



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

INVESTIGATION REPORT

INVESTIGATION I94-004M

A PUBLIC SCHOOL BOARD

June 24, 1994



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named public school board (the Board).

The complainants, the parents of a grade eight separate school student, complained about actions taken by one of the Board's secondary schools in January 1994. The complainants stated that they had received a telephone call at home from a representative of the Board's school about their daughter's registration for grade nine.

The separate school board had assured the complainants that it had not disclosed any list of its students with their addresses and telephone numbers to the Board. The complainants stated that some of their friends had also received letters and telephone calls from representatives of the Board.

The complainants wanted to know how the Board had collected their daughter's address and telephone number and what authority the Board had relied on to use this information. It was their view that the Municipal Freedom of Information and Protection of Privacy Act (the Act) should have prevented the Board from collecting their daughter's personal information and then using it.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Did the Board collect the personal information, in accordance with the provisions of section 28(2) of the Act? If yes,
- (C) Did the Board use the personal information in accordance with section 31 of 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 defines "personal information", in part, as:

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

- ...
- (d) the address, telephone number, fingerprints or blood type of the individual,
- ...
- (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 information in question was the complainants' daughter's name, her address and telephone number. It is our view that this information met the requirements of paragraphs (d) and (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: Did the Board collect the personal information, in accordance with section 28(2) of the Act?

The Board informed us that on November 28, 1991, the Ministry of Education's (the Ministry) Planning and Implementation Commission had issued a memorandum to all Ontario school principals stating that Catholic (separate) school students must be given access to school program and guidance information from public school boards (and vice-versa). On April 16, 1993, the Ministry issued Program Memorandum No. 117 further supporting the earlier memorandum.

The Board advised that the manner in which access to program and guidance information was to be granted had been "the source of considerable discussion" between itself and the separate school board. The Board stated, however, that it had been denied direct access to grade eight students in separate schools to inform these students and their parents of the options available in the public school system. As a result, some of the Board schools had looked for alternate ways of making personal contact with separate school students and their parents.

One of the alternatives was that a school would follow up on names suggested by students currently enrolled in the school or by school staff, of individuals who might benefit from information about the Board's programs and registration. The Board stated that in this case, like many others, another student living in the same community as the complainants had recommended their daughter's name, address and telephone number. The school had then followed up on this information by telephoning the complainants at home. The complainants specifically objected to this collection of their daughter's personal information.

Section 28(2) of the Act states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity** [emphasis added].

The Board stated that its collection of the complainants' daughter's personal information was necessary to the proper administration of a lawfully authorized activity, namely, to contact prospective students and their parents to inform them of the Board's programs.

The Board stated that it had relied on sections 21 and 144 of the Education Act, (the EA), for its collection of the personal information. Section 21(1)(a) of the EA states:

- (1) Unless excused under this section,
 - (a) every child who attains the age of six years on or before the first school day in September in any year shall attend an elementary or secondary school on every school day from the first school day in September in that year until the child attains the age of sixteen years; and

...

Section 144(2) states:

...

A person who is qualified to be a resident pupil of a Roman Catholic school board and to receive instruction in a secondary school grade is entitled to receive instruction provided in a secondary school operated by a public board if the area of jurisdiction of the Roman Catholic school board is in whole or in part the same as the area of jurisdiction of the public board.

...

In addition, during our review of this matter, we noted that section 170(6) of the EA states:

Every board shall,

...

- (6) provide instruction and adequate accommodation during each school year for the pupils who have a right to attend a school under the jurisdiction of the board;

...

The Board submitted that students enrolled in a separate school have a right to receive secondary school instruction from a public board. Since a student must attend school until he/she has attained the age of sixteen, the Board had a right to contact students under the age of sixteen years to provide them with appropriate information pertaining to the programs it offered. Based on our review of the Board's submissions and the provisions cited, it is our view that notifying prospective students of the Board's programs of instruction and accommodation was a lawfully authorized activity.

In this case, the Board had collected the complainants' daughter's personal information by following up on information provided by another student in the community. Under the third

condition of section 28(2), this collection had to be **necessary** to the Board's lawfully authorized activity i.e., the notification of its programs and accommodation.

During the course of our investigation, we found that there was another method of notifying prospective students of the Board's available programs. The Ministry's Memorandum No. 117 stated that school boards should provide materials containing information on their secondary schools to the boards of the other school system and to distribute materials containing information on programs available in the secondary schools of the other system to their own grade eight pupils and their parents. It would appear, therefore, that the Ministry had contemplated that school boards would indirectly notify prospective students of the programs and accommodation available by providing this information to the school boards of the other system for distribution.

It is our view that since there existed an alternative way for the Board to notify prospective students and their parents without collecting the names and addresses of the students, the Board's collection of the complainants' daughter's personal information cannot be said to have been "necessary" to the Board's activity of notification of its programs and accommodation. Thus, in our view, the Board's collection was not in accordance with section 28(2) of the Act.

Conclusion: The Board did not collect the personal information in accordance with section 28(2) of the Act.

Since the Board did not collect the personal information in accordance with the Act, it was not necessary to examine the Board's "use" of the personal information it had collected.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information", as defined in section 2(1) of the Act.
- The Board did not collect the personal information, in accordance with section 28(2) of the Act.

RECOMMENDATION

We recommend that the Board revise its policies and/or procedures to ensure that it collects personal information in accordance with the Act.

Within six months of receiving this report, the Board should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

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

June 24, 1994 _____
Date
