



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-2158-F

Appeal MA-050405-1

York 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/Télé: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

BACKGROUND AND NATURE OF THE APPEAL:

This is my final order disposing of the sole outstanding issue in Interim Order MO-2118-I, which was issued November 14, 2006.

The York Catholic District School Board (the Board) received two requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to letters written by two named individuals relating to events that transpired at a school concert in which the appellant was identified as a participant.

The Board identified two records as responsive to the requests and notified the two individuals who had written them, pursuant to section 21 of the *Act*, to seek their representations on the disclosure of the letters. Upon receiving a response from both individuals (the affected parties), the Board issued one decision letter to respond to the two requests, denying access to the records in their entirety under section 14(1) (invasion of privacy). The appellant appealed the Board's decision to this office.

During mediation, the mediator determined that the records may contain the personal information of the appellant. Consequently, the application of the invasion of personal privacy exemption at section 38(b), in conjunction with section 14(1), was added as an issue in this appeal.

After conducting an inquiry and receiving representations from the Board, the two affected parties, and the appellant, I found that disclosure of the portions of the records that contained the appellant's personal information could not result in an unjustified invasion of another individual's personal privacy, as required by section 38(b). Accordingly, I ordered those portions of the records disclosed to the appellant.

I also found that the remaining portions of the two records qualified for exemption under section 38(b). I reached this conclusion after balancing several of the relevant factors in section 14(2) and finding that those favouring protection of the privacy of the affected parties and other identifiable individuals outweighed the factors favouring disclosure of the information to the appellant.

However, in reviewing the Board's exercise of discretion under section 38(b), I noted that the Board had not submitted representations, and that I had no evidence before me to explain why the Board had exercised its discretion as it did. At page 12 of Interim Order MO-2118-I, I wrote:

I am left to wonder, for example, why the Board would not exercise its discretion to disclose the appellant's personal information to her, particularly in view of her expressed concern about knowing more about the basis for the actions taken in relation to her by school administration following the events of the school concert.

Although the Board may have formed an opinion about the appropriateness of releasing certain information in the records, including the personal information of other individuals, I am aware of no such rationale for withholding the record in its entirety. It was always within the Board's discretion to sever the records and

disclose parts of them, even if the records in their entirety had met the requirements of the personal privacy exemption at section 38(b).

Based on the information available to me, I find that the Board did not properly exercise its discretion.

Further to my finding that the Board had not properly exercised its discretion, I ordered the Board to re-exercise its discretion with respect to the remaining withheld portions of the records. Order provision number two in Interim Order MO-2118-I reads:

I order the Board to re-exercise its discretion in accordance with the discussion of that issue above and to advise the appellant and this office of the result of this re-exercise of discretion, in writing. If the Board continues to withhold all or part of the remaining information, I also order it to provide the appellant with an explanation of the basis for exercising its discretion to do so and to provide a copy of that explanation to me.

The Board is required to send the results of its re-exercise, and its explanation to the appellant, with the copy to this office, **no later than January 16, 2007**. If the appellant wishes to respond to the Board's re-exercise of discretion, and/or its explanation for exercising its discretion to withhold information, the appellant must do so within 21 days of the date of the Board's correspondence by providing me with written representations.

In compliance with the provisions of Interim Order MO-2118-I, the Board has provided representations to me, dated January 15, 2007. I did not receive representations from the appellant.

DISCUSSION:

EXERCISE OF DISCRETION

Section 38(b) of the *Act* requires the Board to properly exercise its discretion in deciding whether to provide the appellant with access to any or all of the remaining portions of the records.

For the most part, the Board's representations simply paraphrase sections of my analysis and findings on section 38(b) in Interim Order MO-2118-I. The representations themselves are sparse and because they contain little in the way of explanation, I question whether the appellant could have gained any further understanding of, or insight into, the Board's re-exercise of discretion by reading the letter.

Having said that, I note that the Board acknowledged in its representations that it had the discretion to sever the records and disclose portions of each letter even if the requirements of section 38(b) of the *Act* were met. The Board also stated that it had considered the findings and

factors discussed in Interim Order MO-2118-I in re-exercising its discretion regarding the release of additional portions of the records. The Board does not expressly state whether or not additional portions of the records were disclosed under the re-exercise of discretion, but it would appear to be implicit that no further portions were released to the appellant as a consequence of the re-exercise.

I had invited the appellant to provide me with representations on the Board's re-exercise of discretion within 21 days of the date of the Board's correspondence, but did not receive submissions from her.

In my view, it would have been preferable had the Board provided a more expansive – and helpful - explanation in its January 15, 2007 letter to the appellant since, as I have previously observed, this would have better assisted the appellant in understanding the Board's rationale for exercising its discretion against disclosure of the portions of the records remaining at issue.

However, I have considered the other circumstances of this appeal in addition to the Board's letter, particularly the information the appellant has already received through the operation of Interim Order MO-2118-I. With the appellant providing no responding representations, and in consideration of the sum of the information available to me, I am satisfied that there was nothing improper in the manner in which the Board re-exercised its discretion.

ORDER:

I uphold the decision of the Board.

Original signed by: _____
Daphne Loukidelis
Adjudicator

February 8, 2007 _____