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

ORDER MO-2291

Appeal MA06-279

Hastings and Prince Edward District School Board

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NATURE OF THE APPEAL:

The Hastings and Prince Edward District School Board (the Board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act)* for copies of records relating to two separate incidents at a specific school. The incidents led to disciplinary action being taken against two students. The requester, who is the father of two other children at the school, sought access to "…all records … for each of the occurrences, including, but not limited to, any incidents reports, notes, police reports, discipline reports." The requester also stated that he expected the Board to "remove or black out names and other personal information before releasing the records" to him.

The Board located five responsive records and issued an access decision in response to the request. The Board denied access to the records in their entirety under the exemption at section 14(1) of the *Act* (personal privacy).

The requester, now the appellant, appealed the Board's decision to this office. During the mediation stage of this appeal, the appellant raised the possible application of the public interest override in section 16 of the *Act*. Mediation did not resolve this appeal and it was transferred to the adjudication stage of the appeal process, in which an adjudicator conducts an inquiry under the *Act*.

This office commenced the inquiry by sending a Notice of Inquiry to the appellant, outlining the background and issues in the appeal and inviting his representations. The appellant provided representations in response. The appeal was then re-assigned to me. I decided to invite the Board to provide representations, and accordingly, I sent a Notice of Inquiry to the Board, along with the appellant's representations. The non-confidential portions of the Board's representations were then shared with the appellant, who was provided with an opportunity to make representations in reply, which he did.

RECORDS AT ISSUE:

The records at issue are as follows:

Record 1: Board copy of a suspension letter
Record 2: Computer printout – incident details
Record 3: Incident report
Record 4: Board copy of a suspension letter
Record 5: Computer printout – incident details

DISCUSSION:

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. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name if 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;

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature

about the individual [Orders P-1409, R-980015, PO-2225].

The appellant does not dispute that the records at issue contain personal information. Rather, his position is that with appropriate severances, as referred to in his original request, portions of the records would no longer contain personal information and as a result, should be disclosed to him.

In support of his position, the appellant refers to Order M-15 and Order M-264. In Order M-15, former Commissioner Tom Wright ordered the City of Waterloo to release work orders with the names and addresses of the owners severed. Order M-15 determined that work order information is about a property. It did not turn on whether the information was about an "identifiable individual" *per se*, and therefore does not assist the appellant.

In Order M-264, Adjudicator Anita Fineberg ordered the Toronto Police Services Board to release a portion of the notes made by a police officer in the course of an investigation with the personal identifiers of the witnesses severed. Order M-264 found that the requested information could be de-identified by removing the personal identifiers. That is the very question I must decide here, based on the circumstances of this case. As noted in *Pascoe* (cited above), to qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.

The Board's position is that it is reasonable to expect that individuals may be identified, notwithstanding the removal of their names, because the records contain the following further information:

- the dates the students were suspended and a detailed accounting of the students' and teacher's actions which occurred in front of a number of people in the school; and

- the address of the students' legal parents/guardians and the date of birth, age, grade, student exceptionality code and Ontario Education Number of the students.

The records at issue in this appeal consist of two suspension letters, two computer printouts and an incident report. As noted, the records relate to two different students. Records 1, 2 and 3 relate to one of the students, and Records 4 and 5 to the other. The two students were suspended in relation to two separate incidents.

Records 1 and 4 are the letters that were sent to the suspended students' parents or guardians. They state the reason for the suspension, provide a description of the incident and refer to the relevant provisions of both the *Education Act* and Board's Policy and Procedure Manual. The letters also specify the start dates and times, and the end dates and times, for the suspensions.

Records 2 and 5 are computer printouts that consist of entries made by the principal and vice principal of the school. They briefly describe the incidents, setting out the date, type of incident, length of suspension and whether other school administrators or outside agencies were consulted as a result.

Record 3, the incident report, is on a form developed by the Board. It was completed by the teacher who was involved in the incident. This record describes the incident, the Board's response and whether the police were contacted.

I have carefully reviewed all of the records. I find that, in a general sense, each of the records constitutes the personal information of the student dealt with in that record. The suspension letters also contain the parents' or guardians' personal information. In addition, the incident report reveals information of a personal nature about the teacher who was involved in one of the incidents, which therefore constitutes her personal information within the meaning of section 2(1) of the *Act*.

Different scenarios involving possible severances are suggested by the parties. I will review these in turn.

The Board's analysis, referred to above, is based on the removal of only the names that appear in the records. I agree with the Board that removal of the names would not de-identify the information because the addresses of the parents would remain. I find that it would be reasonable to expect the students to be identified in that situation, and the information would, accordingly, remain personal information even with the names severed.

I have also considered the appellant's suggestion of apparently broader severances, since his request refers to the severance of "names and other personal information." In the circumstances described by the Board, in which the incidents were observed by a substantial number of people, I find that, even with further information removed (including the parents' or guardians' addresses, the students' date of birth, age, grade, student exceptionality code or Ontario Education Number), it would still be "reasonable to expect" that the students would be identifiable. Accordingly, even with broader severances, the records would still qualify as their personal information.

In my view, as well, severing names and other identifiers would not serve to de-identify the teacher, whose identity would also be well known to those familiar with that particular incident. It would be reasonable to expect that she would be identified from the remaining information, and the information about her of a personal nature would therefore continue to be her personal information.

Accordingly, I find that it is not possible to de-identify the personal information in the records by means of severances.

In summary, I find that each of the records constitutes the personal information of the student dealt with in that record. The records also contain the personal information of the students' parents or guardians, and the teacher involved in one of the incidents.

PERSONAL PRIVACY

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. If the information fits within any paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14.

In the circumstances of this appeal, it appears that the only exception that could apply is paragraph (f), which provides an exception to the section 14(1) exemption "if the disclosure does not constitute an unjustified invasion of personal privacy."

Sections 14(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Section 14(2) lists some criteria for the Board to consider in making this determination and section 14(3) identifies certain types of information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) identifies information whose disclosure is not an unjustified invasion of personal privacy.

If any of paragraphs (a) to (h) in section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. The Divisional Court has stated that once a presumption in disclosure has been established under section 14(3), it cannot be rebutted by either one or a combination of the factors set out in section 14(2). A section 14(3) presumption can be overcome, however, if the personal information at issue is caught by section 14(4) or if the "compelling public interest" override at section 16 applies. *(John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767*)*. The parties do not claim that section 14(4) applies in the circumstances of this appeal, and I find that it does not.

The appellant submits that section 14(2)(a) of the *Act* applies in the circumstances of this appeal. The Board submits that the presumption in section 14(3)(d), along with the factors in paragraphs section 14(2)(e) and (f) also apply to the information at issue. The relevant sections read:

> (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;

> (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;

Section 14(3)(d): presumed unjustified invasion of privacy

The Board's representations state that each of the five records at issue constitutes part of the affected students' Ontario Student Record ("OSR") created pursuant to the *Education Act* "which forms a historical record of a student's time in the educational institution including for example, records of grade reports, special education needs and programs and, most germane to the request at issue, the student's disciplinary record with the Board." In support of its position, the Board refers me to an excerpt of the Ministry of Education's Violence-Free School Policy which states:

> **Record Keeping of Violent Incidents Leading to Suspension/Expulsion and of Reports to the Police**
>
> The following sections of the Education Act govern the establishment of the Ontario Student Record (OSR):
>
> > Clause 265(d) states that it is the duty of a principal: in accordance with this act, the regulations and the guidelines issued by the Minister, to collect information for inclusion in a record in respect of each pupil enrolled in the school and to establish, maintain, retain, transfer and dispose of the record.
> >
> > Subsection 266(2) states in part: A record is privileged for the information and use of supervisory officers and the principal and teachers of the school for the improvement of the instruction of the pupil. . . .
>
> In addition, the contents of the OSR are described in the guideline Ontario Student Record (OSR), 1989.
>
> It should be noted that the OSR may be the subject of a search warrant or a subpoena and, if so, must be produced. In such instances, reference should be made to section 4 of the OSR guideline.
>
> The information relating to serious violent incidents leading to reports to the police, as well as the information relating to serious violent incidents leading to suspension or expulsion, must be maintained in the OSR. This information is to be recorded on the Violent Incident Form.

The appellant's position is that the information he seeks is not "personal information", and as a result the presumption at section 14(3)(d) of the *Act* has no application in the circumstances of this appeal. For reasons already stated in connection with my finding that the information at issue constitutes the "personal information" of the affected students, their parents/guardians and the teacher involved in one of the incidents, I have made the opposite finding. The appellant therefore cannot avoid the application of section 14(3)(d) on this basis.

I have reviewed the records, and I accept the Board's evidence that all of them form part of the OSR, which is, in effect, the core of a student's educational history. I therefore find that the presumption at section 14(3)(d) applies to all of the records.

With respect to the personal information of the teacher, also contained in the incident report, I am satisfied that the presumption at section 14(3)(a) of the *Act* applies to this information in the circumstances of this appeal. Section 14(3)(a) provides that disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation. I cannot explain the nature of the information further without revealing the contents of the record, but it is clearly information to which section 14(3)(a) applies.

Based on my review of the records, I am satisfied that section 14(3)(d) applies to all of them, in their entirety, and as regards the teacher's personal information, section 14(3)(a) also applies. Disclosure of the records is therefore presumed to be an unjustified invasion of personal privacy. As noted above, section 14(4) does not apply. Section 14(2) cannot overcome the section 14(3) presumptions (per *John Doe*, cited above) and it is therefore not necessary for me to consider it.

Accordingly, I find that disclosure of the records would constitute an unjustified invasion of personal privacy. The exception to the section 14(1) exemption found at section 14(1)(f) therefore does not apply, and the personal information is exempt under section 14(1), subject to possible disclosure under the public interest override.

PUBLIC INTEREST OVERRIDE

Section 16 states:

> An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of

shedding light on the operations of government [Order P-984]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Order P-984].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347, P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

The word "compelling" has been defined in previous orders as "rousing strong interest or attention" [Order P-984].

Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)].

Representations of the parties

The appellant's representations explain that he was motivated to make a request under the *Act* for records relating to the two incidents out of his "concern for the safety of his two children attending the school, as well as the safety of all of the students and staff at the school." The appellant also advised that he had concerns as to whether the school's response to the incidents complied with the *Education Act*. The appellant advised that he raised his concerns about the incidents at a school council meeting, but was not satisfied with the responses he received from school administrators and subsequently made a request under the *Act* for information relating to the incidents. The appeal letter sent to this office states:

> The information provided in my original request is based upon information I heard. I was unable to substantiate it with either the principal or superintendant. I was concerned that breaches of the Ontario Education Act had occurred and was attempting to find the correct facts involving the incidents and discipline for each. From the rumours I heard, I understand that the discipline did not comply with the Education Act, creating a potential unsafe environment for my children and other students.

The appellant also submits that the incidents and the principal's response to the incidents raised considerable interest at the school council meeting he attended.

The Board's position is that the public interest override at section 16 of the *Act* does not apply to the records at issue. The Board's representations state:

> (a) The Board submits that no connection has been established between the health and safety of students and any disciplinary response of the school. Moreover, the Appellant's submission contain no evidence that the Appellant has taken steps to review or suggest amendments to any existing school safety program or measure

> for the ongoing safety of the students. Furthermore, the Board submits that the requester's concern can be better characterized as personal rather than public. No evidence has been forwarded to suggest that the school in question is generally unsafe. Moreover, there are other methods of oversight available (as noted in the discussion under section 14(2)) which do not require disclosure of highly sensitive student documents to the public at large. These include a request to the Board of Trustees and/or a review by the Ministry of Education.
>
> (b) With respect to the Appellant's public oversight argument, the Board makes the following observations. Firstly, the *Education Act*, provides no express right of oversight to the general public with respect to the discipline of a minor student for whom they are not a parent or guardian. Moreover, the Appellant has not addressed why, to the extent it is actually necessary, such oversight cannot be achieved by raising the matter with the Ministry of Education as referenced in the discussion of s.14(2) of these submissions.
>
> Moreover, to the extent that the Appellant wishes to publicize any disciplinary response of the Board with respect to student misconduct the Board observes that disciplinary responses are dealt with in detail in the *Education Act* which sets out specific penalties for various categories of student infractions.
>
> Disciplinary information is also provided to the student/parent/guardian community on the Board's website (see documents attached). The Board submits that such communication of disciplinary responses is sufficient to address the issue of general deterrence.

The appellant's reply representations clarify that the majority of the parent members who attended the school council expressed concern in relation to the incidents in question.

Analysis and Findings

In my view, the issue of school safety is one of vital public interest. In this regard, I note that the Toronto District School Board recently released its *Final Report on School Safety* completed by the School Community Safety Advisory Panel (the Panel). The Panel was created following the shooting death of a Toronto high school student and the *Final Report* contains more than one hundred recommendations to help improve the safety and enhance the culture at the Toronto District School Board. Two of the recommendations speak to the issue of public disclosure of non-violent and violent incident reports. The Panel recommends that such reports should be generated weekly by school principals and submitted to the Toronto District School Board who the Panel recommends should publish an annual detailed report on school safety issues using the data collected from individual schools. I note, however, that unlike the appeal before me, this recommendation does not involve the public disclosure of individually identifiable records or incident reports.

In my view, there can be no doubt that the records relate to the issue of school safety, as the incidents in question and the Board's responses to them clearly provide information in that regard. Therefore, it is possible that a compelling public interest in disclosure could outweigh the privacy interest in records of this nature.

In this case, however, I have concluded that the question of whether there is a public interest in *non*-disclosure is significant. The records provide textured information about *individual* student discipline and describe incidents that could attract the attention of law enforcement authorities.

In this regard, I note that Canadian legislation aims to protect young people from negative publicity about activities that may not reflect well on them. This policy initiative clearly underlies significant provisions about non-publication of information found in the *Youth Criminal Justice Act*. For example, section 110(1) of that statute states:

> Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.

This is consistent with the provisions of section 266 of the *Education Act*, referred to in the Board's representations, which indicates that the OSR is "…privileged for the information and use of supervisory officers and the principal and teachers of the school…."

With respect to the records at issue in this appeal, I have found that they relate to identifiable individuals, even with names and other identifiers removed. I have also found that all of them constitute the personal information of one student or the other. While school safety is a vital issue, in my view the public interest in non-disclosure of information that could damage the reputation of a young person is compelling in the circumstances of this case.

While the appellant indicates that "other methods of oversight, such as letters to the Minister of Education have already been addressed," I would observe, nonetheless, that the Board and the Ministry are the public authorities who are responsible for school safety. Encouraging a different approach, in which individual parents are entitled to view textured information about measures used to deal with students who are not their children and, in effect, to decide for themselves whether the response is adequate, is not a recognized model for school oversight. The safety of schools remains the responsibility of public authorities. In the circumstances of this appeal, applying the public interest override would, in effect, support an oversight model involving access to textured student information by other parents. In my view, such an approach is not consistent with articulated public policy, nor would it be in the public interest.

I find that section 16 does not apply in the circumstances of this appeal.

ORDER:

I uphold the Board's decision.

Original signed by: April 11, 2008
John Higgins
Senior Adjudicator