

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER PO-3516

Appeal PA14-313

Ministry of Education

July 29, 2015

**Summary:** The ministry received a request for access to certain student transportation survey/reports relating to identified school boards and transportation consortiums. After notifying affected parties who may have an interest in the records, the ministry issued a decision granting full access to the requested records. One affected party appealed the ministry's decision on the basis that the records were exempt under section 17(1) (third party information), and also took the position that the records contain personal information. This order finds that the records are not exempt under the *Act*, and upholds the ministry's decision to disclose the records.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 17(1) and 2(1) (definition of "personal information").

### OVERVIEW:

[1] The Ministry of Education (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*), for the following two categories of records:

The Renfrew County District School Board/Renfrew County Catholic District School Board/Renfrew County Joint Transportation Consortium – Student Transportation Survey/Report from 2010-2013; and

Le conseil des écoles catholiques du Centre-Est (CECCE)/le conseil des écoles publiques de l'est de l'ontario/Le Consortium de transport scolaire d'Ottawa (CTSO) Student Transportation Survey/Reports from 2008-2013.

[2] Prior to issuing its decision, the ministry notified each of the school boards and consortiums (the affected parties), in accordance with section 28(1) of the *Act*, seeking their views regarding disclosure of the responsive records. The affected parties objected to the disclosure of the records.

[3] The ministry then issued an access decision to the requester, indicating that it was prepared to provide full access to the requested records. The affected parties were notified of the ministry's decision to disclose the records in their entirety.

[4] One of the consortiums, on behalf of itself and two other affected parties (hereafter "the appellant") appealed the ministry's decision to disclose the records on the basis that the exemption in section 17(1) applies to the records.

[5] During mediation, the appellant consented to partial disclosure of some of the records, and the ministry subsequently disclosed a redacted copy of certain records to the requester.

[6] Also during mediation, the appellant took the position that disclosure of some of the information contained in the records may identify individual students, raising the possible application of the mandatory personal privacy exemption in section 21(1) to that information.

[7] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process, where an adjudicator conducts an inquiry under the *Act*. I sent a Notice of Inquiry identifying the facts and issues in this appeal to the appellant, initially, and received brief representations in response. On my review of the representations, I decided I did not need to hear from the other parties before issuing this order.

[8] In this order, I find that the records do not qualify for exemption, and I order that they be disclosed to the requester.

## **RECORDS:**

[9] The records remaining at issue consist of the following information: portions of the survey/reports of the Renfrew Joint Transportation Consortium for the years 2010-11 and 2011-12, and the survey/reports of the Consortium de Transport Scolaire d'Ottawa for the years 2008-09 through 2011-12.

## **ISSUES:**

- Issue A: Does the mandatory exemption at section 17(1) apply to the records?
- Issue B: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- Issue C: If the records contain personal information, does the mandatory exemption at section 21(1) apply to that information?

## **DISCUSSION:**

### **Issue A: Does the mandatory exemption at section 17(1) apply to the records?**

[10] Section 17(1) of the *Act* states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

[11] Section 17(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions.<sup>1</sup> Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.<sup>2</sup>

[12] For section 17(1) to apply, the institution and/or the third party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 17(1) will occur.

***Parts 1 and 2: "type of information" and "supplied in confidence"***

[13] The appellant submits that the information at issue in this appeal is both technical and financial information, and that it was supplied in confidence, but provides no further evidence in support of its position. However, because of my finding under the third part of the test, below, it is not necessary for me to determine whether the first two parts of the test have been met.

***Part 3: Harms***

[14] To meet this part of the test, the party resisting disclosure must provide detailed and convincing evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.<sup>3</sup>

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<sup>1</sup> *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

<sup>2</sup> Orders PO-1805, PO-2018, PO-2184 and MO-1706.

<sup>3</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

[15] The failure of a party resisting disclosure to provide detailed and convincing evidence will not necessarily defeat the claim for exemption where harm can be inferred from the surrounding circumstances. However, only in exceptional circumstances would such a determination be made on the basis of anything other than the records at issue and the evidence provided by a party discharging its onus.<sup>4</sup>

[16] Parties should not assume that the harms under section 17(1) are self-evident or can be proven simply by repeating the description of harms in the *Act*.<sup>5</sup>

[17] The appellant provides brief representations on the harms in section 17(1), which are detailed below.

[18] I have considered the appellant's representations and the information at issue in this appeal. In the circumstances, I find that I have not been provided with sufficiently "detailed and convincing" evidence to support a finding that disclosure of the information at issue could reasonably be expected to give rise to the harms outlined in section 17(1) of the *Act*.

[19] To begin, I note that the records at issue consist of survey/reports for identified transportation consortiums for particular school years, and include tables under various general headings. This includes student transportation figures detailing how many students, from various categories, are enrolled in various transportation programs, and the corresponding expenditures. Other tables contain general information about transportation policies, staff safety programs or training and vehicle information.

[20] With respect to section 17(1)(a), the appellant states that if the information at issue is disclosed, it could be used by one party "to successfully compete with an unfair advantage." The appellant provides no further support for its assertion that the harms in this section have been met, nor how these harms could result from disclosure of the records. Previous orders have found that similar "bald assertions" of harm without specific explanation or evidence are insufficient to meet part three of the section 17(1) test.<sup>6</sup> Following these orders, I find that the appellant has not established that the exemption in section 17(1)(a) applies to the information at issue.

[21] Regarding the harms under section 17(1)(b), the appellant argues that "the frequency and costs associated with defending these [freedom of information] requests will result in [the appellant] no longer supplying this type of information to the ministry." On my review of this argument, the appellant does not appear to suggest that disclosure of the records will result in the information no longer being supplied;

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<sup>4</sup> Order PO-2020.

<sup>5</sup> Order PO-2435.

<sup>6</sup> See. For example, PO-3237.

rather, that if the appellant is required to object to these requests for information to the ministry under the *Act*, the appellant will no longer supply this information to the ministry. This is not sufficient to meet the test under section 17(1)(b), as the appellant is required to satisfy me that disclosure of the information would result in the identified harms. I also note that the appellant decided to appeal the ministry's decision to disclose the records; it cannot successfully argue that its decision to appeal is what results in the section 17(1)(b) harms.

[22] Lastly, the appellant submits that section 17(1)(c) has been met, as the information at issue could provide an unfair advantage to other parties that may be used against the companies the appellant currently does business with, or may do business with in the future. Again, the appellant provides no further support for its assertion that the harms in this section have been met, nor how these harms could result from disclosure of the records. I find that these "bald assertions" of harm without specific explanation or evidence are insufficient to meet the harms under section 17(1)(c).

[23] Given the nature of the information at issue, I find that the statements made by the appellant in its representations, without any additional information, do not support a finding of a reasonable expectation of harm if the information is disclosed. As a result, I find that part three of the test for the application of section 17(1) has not been met.

[24] Having found that part three of the test has not been met, I find that the information at issue is not exempt under section 17(1).

**Issue B: Does the information at issue contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[25] During mediation, the appellant took the position that disclosure of some of the information in the records could identify certain individuals. This raises the possible application of the mandatory personal privacy exemption in section 21(1).

[26] In order for the personal privacy exemption to apply, the record must contain "personal information." 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 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;

[27] 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.<sup>7</sup>

[28] Sections 2(2), (3) and (4) 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.

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<sup>7</sup> Order 11.

(3) 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.

(4) 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.

[29] 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.<sup>8</sup>

[30] 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.<sup>9</sup>

[31] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>10</sup>

[32] The appellant did not provide any representations in support of its position, raised during mediation, that the disclosure of the records would reveal personal information. As noted above, the records at issue consist of survey/reports, which include various tables and figures. Some of this information relates to the number of students enrolled in particular transportation programs, related expenditures, relevant training or staff programs, and other transportation related information. The records do not contain the names of any individuals or any other identifying information and, on their face, do not contain the personal information of identifiable individuals.

[33] I have also considered whether an individual may be identified if the information in the records is disclosed. On my review of the records, I find that it is not reasonable to expect that an individual may be identified as a consequence of disclosing the information at issue. While some figures represent a very small number of individuals in a given category, it is not clear to me how the individuals represented by the figures could be identifiable from the information in the records or other publicly available information, nor have I been provided with information supporting such a finding. Accordingly, I find that the information at issue does not contain the personal

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<sup>8</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>9</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>10</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).



information of any identifiable individual, and does not constitute "personal information" as defined under section 2(1) of the *Act*.

[34] As the mandatory exemption in section 21(1) can only apply to personal information, I find that the records do not qualify for exemption under section 21(1) of the *Act*.

**ORDER:**

I uphold the ministry's decision, and order the ministry to disclose the records at issue to the original requester by **September 3, 2015** but not before **August 28, 2015**.

Original Signed by: \_\_\_\_\_  
Frank DeVries  
Senior Adjudicator

\_\_\_\_\_ July 29, 2015