



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-292

Appeal M-9300190

Nipissing District Roman Catholic Separate School Board



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ORDER

BACKGROUND:

The Nipissing District Roman Catholic Separate School Board (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to:

the work assignments for each person assigned as an occasional teacher in the English Language Section of the Board for the school years 1991-1992 and 1992-1993. This should include the names, schools and dates of assignments.

The Board responded by denying access to the requested information on the basis that it constituted to the personal information of identifiable individuals and that disclosure, without the express consent of the individuals, would violate their personal privacy rights, thereby implicitly claiming the application of section 14 of the Act. The requester appealed the decision of the Board.

During mediation, the Board indicated that the records containing the requested information consist of forms entitled "Monthly Report of Absences and Supply Teaching" (the forms). The forms are submitted to the Board by each school for each month of the school year. The forms contain six columns which include the following information: the name of the absent teacher, the dates on which the teacher was absent, the number of days the teacher was absent, the reasons for the absence, the name of the supply teacher and the number of days worked by the supply teacher.

The Board explained that, as a result of previous requests for similar information, it routinely provides the appellant with the dates and number of days worked by supply teachers in a particular school but does not disclose the name of the absent teacher, the reason for the absence, the number of days of the absence or the name of the supply teacher. It is the name of the supply teacher, the information contained in column five of the forms, which is the information at issue in this appeal.

Further mediation was not successful and notice that an inquiry was being conducted to review the decision of the Board was sent to the Board and the appellant. Representations were received from both parties.

ISSUES:

The issues arising in this appeal are:

- A. Whether the requested information constitutes "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the requested information constitutes "personal information" as defined in section 2(1) of the Act.

"Personal information" is defined in section 2(1) of the Act, in part, as:

recorded information about an identifiable individual, including,

...

- (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;

As I have previously indicated, it is only the names of the supply teachers that is at issue in this appeal. However, in my view, disclosure of these names would reveal other personal information about these individuals, namely the number of days and dates on which these individuals worked at a specific school during the 1991-1992 and 1992-1993 school years. Accordingly, I find that the names themselves constitute "personal information" as defined in section 2(1) of the Act.

ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies.

Under Issue A, I found that the information at issue constitutes the personal information of identifiable individuals.

Section 14 of the Act prohibits the disclosure of personal information to any person other than the individual to whom the information relates, except in certain circumstances listed under section 14(1). It is the position of the appellant that sections 14(1)(d), (e) and (f) are relevant in the circumstances of this appeal. These sections state:

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

- (d) under an Act of Ontario or Canada that expressly
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authorizes the disclosure;

- (e) for a research purpose if,
 - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
 - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
 - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 14(1)(d)

In its submissions, the appellant does not make specific reference to any "Act of Ontario or Canada" which expressly authorizes the disclosure of the names of the supply teachers. Rather, its position appears to be that such disclosure is necessary in order for the appellant, a union, to adequately discharge its representational duties.

In this regard, it refers to sections 45 and 65 (formerly section 64) of the Labour Relations Act. Section 45 refers to the arbitration process. Section 65 requires that "no employer shall participate in or interfere with the formulation, selection or administration of a trade union or the representation of employees by a trade union". Based on these sections of the Labour Relations Act, the appellant submits that:

The school board's denial of the information to the Local unjustly inhibits the preparation of the arbitration case in that the Local does not have all the factual data necessary to prepare its case to present to the arbitration board in order for the arbitration board to make a complete and timely decision.

There are no orders of the Commissioner's office in which section 14(1)(d) has been interpreted. However, there are Compliance Investigation Reports which have considered the interpretation of the phrase "expressly authorized by statute" as it is found in section 38(2) of the provincial Freedom of Information and Protection of Privacy Act. This section 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]

In Compliance Investigation Report I90-29P the following comments were made about this section:

The phrase "expressly authorized by statute" in subsection 38(2) of the Act requires either that specific types of personal information collected be expressly described in the statute, or a general reference to the activity be set out in the statute, together with a specific reference to the personal information to be collected in a **regulation** made under the statute, i.e., in a form or in the text of the **regulation**. [emphasis added]

In my view the same interpretation should apply to the phrase "expressly authorizes" as it is found in section 14(1)(d) of the Act.

Applying this interpretation, I conclude that the sections of the Labour Relations Act referred to by the appellant do not "expressly authorize" the disclosure of the personal information at issue in this appeal. This conclusion is consistent with that reached in Compliance Investigation Report I93-023P in which it was found that there is no express provision of the Labour Relations Act which requires the Ontario Labour Relations Board to disclose to the Union employee lists provided by employers.

Accordingly, the exception in section 14(1)(d) of the Act has no application in the circumstances of this appeal.

Section 14(1)(e)

With respect to this section, the appellant submits:

... section 14(1)(e) of the Act also applies in that it is necessary for the Local to collect data for research purposes in order to properly monitor the collective agreement and represent the members adequately in collective bargaining.

Section 14(1)(e) is the only provision of the Act where the granting of conditional access is explicitly contemplated (Order 164). Even if it could be said that the disclosure is for a research purpose, the appellant has provided me with no evidence that the conditions in sections 14(1)(e)(i), (ii) and (iii) have been satisfied. Therefore, the exception in section 14(1)(e) of the Act does not apply.

Section 14(1)(f)

The appellant maintains that disclosure of the names of the supply teachers would not constitute an unjustified invasion of their personal privacy. It is the position of the Board that disclosure of this information would result in a presumed unjustified invasion of privacy pursuant to sections 14(3)(d) and (f) of the Act, which state:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (d) relates to employment or educational history;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

As I have indicated, disclosure of the names of the supply teachers, in conjunction with the information already disclosed to the appellant, would reveal the number of days and dates on which these individuals worked at a specific school during the 1991-1992 and 1992-1993 school years. In my view, this constitutes the "employment history" of these individuals such that the section 14(3)(d) presumption has been satisfied.

The only way in which a section 14(3) presumption may be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is made that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the exemption (Order M-170).

I have considered section 14(4) of the Act and find that none of the personal information at issue falls within the ambit of this provision. In addition, the appellant has not argued that the public interest override set out in section 16 of the Act applies to the facts of this case.

The appellant maintains that the Board did not adequately consider section 14(2)(d) of the Act (disclosure of the personal information is relevant to a fair determination of the rights affecting the person who made the request). Even if I were to find that this is a relevant consideration, this factor is not sufficient to rebut the section 14(3)(d) presumption.

Accordingly, I am of the view that the presumption contained in section 14(3)(d) applies to the personal information at issue in this appeal and it is properly exempt from disclosure under section 14 of the Act.

ORDER:

I uphold the decision of the Board.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ March 28, 1994