



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

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# INVESTIGATION REPORT

INVESTIGATION I96-033M

A SEPARATE SCHOOL BOARD

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September 6, 1996



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# INTRODUCTION

## Background of the Complaint

This investigation was initiated as a result of a complaint concerning a separate school board (the Board). The complainant is the father of a 13-year-old boy who was arrested and charged by the police after a fight between himself and another boy at a shopping centre. Both boys attended one of the Board's schools.

After the father read a police report related to his son's arrest, he concluded that information from his son's Ontario Student Record (OSR) had been disclosed by the Board to the police.

The father believed that such a disclosure by the Board would have been improper, because the OSR is a privileged record under the Education Act. The father's view was that the actions of the Board breached the provisions of 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) Does the Act prevail over a confidentiality provision in the Education Act?
- (B) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (C) Did the Board disclose the personal information in compliance with section 32 of the Act?

## RESULTS OF THE INVESTIGATION

**Issue A:** Does the Act prevail over a confidentiality provision in the Education Act?

Section 53(1) of the Act states:

This Act prevails over a confidentiality provision in any other Act unless the other Act or this Act specifically provides otherwise.

Thus, the privacy provisions of the Act would prevail over a confidentiality provision in the Education Act, unless the Education Act or the Act specifically provides otherwise. We examined sections 266(2) and 266(10) of the Education Act to determine whether they are confidentiality provisions over which the Act would prevail.

Section 266(2) of the Education Act states in part:

(2) A record is privileged for the information and use of supervisory officers and the principals and teachers of the school for the improvement of the instruction of the pupil, and such record,

- (a) subject to subsections (3) and (5), is not available to any other person; and
- (b) except for the purposes of subsection (5), is not admissible in evidence for any purpose in any trial, inquest, inquiry examination, hearing or other proceeding, except to prove the establishment, maintenance, retention or transfer of the record, without the written permission of the parent.

Section 266(2) above sets out the privileged status of the OSR. In our view, this section is not a confidentiality provision (over which the Act would prevail); it is a simple prohibition against the OSR being admissible as evidence in a trial, etc., without the written permission of the parent.

Section 266(10) of the Education Act states:

Except as permitted under this section, every person shall preserve secrecy in respect of the content of a record that comes to the person's knowledge in the course of his or her duties or employment, and no such person shall communicate any such knowledge to any other person except,

- (a) as may be required in the performance of his or her duties; or
- (b) with the written consent of the parent or guardian of the pupil where the pupil is a minor; or
- (c) with the written consent of the pupil where the pupil is an adult.

It is our view that section 266(10) of the Education Act is a confidentiality provision, and that the Act prevails over this confidentiality provision, because neither the Act nor the Education Act specifically provides otherwise. Thus, we are of the view that the privacy provisions of the Act would apply to any disclosures of personal information by the Board, where the personal information was contained in a pupil's OSR.

**Conclusion:** The Act prevails over the confidentiality provision in section 266(10) of the Education Act.

**Issue B:** Was the information in question the pupil's "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states in part, that “personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- ...
- (e) the personal opinions or views of the individual except if they relate to another individual,
- ...
- (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 information in question was contained in notes from the complainant's son's behaviour file, which formed part of his OSR. The notes contained references not only to the complainant's son, but also to various other individuals, for example, his parents, other pupils, the parent of another pupil, and teachers.

In our view, the information in question met the requirements of paragraphs (a),(b),(e),(g) and (h) of the definition of personal information in section 2(1) of the Act, and, thus, was the complainant's son's and other individuals' “personal information”.

**Conclusion:** The information in question was the complainant's son's and other individuals' “personal information”, as defined in section 2(1) of the Act.

**Issue C: Did the Board disclose the personal information in compliance with section 32 of the Act?**

Under the Act, an institution shall not disclose personal information except in the circumstances outlined in section 32.

In separate responses to this complaint, both the Board and the police agreed that the investigating officer had not been shown the complainant's son's OSR, nor had he received copies of the OSR from the school principal. The principal stated that he did not have the OSR present when he spoke to the police officer, nor did he read to the police officer from the OSR. Any information that was disclosed by the principal was disclosed verbally.

The Board further submitted that the information had been disclosed to the police in compliance with section 32(g) of the Act, which states in part:

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

- (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

In the circumstances of this case, the police were investigating an assault alleged to have been made by the complainant's son against another boy. It is our view that such an investigation would have been undertaken by the police with a view to a law enforcement proceeding. The personal information was disclosed by the Board to aid the police investigation. Thus, it is our view that the personal information was disclosed to the police in compliance with section 32(g) of the Act.

We further note that the police also interviewed witnesses, who provided additional information to the police, which may, or may not have been, similar to the information in the OSR.

**Conclusion:** The personal information was disclosed in compliance with section 32(g) of the Act.

## **Other Matters**

### **Protocol Between The Board and The Police**

During the course of our investigation, reference was made by Board staff to a protocol which exists between the Board and the police. The protocol supports the principle that all students and staff deserve a safe learning environment. The purpose of the protocol is to clarify the roles of the Board and the police.

At page 18, the protocol states:

If the police are conducting an investigation for the purpose of law enforcement proceedings, the school Principal may rely upon section 32(g) of the Municipal Freedom of Information and Protection of Privacy Act to release "general information" (such as the name, address and phone numbers of a student or staff) to the law enforcement official. This does not allow the release of the O.S. R.

In our view, the examples of "general information" referred to in the protocol would constitute "personal information" as defined in section 2(1) of the Act (i.e., recorded information about identifiable individuals).

In our discussion with Board staff, some characterized the personal information disclosed to the police as “general information”. The Board, however, in its submissions on our draft report, acknowledged that the “general information” referred to in the protocol was also personal information under the Act. In our view, as the protocol is currently worded, confusion could arise as to what is considered to be “personal information” under the Act.

## SUMMARY OF CONCLUSIONS

- The Act prevails over the confidentiality provision in section 266(10) of the Education Act.
- The information in question was the complainant’s son’s and other individuals’ “personal information”, as defined in section 2(1) of the Act.
- The personal information was disclosed in compliance with section 32(g) of the Act.

## RECOMMENDATION

At page two, the protocol between the Board and the police states that the police/school liaison committee will monitor the implementation of the protocol and meet periodically thereafter to deal with any problems and issues that might arise.

We recommend that the Board review its protocol with the police to ensure that the wording of the protocol is clear with respect to what constitutes “personal information” under 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: \_\_\_\_\_  
Susan Anthistle  
Compliance Review Officer

September 6, 1996  
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Date

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