



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

INVESTIGATION REPORT

INVESTIGATION I95-008M

A SEPARATE SCHOOL BOARD

July 21, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a privacy complaint concerning a separate school board (the Board). The privacy complaint was made by one of the Board's teachers.

Some students had complained to the Board about this teacher. They were concerned that the remarks the teacher had made in history class reflected an anti-Catholic/anti-Christian viewpoint.

The Board's Human Resources Committee met in-camera to discuss the students' complaints against the teacher. A background package prepared for the Committee members attending the in-camera meeting included copies of the students' complaints against the teacher, and transcripts of remarks the teacher was alleged to have made in class.

After the meeting, one of the Board's trustees, who had attended the meeting even though she was not a committee member, forwarded the package to the Archbishop, who was the local diocesan bishop. According to the Board's initial representations, the trustee wanted to obtain the Archbishop's opinion on the matter to assist herself and the Board when the matter came before the Board for a decision.

The complaint against the teacher was subsequently resolved without the intervention of the Archbishop, with a finding that the teacher's remarks had been appropriate in the context in which they had been made.

The teacher complained that the disclosure to the Archbishop had breached 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) Did the records in question contain the complainant's "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the personal information disclosed to the Archbishop in compliance with the Act?

RESULTS OF THE INVESTIGATION

Issue A: Did the records in question contain the complainant's "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information" as recorded information about an identifiable individual, including,

- ...
- (g) the views or opinions of another individual about the individual, and
 - (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 records in question contained the teacher's name, together with the written complaint made against him by the students, and the students' names. The Board indicated that the records in question contained the personal information of the teacher. It is our view that the records in question contained both the teacher's and the students' personal information, as defined in sections 2(1)(g) and (h) of the Act.

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

Issue B: Was the personal information disclosed to the Archbishop in compliance with the Act?

In our draft report, based on the Board's original representations, the discussion of this issue was as follows:

The Board took the position that the disclosure to the Archbishop had been made in compliance with the Act. The Board relied on sections 32(d) and 32(c) of the disclosure provisions of the Act.

Section 32(d) of the Act states in part:

An institution shall not disclose personal information in its custody or under its control except,

...

- (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;

The Board submitted that the personal information had been disclosed by the trustee to the Archbishop in his capacity as Honourary Director of Education and as the local diocesan bishop in the area. The trustee's intent was to seek assistance in making a decision regarding the students' complaints about the teacher. The Board, however, did not explain why the Archbishop needed to know the identity of the teacher (or of the students), in order to give an opinion on the subject.

Further, the Board informed us that the Archbishop had stated in his response to the trustee's communications that there were other steps that should be taken prior to his involvement in the matter. The Board acknowledged that the trustee did not follow proper procedures for communicating with the Archbishop on Board related business. The Board stated that it had later advised the trustee that she should initiate such communications either through the Chair of the Board or through the Board, by way of motion. The students' complaints were eventually resolved by the Board without the Archbishop's involvement.

While there may be circumstances where the Archbishop may require disclosure of personal information in the performance of his duties, on the basis of the Board's submissions, we must conclude that in this case, the Archbishop did not need the personal information in the performance of his duties and that the disclosure was not necessary and proper in the discharge of the Board's functions. Accordingly, we are of the view that the disclosure was not in compliance with section 32(d) of the Act.

The Board also submitted that the disclosure was in compliance with section 32(c), for a consistent purpose. Section 32(c) of the Act states in part:

32. An institution shall not disclose personal information in its custody or under its control except,
- ...
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- ...

Section 33 of the Act states:

The purpose of a use or disclosure of personal information that has been collected **directly** from the individual to whom the information relates is a consistent purpose under clauses 31(b) and 32(c) only if the individual might reasonably have expected such a use or disclosure. [emphasis added]

In this case, the teacher's personal information had been collected indirectly (i.e. from the students). Therefore, the teacher's reasonable expectations could not be a factor in determining consistent purpose. Where there has been an indirect collection of personal information, in order for the disclosure to have been made for a consistent purpose, the purpose for which the personal information was disclosed must be reasonably compatible with the purpose for which the personal information was obtained or compiled by the Board.

It was the **Board's** view that it had obtained the personal information for the purpose of investigating and resolving the students' complaints. However, the **trustee's** decision to disclose the personal information was, on the face of the

Board's submissions, incompatible with the Board's own purposes, which at no point contemplated a trustee disclosing this information to the Archbishop. The Board stated that other authorized channels were available for consulting with the Archbishop if the Board had deemed that necessary (which it did not in this case). As previously stated, the matter was resolved without the intervention of the Archbishop.

Taking all of this into account, we find that the purpose for which the trustee disclosed the personal information was not compatible with the purpose for which the Board obtained the personal information. Accordingly, we find that the disclosure was not made for a consistent purpose, and was thus not in compliance with section 32(c) of the Act.

Therefore, in our draft report we concluded that the personal information in question had not been disclosed in compliance with the Act.

However, at the same time that this case was before us, we received another complaint involving a disclosure of personal information by another trustee of the Board. In that case, the trustee had disclosed information about the employment benefits of a Board employee, by way of a press release.

We found that in the particular circumstances of that case, the trustee had disclosed the information as an individual in his "political" capacity -- as an elected official communicating with his constituents. In our view, the trustee had not acted on behalf of, or as a representative of, the Board (the institution involved); he had acted as an individual. Since the Act applies only to the actions of institutions, we concluded that the Act did not apply.

In its submissions on the draft report in the present case, the Board referred to this earlier complaint, stating that as a result of our findings in that case, regardless of its previous representations, the Board's current position was that the trustee in this case:

...is not an Officer of the Board and has no power to act on behalf of the Board. At no time was the Trustee (named) directed by the Board to act on its behalf in this matter. The Trustee (named) was not seeking the opinion of the Archbishop in order to assist her and the Board in the decision making process. Rather, as a strong defender of the teachings of the Church, elected by her constituents to do so, she was individually, in her political capacity informing the Archbishop of the complaints in order to protect the faith and acting in the furtherance of her political role as guardian of the faith at the (named) Board.

The Board stated that since it had not disclosed the information, the disclosure provisions of the Act did not apply.

In our view, this case can be contrasted with the other case since the circumstances differ considerably. In this case, the trustee disclosed the information in order to obtain the Archbishop's comments on the matter. Further, the trustee, as a member of the Board, intended

to communicate those comments to the Board to assist it in its deliberations on the matter. We accept that the trustee may have been motivated to act as a "strong defender of the teachings of the Church." However, this does not change our view that the trustee was acting primarily as a member of the Board. Accordingly, we are not persuaded that the trustee was acting primarily in a political capacity, as in the other case.

Having considered the initial and subsequent representations from the Board, we remain of the view that the disclosure was not in compliance with the Act for the reasons contained in our draft report, cited above on pages two to four.

Conclusion: The personal information in question was not disclosed in compliance with section 32 of the Act.

SUMMARY OF CONCLUSIONS

- The records in question contained personal information as defined in section 2(1) of the Act.
- The personal information in question was not disclosed in compliance with section 32 of the Act.

RECOMMENDATION

We recommend that the Board remind relevant staff and trustees that personal identifiers should be severed before disclosing records containing personal information, where the identity of the individual(s) is not required by an officer or employee of the Board in the performance of his or her duties.

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

July 21, 1995 _____
Date
