



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

INVESTIGATION REPORT

INVESTIGATION I93-022M

A MUNICIPAL BOARD OF EDUCATION



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a municipal Board of Education (the Board).

The complainant was of the view that his personal information had been improperly disclosed when the Board identified him and three other individuals in a newspaper article, as being part of a group responsible for filing the most freedom of information requests with the Board. These requests were for access to information under the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from this investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the Board's disclosure of the personal information to the newspaper, in accordance with the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

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

- (h) the individual's name where it appears with other personal information relating to the individual...

The complainant provided us with two newspaper articles dated February 6, 1993 and February 10, 1993. In the February 6, 1993 article, the Board identified the complainant and three other individuals as being part of a group responsible for filing the most freedom of information requests with the Board. The second newspaper article dated February 10, 1993, reported on the complainant's reaction to being named in the February 6, 1993 article.

It is our view that the information in question met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the Board's disclosure of the personal information to the newspaper, in accordance with the Act?

We determined that in an interview with a local newspaper reporter, the Chair of the Board and the Director of Education said that the Board had received a total of 247 freedom of information access requests during 1991 and 1992. They also told the reporter that these 247 requests had been made by a total of 27 people. The Board then identified four individuals by name, including the complainant, as part of a group that was responsible for filing the most access requests with the Board. This information appeared in the February 6, 1993, newspaper article.

Under the Act, an institution may not disclose personal information in its custody or under its control except in the specific circumstances outlined in section 32.

However, the Board has submitted that section 50(1) of the Act is applicable in the circumstances of this case, and that it is not necessary to rely on section 32 of the Act for the disclosure. Section 50 of the Act provides in part that:

(1) If a head may give access to information under this Act, nothing in this Act prevents the head from giving access to that information in response to an oral request or in the absence of a request.

The Board stated that if a formal access request had been made under Part I of the Act, disclosure of the personal information would not have constituted an "unjustified invasion of personal privacy" under section 14 of the Act. Thus, the head would have been obliged to provide access to the personal information. The Board submitted that since the head could have given access if a formal request had been made, the Board was then permitted to give access "in response to an oral request or in the absence of a request", as outlined in section 50(1) of the Act.

The Board further submitted that since section 50(1) says "nothing in this Act prevents the head from giving access", then section 50(1) overrides all other sections of the Act, in particular section 32. It argued that even if the disclosure is not in accordance with section 32, access can be given pursuant to section 50(1) of the Act. The Board submitted that if the Legislature had intended to exclude section 32 when placing in section 50(1) the words "nothing in this Act", it would have done so.

In addition, according to the Board, the reference to "information" in section 50(1) of the Act is a term broad enough to include both personal information and information that is not personal. In previous investigation reports, we have held the view that section 50(1) of the Act does not apply to personal information. The Board submitted that if the Legislature had intended personal information to be excluded from section 50(1), it would have said so.

We have carefully considered the Board's previous submissions regarding this issue and its present submissions concerning the instant case. However, we do not agree with the Board's interpretation of section 50(1) of the Act.

The Board stated that the reference to "information" in section 50(1) of the Act is a term broad enough to include both personal information and information that is not personal. It is our view that section 50(1) of the Act was designed to promote routine disclosure of information, **other than** personal information, in accordance with the purposes of the Act.

However, even assuming that section 50(1) applied to personal information, we do not agree with the Board's argument. In our view, even if section 50(1) of the Act were to be interpreted as permitting the disclosure of personal information in the absence of a request under Part I, the disclosure under section 50(1) would still have to be in accordance with the Act since that section specifically states "If a head may give access to information **under this Act...**" (emphasis added). Therefore, the disclosure would need to comply with Part I of the Act and section 50(1) would not override all other sections of the Act. In order to comply with Part I, an institution would need to comply with the notification provisions set out in section 21 of the Act. This section requires the notification of individuals in situations where disclosure of the personal information **might** constitute an "unjustified invasion of personal privacy". It provides that an individual should be given an opportunity to explain why, in their view, the disclosure of the information **might** be an unjustified invasion of personal privacy, before the head makes a decision regarding whether to provide access to the personal information. In our view, adopting an interpretation of section 50(1) which avoids the need for the notification of affected parties would be inconsistent with the purposes of the Act.

Therefore, since it is our view that the disclosure would not have complied with Part I of the Act, it would not have been in accordance with section 50(1) of the Act.

In addition, it is our view that none of the disclosure provisions of section 32 of the Act applied to the disclosure of the personal information in question. Therefore, the disclosure of the complainant's personal information was not in accordance with the Act.

Conclusion: The Board's disclosure of the complainant's personal information to the newspaper was not in accordance with the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The Board's disclosure of the complainant's personal information to the newspaper was not in accordance with the Act.

RECOMMENDATION

We recommend that the Board take the necessary precautions to ensure that in future, all disclosures of personal information are made in accordance with the Act. For example, advice regarding the disclosure of the names of individuals making access requests under the Act should be incorporated into any Board policies or guidelines concerning the Act.

Since we have already made this recommendation to the Board in a previous investigation, the Board may provide the Office of the Information and Privacy Commissioner with proof of compliance with this recommendation, at the same time it responds to the earlier investigation.

Original signed by:
Ann Cavoukian, Ph.D.
Assistant Commissioner

September 29, 1993
Date