



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

ORDER MO-2467

Appeal MA08-270

Thames Valley 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/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Thames Valley District School Board (the Board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

... the attendance/enrolment records of the Port Stanley Public School from 1960 to as far back in time as records exist (probably the late 1800s), or any narrower time frame that is deemed to be acceptable. I am interested in each school year class, the teacher and the student names only.

The requester also indicated that he is seeking these records for the following two purposes:

1. School reunions and other celebrations e.g. Port Stanley Public School recently celebrated its centennial and will be having an “old girls” reunion this September.
2. Genealogical research to substantiate if and when relatives may have attended a particular school and year.

The requester later submitted representations to this office that further explained why he is seeking access to the above information. In particular, he indicated that he has acquired several hundred photographs of various classes of Port Stanley Public School from 1899 to the present. He states that he has been meeting with various graduates of the school, who have assisted him in annotating each photograph with the names of the students and teachers in each photograph and the grade and school year. He further states that the attendance registers archived by the Board contain information that would assist with filling in the missing names of students and teachers in the class photographs:

... I am interested in the attendance registers from about 1964 to as far back in time as records exist (probably 1899), or any narrower time frame that is deemed acceptable. **It is not my intent to display the attendance register itself but to use the information to annotate these school photographs.** If any attendance register also contains information in which I am not interested (e.g., parents’ names, address, etc), I will not collect it. I am prepared to sign a confidentiality agreement. [Emphasis in original.]

The Board sent a decision letter to the requester stating that these records cannot be disclosed without the written consent of the affected persons. It denied him access to such records pursuant to the mandatory exemption in section 14(1) (personal privacy), read in conjunction with the presumption in section 14(3)(d) (employment or educational history) of the *Act*. The letter also offered the requester the opportunity to view copies of any materials that were “publicized” (e.g., class photographs, newspaper articles, etc.) that may be available at the school.

The requester (now the appellant) appealed the Board’s decision to this office, which appointed a mediator to assist the parties in resolving the issues in the appeal. This appeal was not resolved in mediation and has been moved to the adjudication stage of the appeal process for an inquiry.

I started my inquiry by issuing a Notice of Inquiry and seeking representations from the Board, which submitted representations in response. I then sent a Notice of Inquiry to the appellant, along with a copy of the Board's representations. The appellant submitted representations in response.

RECORDS:

The records at issue are the attendance "registers" for the classes at Port Stanley Public School from 1899 to 1964. The Board has provided this office with three pages of sample records from 1923 to illustrate the nature of the information at issue. These sample records appear to be for one class at the school.

The first page is simply a cover sheet entitled "Daily Register for Recording the Attendance of Pupils." The second page is a chart setting out each pupil's register number, form (i.e. grade), name, date of birth, name of parents or guardians, address, gender and phone number. The third page is a chart entitled, "Attendance for the Month of January 1923." This chart includes each pupil's register number, form, name, attendance for each day of the month, and the total number of days in attendance at school that month.

In his request, the appellant states that he is only interested in "each school year class, the teacher and the student names only." The appellant's representations in this appeal make it clear that his reference to "school year class" in the records includes both the grade and the year. Consequently, the information at issue in this appeal from the attendance registers relating to specific classes is the names of the students, the names of the teachers (if they appear in the records), the grade and the year.

DISCUSSION:

PERSONAL INFORMATION

General principles

The Board claims that the information at issue is exempt from disclosure under the personal privacy exemption in section 14(1) of the *Act*. However, section 14(1) only applies to information that qualifies as "personal information." Consequently, the first issue that must be considered in this appeal is whether the following information from the attendance registers qualifies as "personal information": the names of the students, the names of the teachers (if they appear in the records), the grade and the year. "Personal information" 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 if 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 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;

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].

Sections 2(2), (2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

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 and 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 and MO-2344].

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

Sections 2(1) and 2(2.1)

Both the Board and the appellant submit that the records contain the “personal information” of the students named in the records. I agree with the parties. Paragraph (b) of the definition of “personal information” in section 2(1) of the *Act* stipulates that “personal information” includes information relating to the “education” of the individual. I find that the students’ grade and year are information relating to their education. In addition, their names, coupled with their grade and year, fall within paragraph (h) of the definition. Consequently, this information constitutes their “personal information,” as that term is defined in section 2(1).

The appellant submits that the names of any teachers, principals or school staff in the attendance registers identify these individuals in a professional capacity, as contemplated by section 2(2.1) of the *Act*, which excludes such information from the definition of “personal information.”

At the outset, I would point out that the appellant did not include the names of principals and school staff in his original request. He only requested the names of teachers. Consequently, the only information relating to school staff that is at issue in this appeal is the names of any teachers that appear in the attendance registers.

I would also caution that the sample records that the Board provided to me, which include the attendance register for a class of students in January 1923, may not contain the name of the teacher for that particular class. The name of an individual is written in hand at the top of the cover sheet (Daily Register for Recording the Attendance of Pupils), but it is not clear whether that individual is the teacher. Consequently, whether the responsive records as a whole (the attendance registers from 1899 to 1964) contain the names of the teachers for each class is an open question.

I agree with the appellant, however, that if the name of the teacher for a particular class appears in the records, this information alone is professional information relating to that individual, not personal information. Section 2(2.1) clearly states that personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a

business, professional or official capacity. The name of a teacher in the attendance register identifies that individual in a professional capacity, not a personal capacity. Accordingly, this information alone does not qualify as “personal information” and cannot be exempt from disclosure under the personal privacy exemption in section 14(1) of the *Act*.

However, the fact that a teacher’s name in a record constitutes professional information does not automatically mean that other information relating to that same individual in the record is not personal information. For example, paragraph (b) of the definition of “personal information” in section 2(1) stipulates that “personal information” includes information relating to the “employment history” of the individual.

As noted above, the appellant is seeking the grade and year in the attendance registers. In my view, the grade and year (e.g., 1923) reveals a portion of a teacher’s work history, because it shows when that individual worked at Port Stanley Public School in the past and what grade he or she taught. Accordingly, I find that the grade and year in the attendance registers is information relating to a teacher’s employment history, and this information therefore qualifies as that teacher’s “personal information.”

Section 2(2)

I have found that the names of the students constitute their “personal information,” and that the grade and year in the attendance registers constitute the “personal information” of both the students and the teachers. However, section 2(2) of the *Act* states that personal information does not include information about an individual who has been dead for more than 30 years.

The appellant is seeking information from the attendance registers from Port Stanley Public School that span the years 1899 to 1964. Consequently, it is likely that the information relating to the students and teachers in some of the older records, particularly from the early part of the 20th century, is excluded from the definition of “personal information,” in accordance with section 2(2) of the *Act*. In such circumstances, this information could not be withheld under the personal privacy exemption in section 14(1) of the *Act* and would have to be disclosed to the appellant.

The current year is 2009. Consequently, the information in the attendance registers relating to any students or teachers who died in 1979 or before would not qualify as “personal information,” because those individuals would have been dead for more than 30 years.

It is challenging, however, to determine whether the information relating to specific students and teachers might fall within section 2(2) of the *Act*, given the large number of individuals in the records and the varying ages of these individuals. The sample records for 1923 contain the birth dates of the students for a particular class, which is helpful in determining whether the information relating to specific students might fall within section 2(2) of the *Act*. However, I have no evidence with respect to the dates of death of any of these individuals, and particularly whether they died in 1979 or before.

In his representations, the appellant acknowledges that the nature of the records at issue makes it difficult to apply section 2(2) in a coherent manner:

... [I]f the student has been dead for more than 30 years, the information is no longer considered personal. However, it may be difficult for the Board to identify which students have died, and it would be difficult for me to identify which students have died without their name, and it would be difficult to separate the names of the living and dead students in the same register.

The Board submits that the records from 1900 cannot be released until 2010:

Assuming an average life expectancy of 80 years, and in consideration of section 2(2), it was determined that the records from 1900 could not be released until the year 2010 and subsequent years forward without express consent from the students cited in the records. Each register contains the range of classes within the school making it impossible to separate out those records that might otherwise be beyond the 30 years after death time frame according to Section 2(2).

I recognize that the Board has proceeded as cautiously as possible, given the difficulty in determining the dates of death of specific students and teachers. However, in my view, the Board's approach is unduly conservative. As a preliminary matter, I note that the Board has conflated the class year with the year of birth. However, any students or teachers whose names appear in the attendance registers for 1900, for example, were not actually born in that year. The students in classes at Port Stanley Public School in 1900 would presumably have already ranged in age from approximately five to the teens, depending on their grade. In addition, a teacher would have already been at least 18 years of age in 1900.

In addition, it is not reasonable, in my view, to apply an average life expectancy of 80 years to a person born in 1900, as the Board has done. According to the most recent data available from Statistics Canada, a female born in 2006 had a life expectancy of 83 years, while a male had a life expectancy of 78.4 years (www40.statcan.gc.ca/101/cst01/health72a-eng.htm). However, life expectancy has increased over the past century. A person born in the early 20th century had a lower life expectancy than a person born in 2006.

In Order PO-1886, former Assistant Commissioner Tom Mitchinson found that if an individual's specific date of death is not known, a more reasonable approach to making an assumption about this date is to apply the average life expectancy for the year in which a particular individual was born, not modern-day life expectancy. He stated, in part:

Although in the closing years of the 20th century it was not unusual ... for someone still alive to live to the age of 95, the same cannot be said of people born in earlier times. The fact that life expectancy has increased over time would appear to me to be a commonly accepted fact, and applying current life expectancy assumptions to people born in the 1800s would, in my view, not be reasonable.

... [I]n circumstances where the actual dates of death are not known, as is the case in these appeals, the figure available from Statistics Canada is a reasonable one to apply in making assumptions regarding the life expectancy of the parents.

The factual circumstances in Order PO-1886 were different than those in the appeal before me. However, I agree with former Assistant Commissioner Mitchinson's general reasoning and will apply it in the circumstances of this appeal.

According to Statistics Canada, a male born in the years 1920 to 1922 had a life expectancy of 59 years and a female born in the same time period had a life expectancy of 61 years (www40.statcan.gc.ca/101/cst01/health26-eng.htm). (I am unable to find any figures for earlier years.) Consequently, I will make the assumption that a person born in 1920 had an average life expectancy of 60 years.

In my view, it is reasonable, based on these statistics, to assume that the average person born in 1919 would have died 60 years later, in 1979. I have already determined that the information in the attendance registers relating to any student or teacher who died in 1979 or before would not qualify as "personal information." Consequently, it would be reasonable to conclude that the information relating to any students or teachers in the attendance registers who were born in 1919 or before does not constitute their "personal information," in accordance with section 2(2) of the *Act*. In short, this information cannot qualify for exemption under the personal privacy exemption in section 14(1) of the *Act* and must be disclosed to the appellant.

As noted above, it is not entirely clear whether the attendance registers contain the names of the teachers for each class. For example, although the name of an individual is written in hand at the top of the cover sheet (Daily Register for Recording the Attendance of Pupils) of the sample records for 1923, it is not clear to me whether that individual is the teacher for that class. In addition, the attendance registers likely do not contain the dates of birth for any teachers.

However, if the name of any teacher appears on the attendance register for a class in which the students were born in 1919 or before, the Board can obviously assume that the teacher was born well before 1919 and would have been dead for at least 30 years. Consequently, the information relating to that teacher does not constitute his or her "personal information," in accordance with section 2(2) of the *Act*.

The Board will be required to review the attendance registers from 1899 to 1964 to determine which ones must be disclosed to the appellant. This will entail reviewing the students' dates of birth in each attendance register to ensure that only information relating to students born in 1919 and before are disclosed to the appellant. For example, the students named in the sample records for 1923 have birth dates between 1907 and 1911. Consequently, the Board must disclose the information relating to these students to the appellant. In all likelihood, the appellant will be able to access the attendance registers from 1899 to the late 1920s or early 1930s, but the Board will be required to make this determination, based on its review of the records.

The appellant has only requested the names of the students, the names of the teachers (if they appear in the records), the grade and the year. However, to limit disclosure to just this

information would require the Board to sever substantial portions of each attendance register, which would involve a lengthy process. Given that I have found that the information in the attendance registers relating to any individuals who were born in 1919 or before does not constitute their “personal information,” the appellant is entitled to all of the information relating to these individuals in the attendance registers, including the students’ dates of birth. In addition, he would be entitled to access the names of their parents, which also appear in the sample records, because such individuals would also have been dead for at least 30 years if their children were born in 1919 or before.

In short, once the Board determines that the appellant is entitled to the information relating to specific individuals in a particular year (those students born in 1919 or before), it may wish to simply disclose the entire attendance register for that class to the appellant rather than engaging in a lengthy and laborious severing exercise to withhold information that the appellant has not requested.

However, at some point, the Board will have to engage in some severing of these records. Some attendance registers, likely those in the 1920s and early 1930s, will contain a mixture of students, with some born in 1919 or before and some born after 1919. The information that the Board would be required to sever is any personal information (names, dates of birth, etc.) relating to students born after 1919, because as will be explained in the following section of this order, such information qualifies for exemption under the personal privacy exemption in section 14(1) of the *Act*. However, the Board must disclose the information in those attendance registers relating to any students born in 1919 or before.

PERSONAL PRIVACY

General principles

I have found that the information in the school attendance registers relating to any students or teachers who were born in 1919 or before does not constitute their “personal information,” in accordance with section 2(2) of the *Act*. However, the information in the attendance registers relating to individuals born after 1919 constitutes their “personal information,” as that term is defined in section 2(1) of the *Act*, because it cannot be reasonably assumed that such individuals have been dead for at least 30 years.

The Board submits that this personal information is exempt from disclosure under the personal privacy exemption in section 14(1) of the *Act*. Consequently, it must be determined whether the personal information in the attendance registers relating to the students and any teachers born after 1919 qualifies for exemption under section 14(1).

Where a requester seeks the 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 of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14.

In my view, the only possible exceptions that could apply are paragraphs (e) and (f) of section 14(1). These provisions state:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (e) for a research purpose if,
 - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
 - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
 - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 14(1)(e)

If the requirements set out in the exception in paragraph (e) of section 14(1) are met, the personal information of the students and other individuals in the attendance registers is not exempt from disclosure under section 14(1).

The wording of section 14(1)(e) makes it clear that this exception only applies if the disclosure of personal information is for a “research purpose.” If that preliminary requirement is met, paragraphs (i), (ii) and (iii) must also be satisfied for the section 14(1)(e) exception to apply.

I will first determine whether the disclosure of the personal information from the attendance registers is for a “research purpose.”

The Board submits that the attendance registers were not developed with the intent that they be made available for research purposes. It further submits that this personal information does not meet the test of “research” set out in Order P-666.

The appellant submits that the disclosure of personal information from the attendance registers is for a “research purpose”:

... I contend that genealogical research does constitute “research” as defined by the *Concise Oxford Dictionary*. Innumerable resources, both public and private, are now available to assist someone in tracing the genealogy of individuals; locating and being able to use information to identify a relative in a photograph is particularly of interest. The research that I conduct, and the photographs that I annotate, provide such information.

In Order P-666, former Assistant Commissioner Irwin Glasberg considered the application of section 14(1)(e) and relied on the following definition of “research” in the *Concise Oxford Dictionary* (8th Edition):

... [T]he systematic investigation into and study of materials, sources, etc. in order to establish facts and reach new conclusions [and] ... an endeavour to discover new or to collate old facts etc. by the scientific study or by a course of critical investigation ...

I am satisfied that the appellant is conducting “research,” as that term is defined in the *Concise Oxford Dictionary*. He is engaged in the systematic investigation of materials and sources in order to substantiate when individuals attended Port Stanley Public School. I also accept his submission that he is conducting genealogical research, which is the study of families and the tracing of their lineages and history. In my view, the meaning of “research” in section 14(1)(e) should not necessarily be restricted to professional researchers and academics but should be interpreted in a broad enough manner to encompass genealogical and other research conducted by ordinary citizens, as long as their work meets the definition set out in the *Concise Oxford Dictionary*.

As noted above, paragraphs (i), (ii) and (iii) must also be satisfied for the section 14(1)(e) exception to apply. However, even if I was to accept that paragraphs (i) and (ii) apply in the circumstances of this appeal, I find that the appellant has not satisfied paragraph (iii).

Under paragraph (iii), the person who is to receive the record must have agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations. Section 10(1) of Regulation 823 sets out the following terms and conditions relating to security and confidentiality that a person is required to agree to before a head may disclose personal information to that person for a research purpose:

1. The person shall use the information only for a research purpose set out in the agreement or for which the person has written authorization from the institution.
2. The person shall name in the agreement any other persons who will be given access to personal information in a form in which the individual to whom it relates can be identified.
3. Before disclosing personal information to other persons under paragraph 2, the person shall enter into an agreement with those persons to ensure that they will not disclose it to any other person.

4. The person shall keep the information in a physically secure location to which access is given only to the person and to the persons given access under paragraph 2.
5. The person shall destroy all individual identifiers in the information by the date specified in the agreement.
6. The person shall not contact any individual to whom personal information relates directly or indirectly without the prior written authority of the institution.
7. The person shall ensure that no personal information will be used or disclosed in a form in which the individual to whom it relates can be identified without the written authority of the institution.
8. The person shall notify the institution in writing immediately if the person becomes aware that any of the conditions set out in this section have been breached.

This office has previously found that to satisfy paragraph (iii) of section 14(1)(e) (including the requirements of section 10(1) of Regulation 823), the individual making a request must provide evidence that he or she has signed a research agreement [Order PO-1741]. It is evident from the parties' representations that the appellant has not signed a research agreement with the Board that would allow him to access the personal information from the attendance registers.

To address this problem, the appellant states that he is prepared to sign a research agreement with the Board to conform with paragraph (iii) of section 14(1)(e). However, the general thrust of section 10(1) of Regulation 823 is to provide a researcher with access to personal information on the condition that he or she not disclose that information more broadly. For example, paragraph 2 of section 10(1) requires that the researcher identify in the agreement any other persons who will be given access to personal information in a form in which the individual to whom it relates can be identified. Paragraph 3 then requires that before disclosing personal information to other persons under paragraph 2, the researcher must enter into an agreement with those persons to ensure that they will not disclose it to any other person.

The appellant wishes to use the personal information that he obtains from the attendance registers to annotate existing school photographs with the names of the students and teachers in each photograph, plus the grade and year. He has indicated that he would be sharing this information with other individuals at school reunions and other celebrations. In my view, the appellant would not be able to comply with the requirements of section 10(1) of Regulation 823, given the purposes for which he is seeking access to the information, which entail sharing it with other individuals.

In short, I find that the exception in paragraph (e) of section 14(1) does not apply in the circumstances of this appeal.

Section 14(1)(f)

As noted above, 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. I have found that the exception in paragraph (e) does not apply.

In my view, the only other exception that could apply is paragraph (f), which allows an institution to disclose personal information to a person other than the individual to whom the information relates if the disclosure does not constitute an unjustified invasion of personal privacy.

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f).

If any of paragraphs (a) to (h) of 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 presumed unjustified invasion of personal privacy is established under section 14(3), it can only be overcome if section 14(4) or the “public interest override” at section 16 applies. The section 14(3) presumption cannot be rebutted by one of more factors or circumstances under section 14(2). [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The Board submits that the personal information of the students in the attendance registers falls within the presumption in section 14(3)(d) of the *Act*. This provision states:

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;

I agree with the Board that the students’ personal information falls within the section 14(3)(d) presumption. The attendance registers include the students’ grade and year. I find that this personal information relates to their “educational history,” as contemplated by the section 14(3)(d) presumption. In addition, the grade and year reveals a portion of a teacher’s work history. I find, therefore, that this personal information relates to a teacher’s “employment history” and, therefore, also falls within the section 14(3)(d) presumption.

The appellant submits that disclosing a student’s name, grade and school year would not constitute an unjustified invasion of that individual’s personal privacy. He acknowledges that his request covers information relating to the “educational history” of students, as contemplated by the presumption in section 14(3)(d). However, he submits that these individuals have no reasonable expectation of privacy with respect to their name, grade and school year, for several reasons, including the fact that this information is included in class photographs and the fact that this information is published in the local newspaper from time to time.

I do not dispute that there is an air of logic to the appellant's submissions. However, I must follow the rules set out in the *Act* and the Divisional Court's decision in *John Doe*, cited above. I have found that the grade and year in the attendance registers relating to named students and teachers fall squarely within the section 14(3)(d) presumption. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies.

In my view, none of the paragraphs in section 14(4) apply to the personal information at issue in this appeal. With respect to the public interest override in section 16, the Board submits that displaying the attendance registers at a reunion does not constitute a "compelling" public interest. The appellant submits that the "public interest override" in section 16 applies, because the attendees at school reunions strive to identify everyone in the old photos and are disappointed if they are unable to do so.

Under section 16 of the *Act*, an exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. In my view, the fact that some attendees may have a curiosity and interest in knowing the names of the individuals in old school photographs falls far short of the "compelling" public interest contemplated by section 16 of the *Act*. Accordingly, I find that the public interest override at section 16 does not apply in the circumstances of this appeal.

The appellant has provided submissions on section 14(2), which lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. However, as established in the *John Doe* decision, cited above, the section 14(3) presumption cannot be rebutted by one of more factors or circumstances under section 14(2).

In short, disclosure of the personal information of the students and any teachers in the attendance registers is presumed to constitute an unjustified invasion of their personal privacy under section 14(3)(d). Consequently, I find that the exception in paragraph (f) of section 14(1) does not apply in the circumstances of this appeal.

Conclusion

As noted above, where a requester seeks the 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. The only possible exceptions that might have applied are paragraphs (e) and (f). However, I have found that these two exceptions do not apply in the circumstances of this appeal.

Consequently, I find that the personal information of the students and any teachers in the attendance registers qualifies for exemption under section 14(1) of the *Act* and cannot be disclosed to the appellant. This finding applies to the personal information of any students or teachers who were born after 1919.

However, in the previous section of this order, I found that the information relating to any students or teachers in the attendance registers who were born in 1919 or before does not constitute their “personal information,” in accordance with section 2(2) of the *Act*. This information cannot, therefore, qualify for exemption under the personal privacy exemption in section 14(1) of the *Act* and must be disclosed to the appellant.

ORDER:

1. I order the Board to disclose the information in the attendance registers relating to the students and any teachers born in 1919 or before, in accordance with my findings in this order. The Board must provide this information to the appellant, in the manner prescribed in section 23 of the *Act*, by **November 26, 2009**.
2. I uphold the Board’s decision to withhold the personal information in the attendance registers relating to the students and any teachers born after 1919. This information qualifies for exemption under the personal privacy exemption in section 14(1) of the *Act*.
3. I remain seized of any compliance issues that may arise with respect to this order.

Original signed by: _____
Colin Bhattacharjee
Adjudicator

_____ October 27, 2009