view, based on the nature of the record from which the name is severed, and the fact that the incident involves children, the information contained in those records is "highly sensitive" for the purpose of section 14(2)(f) because its disclosure could reasonable be expected to cause excessive personal distress to the individual whose name was severed (See Orders M-1053, PO-1736 and PO-2339).

I am satisfied that the appellant's concerns regarding the incident and the treatment of her son is genuinely held, which raises inferentially the application of section 14(2)(a), however, this does not outweigh the unnamed student's right to the protection of his or her privacy. I find that on balance, the factors favouring privacy protection at section 14(2)(f) outweigh any factors favouring disclosure in this case, and that the disclosure of the student's name constitutes an unjustified invasion of this individual's personal privacy. I therefore find that the exemption under section 38(b) applies to the record at issue.

In light of this finding, it is not necessary for me to consider the application of the additional factors favouring privacy protection at sections 14(2)(e), (h) or (i), nor the presumption in section 14(3)(d) of the *Act*.

No specific representations were made with respect to the application of the "public interest override" in section 16 of the *Act*. However, even if the representations of the appellant could be interpreted as asserting the application of section 16, based on the materials before me, I am not satisfied on the facts of this case that a compelling public interest exists in the disclosure of the name of the student which clearly outweighs the purpose of the section 38(b) exemption.

Finally, the Conseil's representations identify the considerations it took into account in deciding to exercise its discretion not to disclose the student's name. I am satisfied, based on the Conseil's representations and the circumstances of this appeal, that the Conseil properly exercised its discretion in refusing to disclose the student's name.

Accordingly, I uphold the decision of the Conseil.

ORDER:

I uphold the decision of the Conseil.

Original signed by:

____________________________ August 24, 2005

Steven Faughnan
Adjudicator