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

ORDER MO-2407

Appeal MA08-19

Windsor-Essex Catholic District School Board

Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9188
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The Windsor-Essex Catholic District School Board (the Board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act)* for access to information pertaining to employment contracts and related information for principals and vice-principals employed by the Board. Specifically, the requester sought access to the following:

> …
> We are requesting the current employment contract with the Principals and Vice-Principals, currently in the employ of the Board.
>
> We are requesting that this information contain, all appendices included in these contracts, all working conditions, medical benefits, and salary range.
> …

After having notified the affected principals and vice-principals (the affected parties), the Board issued an initial decision letter in response to the request. With respect to the requester's interest in information relating to "working conditions", the Board advised that no records exist. With regard to information pertaining to "salary range" and "medical benefits", the Board advised that it would provide this information in a subsequent decision letter. The Board also advised that it was denying access to the current employment contracts for principals and vice-principals, pursuant to section 14(1) (personal privacy) of the *Act*. In support of its section 14(1) exemption claim, the Board also cited the application of sections 14(2) and 14(3) of the *Act*.

In a supplementary decision letter, the Board provided the requester with the affected parties' salary ranges, and a general description of their medical benefits.

The requester (now the appellant) appealed the Board's decisions.

During the mediation stage of the appeal process, the parties participated in a teleconference to clarify the part of the request relating to "working conditions". The appellant specified that it is seeking access to any documents that refer to the benefits or "perks" associated with an individual principal's or vice-principal's placement. Upon further consultation with the Human Resources Superintendent, the Board reiterated that no records exist relating to "working conditions" for specific principals or vice-principals. In response, the appellant indicated that it was no longer seeking access to this benefits or "perks" relating to an individual principal's or vice-principal's "working conditions".

However, the appellant confirmed that he is still pursuing access to the affected parties' current employment contracts and salary schedules. The appellant takes the position that these records do not contain the affected parties' personal information.

With respect to the part of the request relating to "medical benefits", the appellant provided the mediator with a copy of a 3-page Benefit Package document that it had obtained from another source. After reviewing this document, the mediator confirmed that it is identical to the one identified by the Board as responsive to the appellant's request. As a result, the appellant indicated that access to the 3-page Benefit Package document is no longer at issue in this appeal.

However, the appellant indicated that another benefits-related record identified by the Board but not disclosed, the Insurer's "Outline of Benefits" booklet, remains at issue.

The parties were unable to resolve any further issues during mediation and the file was transferred to the adjudication stage for an inquiry.

I commenced my inquiry by issuing a Notice of Inquiry and seeking representations from the Board and the affected parties. I asked both the Board and the affected parties, in formulating their representations, to address the application of the exceptions in section 14(4) of the *Act* and, in particular, my findings in Order MO-2172. Order MO-2172 addressed a request and subsequent appeal involving similar records pertaining to elementary school principals employed by the Board.

The Board submitted representations in response and agreed to share them in their entirety with the appellant. The affected parties wrote to me to advise that they endorse the submissions of the Board.

I then sought representations from the appellant and included with my Notice of Inquiry a complete copy of the Board's submissions. I also included a copy of Order MO-2172 and I asked the appellant to comment on the relevance of my findings in that case to those in this appeal. The appellant submitted representations in response. In its representations, the appellant advised that it was only interested in information relating to elementary school principals and vice-principals. Accordingly, any information pertaining to secondary school principals and vice-principals is no longer at issue and I have removed it from the scope of the inquiry.

In light of the representations received from the appellant, I decided to seek reply representations from both the Board and the affected parties. The Board submitted reply representations. The affected parties again wrote to me and advised that they endorse the representations submitted by the Board.

I then decided to seek sur-reply representations from the appellant. The appellant chose not to submit further representations.

RECORDS:

The following three records are at issue:

- "Employment Contract" template between the Board and its principals, effective September 2005, including attached "Salary Schedule"
- "Employment Contract" template between the Board and its vice-principals, effective September 2005, including attached "Salary Schedule"
- Insurer's "Outline of Benefits" booklet, dated August 2005.

DISCUSSION:

THE PERSONAL PRIVACY EXEMPTION

Personal Information

Definition

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain "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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

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].

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.)].

Analysis and findings

In Order MO-2172 I dealt with the same issue and similar information. In that case, following the reasoning in Orders PO-2225 and PO-2435, I found that the information in the records, including the affected parties employment terms and benefit entitlements, is not inherently personal, but rather, is more properly characterized as information that relates exclusively to the professional activities and responsibilities of these individuals. Accordingly, I determined that there is no information in the records at issue in Order MO-2172 that, if disclosed, would reveal something of a personal nature about the affected parties in that case.

On the strength of my conclusions in Order MO-2172, I asked the parties to consider my decision in that case in the context of the facts in this appeal.

Many of the Board's submissions in this case are similar to those that it made in Order MO-2172. The Board states that the records at issue contain the affected parties' personal information. The Board indicates that it employs approximately 41 elementary school principals and 12 elementary school vice-principals. The Board submits that the names of the affected parties are easily obtained by conducting an internet search of the Board's website and that once obtained, the names can be linked to the information in the records. The Board, therefore, submits that the information in the records constitutes recorded information about an identifiable individual within the definition of "personal information" in section 2(1) of the *Act*, since the information is personal in nature to the affected parties as it describes the terms of their employment and their employment history.

Perhaps in an attempt to distinguish the circumstances in this case from those in Order MO-2172, the Board makes the following statement:

> Despite the fact salary range and general benefit entitlement (as has previously been disclosed to the appellant) may as a general rule be considered information associated with a person in a professional capacity, due to the relatively small numbers in each of the employee groups and easy accessibility to names and years of experience, disclosure of these documents would reveal information of a personal nature including actual salary and identifiable comprehensive terms of employment for each individual employee.

The appellant states in response that the information sought is information that was ordered released pursuant to Order MO-2172. The appellant states that it is merely looking for "updates and any changes to the complete employment contract of a work group within the Board." The appellant asserts that the information sought is similar and "no more invasive than the Board published information on other employee groups."

In reply, the Board points out that the request in Order MO-2172 was for information pertaining to elementary school principals, an identifiable group comprised of 41 individuals. Conversely, in this case the requester is seeking information relating to both the 41 elementary school principals and a much smaller identifiable group of vice-principals, comprised of only 12 individuals.

Having carefully considered the parties' representations, I am not persuaded that the circumstances in this case are qualitatively different from those in Order MO-2172. The records are identical. The only difference is that in Order MO-2172 I was dealing exclusively with the group of 41 elementary school principals, while in this case I am faced with the same group of principals and a group of 12 elementary school vice-principals. I see no basis for treating the information in this case any differently from the information at issue in Order MO-2172 for the following two reasons.

First, I am not persuaded that the information pertaining to the vice-principal group is personal in nature. Neither the Board nor the affected parties has provided me with any basis for departing from the reasoning in Orders PO-2225 and PO-2435 that I applied in Order MO-2172. In my view, the fact that this case concerns both a group of 41 principals and 12 vice-principals does not alter the characterization of the information at issue as employment terms and benefit entitlements of Board employees. I reiterate that this was the same information at issue in Order MO-2172. The affected parties in this case act solely in their capacity as elementary school principals and vice-principals and, to the extent that there is information in the records that can be linked to them, this information appears in the context of their professional relationship with the Board. I conclude that this information is not inherently personal, but rather, is information that relates exclusively to the professional activities and responsibilities of these individuals.

Second, even if I were to accept that the circumstances in this case are different from those in Order MO-2172, on the basis that the current appeal concerns both 41 elementary school principals and a smaller identifiable group, namely the group of 12 elementary school vice-principals, I am not persuaded that there is a reasonable expectation that individuals can be identified through disclosure of the information at issue.

In Order PO-2551 Assistant Commissioner Brian Beamish conducted a thorough review and analysis of the meaning of the word "identifiable" in the context of a request for information about a particular class or group of individuals. The request in that case was for a Workplace Safety and Insurance Board (WSIB) electronic database of lost time claims from January, 2000 to December, 2005 for firms whose names appear more than five times in that period. The database sought included the following fields of information: firm name, municipality, industry sector, claim registration date, claim status, occupation, nature of injury, and the number of days lost from work. The WSIB argued that the database requested included "personal information" because there is a reasonable expectation that individuals may be identified if the information is disclosed. In finding that the information requested in that case was not "personal information", Assistant Commissioner Beamish concluded that there was no reasonable expectation that individuals could be identified as a result of the disclosure of the record. I find the following excerpts from Assistant Commissioner's review and analysis useful:

> The following test for the determination of whether an individual is "identifiable" and therefore whether information is "personal" has been applied by this office in a number of previous orders:
>
> > If there is a reasonable expectation that the individual can be identified from information, then such information qualifies under subsection 2(1) as personal information. [Order P-230]
>
> This approach was approved by the Court of Appeal in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.), affirming a decision of the Divisional Court (reported at [2001] O.J. No. 4987) on a judicial review application, and I adopt it here.
>
> A number of previous orders from this office have also dealt with the nature of the evidence required to establish a reasonable expectation that individuals can be identified by the disclosure of the information that is at issue. In Order P-1389, Adjudicator Donald Hale dealt with a request made to the Ministry of Health and Long-Term Care for the total billing amounts relating to the ten highest billing general practitioners in Toronto. In considering the Ministry's representations on the issue of whether individuals could be identified, Adjudicator Hale stated:
>
> > The Ministry further submits that there is a strong possibility that there exists some external information in the public domain or in the general practitioner community which could be linked to the information at issue to make a connection between a particular

> billing amount in the record and the practitioner associated with that billing.
>
> ...
>
> In my view, the Ministry's arguments rely on the unproven possibility that there **may** exist a belief or knowledge of the type described. I have not been provided with any substantive evidence that information exists outside the Ministry which could be used to connect the dollar amounts to specific doctors. The scenario described by the Ministry is, in my view, too hypothetical and remote to persuade me that individual practitioners could actually be identified from the dollar amounts contained in the record. I find, therefore, that the information at issue is not about an **identifiable** individual and does not, therefore, meet the definition of "personal information" contained in section 2(1) of the *Act* [original emphasis].

This issue was also considered by former Adjudicator Irena Pascoe in Order PO-1880, which was affirmed by the Court of Appeal in the decision referred to above. The information at issue was the top ten items that the top billing general practitioner in Toronto billed for, the number of times he or she billed for those items and an explanation of those items. The Ministry had a "small cell count" policy that stated that there was a possibility that an individual might be identified by the disclosure of anonymized personal health information where it appeared in tabulations of less than five. The Ministry relied on this policy to support its decision to withhold the requested information. In that order, former Adjudicator Pascoe stated:

> With respect to the current appeal, although the Ministry refers to a number of previous orders and correctly identifies the conclusions reached in those cases, the Ministry does not provide any evidence applying these general principles to the circumstances of this appeal. For example, although the Ministry refers to Order P-316 and states that "the reasonable expectation of identification is based on a combination of information sought and otherwise available", it does not provide any evidence as to what the "otherwise available" information might be. Similarly, in referring to Orders P-651, P-1208 and 27, the Ministry does not provide any specific information as to how it would be possible to identify the affected person given the circumstances of this particular case.

Former Adjudicator Pascoe found that there was no reasonable expectation that individuals might be identified by the disclosure of the information at issue in that order. On the judicial review application, in the judgment affirmed by the Court of Appeal, the Divisional Court stated:

> The Ministry, apart from its small cell count finding, did not proffer any submissions establishing a nexus connecting the record, or any other information, with the affected person. Any connection between the record and the affected person, in the absence of evidence, is merely speculative. The Ministry made no submissions explaining its small cell count finding or showing how it applied to the facts of the case. No other information was identified by the Ministry or by the affected person that could link the record to an identifiable individual.

In Order PO-2037 (upheld on Judicial Review in *Ontario (Attorney General v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.)), former Senior Adjudicator David Goodis also had an opportunity to consider this issue in the context of a request for access to an accounting of costs, incurred by the Ministry of the Attorney General, for bringing a number of witnesses to Canada to testify at a preliminary hearing and trial. In the Ministry's representations, it submitted that the information in the records was the personal information of the accused and potential witnesses. Former Senior Adjudicator Goodis, after referring to the Divisional Court judgment in *Pascoe*, stated:

> [T]he Ministry provides no evidence to indicate how the individual witnesses might be identified based on a combination of information sought and what otherwise may be available. Based on my review of the records, there is nothing to indicate that, once the names and other personal identifiers are removed, it would be reasonably possible to link a particular receipt or expense record to a specific individual or a very small number of individuals, especially given the relatively large number of witnesses.
>
> As a result, once the necessary severances are made, the records do not constitute the personal information of the witnesses as that term is defined in section 2(1) of the *Act*.

In upholding Order PO-2037, the Divisional Court stated:

> We are further satisfied that the interpretations placed on … sections 2(1) and 21, were not unreasonable and that the adjudicator was reasonable in his conclusion that the Attorney General had not discharged the burden on it to demonstrate that these exemptions were applicable.

I adopt the approach of the Divisional Court in *Pascoe* and the previous orders of this office referred to above in concluding that the record does not contain personal information. I find that the Board has not provided me with sufficient evidence to establish a reasonable expectation that individuals can be identified by linking the information in the record to the other information sources that it refers to. In particular, it is not clear to me how the information in the database can be linked to reported cases, media stories, witnesses, other databases, internet sources and "the workplace" to reveal the identity of the individuals. The Board has not provided me with any examples or details to support what appears to be a bald assertion or mere speculation on its part.

…

I note the Board's position that a linkage can be made through the use of reported cases to identifiable individuals. I have taken into account the fact that the reported cases of the Workplace Safety and Insurance Appeals Tribunal are public records and can be found on the Tribunal's website. However, I note from a review of these reported cases, that the reports are anonymized so that the names of the claimants, employers and witnesses do not appear in the reported decisions. Having reviewed the record and the reported cases, it is not clear that these reported cases will provide an effective link to an identifiable individual. If the Board was referring to reported cases other than those on the Board's website, I have been provided with no particulars on those cases. Similar detail is lacking with respect to the other information sources that the Board identifies as possible links to identifiable individuals.

I have also carefully reviewed the record at issue. There is nothing in the record itself to suggest that any individuals might be identifiable from a possible disclosure of the record. It may be true that the appellant, by assiduously questioning workers at a particular company, may be able to identify a particular claimant. However, the appellant would be able to question workers at a company without the record and still identify workers who had been injured on the job. In addition, as noted by the appellant, there are far easier methods available to the appellant to identify injured workers.

To use the language of the Divisional Court in *Pasco*e, the Board has failed to provide me with sufficient evidence to establish a nexus connecting the information in the record, to any other information that would result in the identity of an individual being revealed.

…

For all of these reasons, I am not satisfied that the information at issue falls within the definition of "personal information" set out in section 2(1) of the *Act*.

> Accordingly, section 21(1) of the *Act*, does not apply to this record. As no other mandatory exemptions apply and no other discretionary exemptions have been claimed for the record, I will order its disclosure to the appellant.

I accept the line of reasoning presented above and apply it in the circumstances of this case. I find the Board's suggestion - that disclosing the information relating to the elementary school vice-principals group would reveal information about identifiable individuals - speculative and unsupported by the evidence presented. While I acknowledge that the group of elementary school principals is three and a half times larger than the pool of elementary school vice-principals, the Board has provided no evidence that disclosure of the information at issue for that group would somehow lead to an ability to connect an identifiable individual to a specific salary. On the contrary, based on my review of the information at issue, including the Salary Schedule, disclosure will merely shed light on the salary range and other benefits related information for the entire group of elementary school vice-principals. Accordingly, I see no basis for differentiating between the group of 41 elementary school principals and the 12 elementary school vice-principals in the circumstances of this case.

In conclusion, I am not persuaded that there is a reasonable expectation that individuals can be identified through disclosure of the information at issue and I find that there is no information in the records at issue that, if disclosed, would reveal something of a personal nature about the affected parties.

Having reached the conclusion that the information in the records does not qualify as personal information, it is not necessary for me to consider the parties' arguments regarding the application of the section 14(1) exemption.

ORDER:

1. I order the Board to disclose the responsive portions of all three responsive records to the appellant no later than **May 6, 2009** but not before **April 30, 2009**. To clarify, the Board is required to disclose the two Employment Contract templates and the Outline of Benefits booklet in their entirety. However, with regard to the two salary Schedules, the Board is only required to disclose those portions relating to elementary school principals and vice-principals. The portions relating to secondary school principals and vice-principals should be withheld.

2. I remain seized of this matter pending compliance with provision 1 of this order.

Original Signed by: March 31, 2009
Bernard Morrow
Adjudicator