



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

ORDER M-96

Appeal M-910462

Wellington County Board of Education



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ORDER

The President of the Ontario Secondary School Teachers' Federation - District 39 (the Federation) submitted a request to the Wellington County Board of Education (the Board) under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the home phone numbers of Federation members. The Board denied access to the record containing the phone numbers, claiming that disclosure would be an unjustified invasion of privacy under section 14(1)(f) of the Act. The Federation appealed the Board's decision.

Attempts to mediate the appeal were not successful, and notice that an inquiry was being conducted to review the Board's decision was sent to the Federation and the Board. Written representations were received from both parties.

During the course of processing the appeal, suggestions were made that the Federation seek the consent of its members to the release of their home phone numbers. The Federation declined to do so and, despite an initial offer of assistance by the Board to facilitate in seeking consent, both parties ultimately decided that the appeal should be resolved through the issue of an order.

Both parties are in agreement that the home phone numbers qualify as "personal information", as defined in section 2(1) of the Act, and that only "permanently or regularly employed" members' home phone numbers are at issue.

The sole issue in this appeal is whether the mandatory exemption provided by section 14 of the Act applies to the home phone numbers of permanently or regularly employed Federation members.

Section 14(1) of the Act prohibits disclosure of personal information except in certain circumstances. One such circumstance is described in section 14(1)(f) of the Act, which states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy.

Section 14(3) lists the types of information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. The parties agree that section 14(3) is not relevant to this appeal, and I will not consider it further.

Section 14(2) provides some criteria for the Board to consider in determining whether a disclosure of personal information would constitute an unjustified invasion of personal privacy. Some of the factors favour disclosure of the records and some favour protection of personal privacy.

The Federation raises section 14(2)(d) in favour of its position that the phone numbers should be disclosed. This section reads as follows:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information is relevant to a fair determination of rights affecting the person who made the request;

The Federation submits:

Pursuant to the provisions of Section 14(2)(d), the personal information is relevant as it clearly affects the rights of the bargaining agent, namely, OSSTF, who made the request.

...

In order to carry out its legally imposed responsibility to represent the said employees, and pursuant to the Federation's legal responsibility to represent the said employees "fairly", the personal information that was requested is wholly relevant to the obligations imposed upon the union.

I do not agree with this position.

While the Federation states that the personal information is relevant because it affects its rights, it has not identified these rights or demonstrated how disclosure of the personal information is "relevant to a fair determination" of these rights.

In my view, section 14(2)(d) presupposes that there is or will be a proceeding in which the requester's rights are to be determined. The Federation has not identified any proceeding in which its rights are being determined or where the disclosure of the personal information would be relevant to a fair determination of these rights.

Therefore, I find that section 14(2)(d) is not a relevant factor in the circumstances of this appeal.

The Federation also raises additional factors which are not listed in section 14(2), but which it submits are relevant considerations. Because the list of factors in section 14(2) is not exhaustive, I will consider the relevance of these factors.

First, the Federation discusses the labour relations context. It states that the relationship between bargaining unit members and bargaining agent is important because it "... mandates the Federation to represent all of the employees in the various bargaining units in a manner which is fair, and reasonable". The Federation goes on to state that "... the Commissioner cannot decide this particular appeal without paying full regard to the recognition by tribunals of unions' rights of access, once they have been recognized or certified by a labour relations tribunal". The Federation appears to be suggesting that its legal status as bargaining agent on behalf of its members is a relevant factor in the context of this appeal.

In my view, a requester's status cannot be a relevant factor in determining whether disclosure of personal information will constitute an unjustified invasion of personal privacy. Disclosure of a record under Part I of the Act is, in effect, disclosure to the world and not just to the requester, and I find that the status of the Federation, or the relationship of a Federation to its members, is not a relevant consideration.

The Federation also submits that the home phone numbers should be disclosed pursuant to sections 32(c) and (e) of the Act. These sections read as follows:

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;
- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, and agreement or arrangement under such an Act or a treaty;

Section 32 is contained in Part II of the Act. This Part establishes a set of rules governing the collection, retention, use and disclosure of personal information by institutions in the course of administering their public responsibilities. Section 32 prohibits disclosure of personal information except in certain circumstances; it does not create a right of access. The Federation's request to the Board was made under Part I of the Act, and this appeal concerns the Board's decision to deny access. In my view, the considerations contained in Part II of the Act, and specifically the factors listed in section 32, are not relevant to an access request made under Part I.

Having considered the parties' representations and the circumstances of the appeal, in my view, there are no factors, either listed in section 14(2) or unlisted, which favour disclosure of the home phone numbers of permanently or regularly employed Federation members. Accordingly, I find that the mandatory exemption provided by section 14(1) applies, and the phone numbers should not be released.

ORDER:

I uphold the Board's decision.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ March 9, 1993