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## PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. MC-020012-1

Toronto District School Board

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# PRIVACY COMPLAINT REPORT

**PRIVACY COMPLAINT NO.** MC-020012-1

**MEDIATOR:** Leslie McIntyre

**INSTITUTION:** Toronto District School Board

## SUMMARY OF COMPLAINT:

The complainant, the mother of a child who attended a school in the Toronto District School Board (the Board) system, believes the principal of her son's school disclosed personal information about the child in breach of the *Municipal Freedom of Information and Protection of Privacy Act* (the Act).

At the time of the incident, the complainant had a child with special needs in grade one. The child was picked up twice a week by the grandmother, who fed him lunch and returned him to school after the lunch break.

The complainant had completed an Index Card at the beginning of the school year, providing contact names in the following priority order: herself, the child's father, the grandmother and the child's doctor.

In her letter of complaint, the complainant states that the school principal disclosed to the child's grandmother "his intentions of program planning, school problems, assessments he wanted done, his intent on removing [the child] from his classroom and school".

The complainant states that neither the principal nor the grandmother had permission from herself or from the child's father to discuss her son's "private medical issues or schooling".

## DISCUSSION:

### What information is at issue?

Both the Board and the grandmother agree that a conversation between the grandmother, the principal and a teacher did take place, and both agree that information about the complainant's child was disclosed by the principal.

### The Grandmother

During the investigation, the Mediator contacted the grandmother who indicated that she went to the school twice a week to pick up the child to feed him lunch. On January 15, 2002 when she was waiting for the lunch break to begin, the principal approached her and asked her if she could go into the school before 12:00 to settle the child down, as he became rambunctious as 12:00 approached.

That same day, when she returned the child to school after the lunch break, the grandmother said that the principal and teacher spoke to her. As the child joined his classmates who were going down to the gymnasium, the principal and teacher approached her at the doorway of the classroom and told her that the child couldn't settle properly in class, and that he was a hyper child. The grandmother told them she knew that the boy needed extra help, and asked why the school hadn't provided extra help for him. The grandmother recalls that the principal said that the child should get help from a doctor, and she replied that her daughter had her own doctor and asked if that wasn't good enough.

### The Board

The Board confirmed that the principal and the teacher did speak to the grandmother. The Board states that the grandmother told them that the child had run away from her, and inquired how it was possible to control the child and help him, and particularly, what the school was doing to help the child.

In response, the principal told the grandmother that the school was unable to respond to the child's needs since his mother had not consented to an assessment to determine his appropriate placement.

While the Board agrees that the principal shared information about the child with the grandmother, it is their position that the shared information is not personal information as defined by the *Act*. In the alternative, if the information is found to be personal information, the Board is of the view that the disclosure was in accordance with sections 32 (b), (c) and (e), and 33 of the *Act*.

### **Is the information “personal information” as defined in sections 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,

- (b) information relating to the **education** or the **medical**, psychiatric, **psychological**, criminal or employment history of the individual ...  
....
- (e) the personal opinions or views of the individual except if they relate to another individual

Based on paragraph (e) of the definition of “personal information” in section 2 of the *Act*, I have concluded that the information disclosed to the grandmother by the principal, as described by the Board, would qualify as the personal information of the complainant, albeit in relation to her son’s education.

Based on paragraph (b) of the definition of “personal information” in section 2 of the *Act*, I have also concluded that the information disclosed to the grandmother by the principal, as described by the grandmother, would qualify as the personal information of the complainant’s child.

**Was the disclosure of the “personal information” in accordance with the *Act*?**

The obligations of an institution with respect to the disclosure of personal information are governed by section 32 of the *Act*. Under the *Act*, an institution cannot disclose personal information in its custody or under its control except in accordance with the specific circumstances outlined in sections 32(a) through to 32(l) of the *Act*.

In this regard, the Board is relying on sections 32 (b), (c) and (e) and 33 of the *Act*.

Section 32 (b) states:

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

...

(b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;

The Board states that the complainant had listed her mother as the third contact priority on the Index Card kept by the school. They state:

The implication of the Index Card is that in the event of an emergency involving [the child], if the school was unable to reach [the child’s] mother or father, the school is instructed to contact [the complainant’s mother] to address any such concerns. When choosing [the grandmother] as the third “Contact Priority”, [the complainant] would be well aware that in the event that [the grandmother] were contacted, that information of a personal nature regarding [the child] may well be shared with her.

The Board submitted a copy of the Index Card and *The Ontario Student Record (OSR) Guideline*, which governs the use of the card.

Page 34 of *The Ontario Student Record (OSR) Guideline* states the following under the title “Office Index Card”:

This card is used to obtain access to vital information in the OSR and, in the case of an emergency, to assist in locating the student or parent(s)/guardian(s).

The Index Card provides a summary of vital statistics including status, preferred name, legal name, gender, birth date, birth country, status in Canada, ministry number, health card, legacy student number, birth date verification, arrival date, status in Canada verification, language of legal documents, and address and phone. In addition, four names are listed: the mother, the father, the grandparent and the doctor. Each name has a “School Closure Priority” number: 1,2, 3 or 4.

The Board also states:

any discussion between [the principal] and [the complainant’s mother] was entirely appropriate in the circumstances, particularly in light of [the complainant’s mother’s] authorized relationship with the school. Consequently, any such disclosure was implicitly authorized by the complainant – impliedly by her course of conduct as required by s. 32 (b) of the *Act*.

With respect to the above, the complainant states that it was her understanding that by providing the four names to the school, she was giving the school permission only to contact these four individuals, in priority order, in the event of an emergency.

The Board contends that the mother had provided consent for the Board to share personal information about her son to individuals named on the Index Card, and therefore the disclosure of personal information was in compliance with section 32 (b) of the *Act*.

However, the facts presented by the Board do not support this position, and the complainant disputes this. Nothing in the OSR guidelines suggest that the Index Card will be used to disclose the type of personal information at issue in this complaint.

Therefore, based on the above, I find that section 32 (b) of the *Act* does not apply.

Section 32 (c) states:

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 states:

33. 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

The Board states,

any information disclosed was disclosed for the purpose for which it was obtained – to arrange the best possible placement for [the child's] education. The information was disclosed, not to – for example – a reporter or complete stranger, but to [the child's] grandmother, to act in [the child's] best interests, to discuss the matter with the complainant and to otherwise treat the information confidentially.

The Board states

[a]ny information potentially disclosed by [the principal] was also for the purpose of complying with the requirements imposed by the *Education Act* and its regulations with respect to [the child's] education ... For example, ... the *Education Act* sets out a number of procedures to be followed regarding special needs students. Again such information was disclosed in order to help to arrange for the best possible placement for [the child's] education. ... the disclosure was to the student's grandmother who was heavily involved in [the child's] education, not to a reporter or a stranger. It would have been expected that [the complainant's mother] would utilise any information provided to her in [the child's] best interest, and maintain the confidential nature of any information imparted to her.

The Board contends that

even if the Principal did provide [the child's] personal information to [the child's] grandmother – which is not admitted- and even if the conveyance of such personal information to [the child's] grandmother was not implicitly authorized by the complainant – as is asserted by the Board – fundamentally the Principal was attempting to obtain assistance for a child with behavioural difficulties in circumstances where the parent was not only failing to address these behavioural difficulties, but was obstructing the Board's attempts to actively assist the child.

The Board is of the view that the complainant “ought easily to have expected that there would be some level of contact and discussion between the school and her mother regarding [the child] given the grandmother's involvement and responsibilities vis-à-vis [the child].”

The Board has stated that in view of the context of the disclosure, the disclosure was permitted by section 32 (c) of the *Act*, which allows disclosure “for the purpose for which it was obtained or compiled or for a consistent purpose”.

Section 33 describes “consistent purpose” as “only if the individual might reasonably have expected such a use or disclosure”.

The Board has asked that we consider a number of factors in this case. The person to whom the Principal disclosed the information was a close relative of the child, who had asked the Principal about their care of the child. She was someone who had part-time care of the child, who visited the school twice a week, and who had been identified as an emergency contact in the event of an emergency involving the child. The Board also states that the *Education Act* obliges the Principal to provide supervision and protection of students for whom they are responsible, and that the personal information was disclosed in the child’s best interest.

The complainant disputes the Board’s contention that the grandmother was involved in the child’s education, stating that the grandmother was not involved in the child’s schooling in any way beyond picking the child up at lunchtime and returning him after lunch, twice a week.

The grandmother stated that she was not involved in the child’s schooling, had never been involved in any meetings with the school relating to the child, and that the principal had never shared information with her about the child prior to this date.

In my view, the child’s behaviour during the school day, whether it is an inability to settle down for class or running away from the grandmother and becoming difficult to control, is a matter relating to the child’s education. The grandmother was directly involved, as were school authorities, in dealing with these behavioural issues. Both have a shared interest and responsibility in assisting the child with such issues in their respective roles, in order to enhance the child’s quality of life through the school day. In these circumstances, it is not unreasonable to expect that the school and the grandmother may occasionally have some contact or exchange through the school day regarding such matters and, in my view, the grandmother’s role in this limited context relates to the child’s schooling. This is one of the factors, among the others I have mentioned, that I must consider in determining whether section 32(c) of the *Act* is applicable in the circumstances and, in particular, whether the complainant “might reasonably have expected such a ... disclosure” within the meaning of section 33 of the *Act*. In my view, this test has been satisfied.

I have considered the views of the complainant and the factors in this case raised by the Board. In my view, school authorities must be permitted a measure of discretion in making judgement calls in the immediate circumstances, and this is not an egregious case where I am prepared to say that the exercise of discretion in this particular case was in breach of the *Act*.

Therefore, in the circumstances of this complaint, I conclude that the disclosure of this personal information is in accordance with section 32 (c) of the *Act*.

Because of my finding that the disclosure is in accordance with section 32 (c) of the *Act*, it is not necessary for me to address the Board's arguments relating to section 32 (e).

Original signed by: \_\_\_\_\_  
Leslie McIntyre  
Mediator

July 21, 2003 \_\_\_\_\_