



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

INVESTIGATION REPORT

INVESTIGATION I94-083M

A PUBLIC SCHOOL BOARD



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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

Background of the Complaint

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

The complainant, the parent of a student attending one of the Board's secondary schools complained that a psychological and personality test had been done on her daughter without her consent. The complainant stated that the Board, through this psychological and personality test had collected her daughter's personal information which she felt was not necessary and thereby may have compromised her daughter's privacy.

It was the complainant's view that the Board's collection contravened 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 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 compliance with section 28(2) 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,

...

(e) the personal opinions or views 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 information about the complainant's daughter and her opinions as provided on her psychological and personality test. It is our view that this information met the requirements of paragraphs (e) 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?

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 psychological and personality testing and the resulting collection of a pupil's personal information was necessary to the proper administration of a lawfully authorized activity, namely, the identification of programs and special education programs and services appropriate to the learning abilities and needs of the pupil.

The Board stated that in this case, it had relied on sections 8(3)(a) and (b) of the Education Act (the EA), and sections 2(3)(a) and (b) of Regulation 305, under the EA, Special Education Identification Placement and Review Committees and Appeals, as its authority to conduct the psychological and personality test and to collect the complainant's daughter's personal information.

Sections 8(3)(a) and (b) of the EA states:

- (3) Identification programs and special education programs and services.--The Minister shall ensure that all exceptional children in Ontario have available to them in accordance with this Act and the regulations, appropriate special education programs and special education services without payment of fees by parents or guardians resident in Ontario, and shall provide for parents or guardians to appeal the appropriateness of the special education placement, and for these purposes the Minister shall,
 - (a) require school boards to implement procedures for early and ongoing identification of the learning abilities and needs of pupils, and shall prescribe standards in accordance with which such procedures be implemented; and

- (b) in respect of special education programs and services, define exceptionalities of pupils, and prescribe classes, groups or categories of exceptional pupils, and require boards to employ such definitions or use such prescriptions as established under this clause.

Sections 2(3)(a) and (b) of Regulation 305 states:

- (3) Where a committee is engaged in identifying a pupil as an exceptional pupil or in determining the recommended placement of such a pupil, the committee shall obtain and consider an educational assessment of the pupil and,
 - (a) where the committee determines that a health assessment or a psychological assessment or both of the pupil are required to enable the committee to make a correct identification or determination in respect of the pupil and with the written permission of the parent, obtain, and consider a health assessment of the pupil by a legally qualified medical practitioner and obtain and consider a psychological assessment of the pupil;
 - (b) where, in the opinion of the committee, it is practicable so to do, the committee shall with the consent of a parent of the pupil, interview the pupil.

The Board stated that some time in 1993, the complainant had requested the Board to conduct an assessment on her daughter for the purpose of assisting school personnel in the planning the school program for her daughter and to identify any special programs for her. Before administering the assessment, the Board obtained a signed consent from the complainant that was witnessed and signed by both the principal of the school where the daughter was attending at the time and by a special services contact.

An assessment, i.e., a psychological and personality test was subsequently conducted but the complainant's daughter did not complete the test and therefore, no special programs were identified for her.

It is our view that the administration of student psychological assessment and personality testing in order to identify programs and special education programs and services for students in accordance with the EA and its regulations was a lawfully authorized activity.

It is also our view, that in order to make a proper assessment to identify appropriate programs and services, it was necessary for the Board to collect students' personal information through the conduct of the psychological assessment and personality testing.

Since the complainant's daughter did not complete the test, the Board did not complete her assessment. However, it is our view that the Board's collection of the complainant's daughter's personal information in order to identify appropriate programs for her would have been necessary to the proper administration of a lawfully authorized activity and was, thus, in compliance with section 28(2) of the Act.

Conclusion: The Board collected the complainant's daughter's personal information in compliance with section 28(2) of the Act.

Other matters

The complainant also believed that there had been a previous psychological testing of her daughter without her consent at another of the Board's schools. Although she had been informed in response to an access request that the Board had created a record of a personal questionnaire but that this had been destroyed in accordance with its "confidential disposal of personal information procedures", the complainant believed that the record was still being maintained and that the Board was refusing to disclose this record to her.

We informed the complainant of the procedures under the Act if she believed that a record in response to an access request existed.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information", as defined in section 2(1) of the Act.
- The Board collected the complainant's daughter's personal information in compliance with section 28(2) of the Act.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

May 24, 1995
Date
