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

ORDER M-333

Appeal M_9300154

Metropolitan Toronto School Board

80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

ORDER

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested copies of records from the Metropolitan Toronto School Board (the Board). The records requested are the expense account receipts and credit card statements (including sales slips) of the Board's Director of Education (the Director) for the period from January 1, 1992 to December 31, 1992. The records consist of 47 pages of credit card statements with related sales slips.

During the course of mediation of this appeal the appellant narrowed the scope of his request. He indicated that he did not require access to the name of the credit card company shown on the records, the number of the credit card and the retailer identification number on the credit card sales slips. The Board has agreed that the name of the card member, the date and amount of each charge as well as the total charges may be disclosed. Accordingly, the only information remaining at issue in this appeal is the reference number for each transaction and the name of the retailer at which the charge was incurred.

The Board relies on the following exemptions to withhold access to this information:

- invasion of privacy -section 14(1)
- danger to life or safety - section 8(1)(e)
- law enforcement - section 8(1)(l)
- danger to safety or health - section 13
- third party information -section 10(1)
- valuable government information - section 11(a)
- economic and other interests - sections 11(c) and (d)

A Notice of Inquiry was provided to the parties to the appeal including the Director. Representations were received from the Board and the appellant.

DISCUSSION:

INVASION OF PRIVACY

When a request involves access to personal information I must, before deciding whether an exemption applies, ensure that the information in question falls within the definition of "personal information" in section 2(1) of the Act. Under section 2(1), "personal information" is defined, in part, to mean recorded information about an identifiable individual.

In its representations, the Board submits that the names of specific retailers contained in the records disclose a pattern of personal conduct on the part of the Director and that such a pattern

constitutes personal information. In particular, the Board states that the names of restaurants frequented by the Director "relate to financial transactions in which he was involved."

The Board acknowledges in its representations that the expenses reflected in the records are those incurred in connection with Board business. It has been established in a number of previous orders that information provided by, or relating to an individual in a professional capacity or in the execution of employment responsibilities is not "personal information" (Orders M-71, M-74, M-106, M-107 and M-108). In particular, information about costs incurred and credit card charges made by other school board employees during the course of their employment as public employees have been held not to qualify as personal information (Order M-262).

In my view similar considerations apply to the information in this appeal. The reference number for each transaction and the name of the retailer at which the charge was incurred are contained in the credit card charges made by the Director. These charges were incurred by the Director in the course of his employment as a public employee. Therefore, this information does not qualify as personal information for the purposes of the Act.

Because I have found that the records do not contain any personal information, disclosure of this information cannot constitute an unjustified invasion of personal privacy and section 14(1) of the Act cannot apply.

DANGER TO LIFE, SAFETY OR HEALTH/LAW ENFORCEMENT

The Board has claimed that exemptions contained in sections 8(1)(e) (danger to life or safety), and (l) (law enforcement) and section 13 (danger to safety or health) of the Act apply to exempt the information from disclosure. These sections respectively read as follows:

> 8(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> (e) endanger the life or physical safety of a law enforcement officer or any other person;
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.
>
> 13 A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

As the Board's submissions address all these exemptions together and similar considerations apply to both sections 8(1)(e) and 13, I shall consider them under this one issue.

Sections 8(1)(e) and 13, respectively, provide the head of an institution with the discretion to refuse to disclose a record that could reasonably be expected to "endanger the life or physical safety of a law enforcement official or any other person" or to "seriously threaten the safety or health of an individual".

In Order P-588, Inquiry Officer Holly Big Canoe considered section 20 of the Freedom of Information and Protection of Privacy Act, which is the equivalent of section 13 of the municipal Act. In that order, it was determined that an institution claiming that exemption bears the onus of providing sufficient evidence to substantiate the reasonableness of the expected harm. The mere possibility of harm is not sufficient and, at a minimum, the institution must establish a clear and direct linkage between the disclosure of information and the harm alleged. In my opinion, the same onus applies when section 8(1)(e) of the Act is claimed.

The Board submits that disclosure of the information at issue would tend to show certain patterns of behaviour on the part of the Director, in particular, which retail establishments he frequents. The Board argues that a person or persons who may wish to threaten or harm the Director would find it much easier to carry out those threats or inflict those harms if they knew about his patterns of behaviour when away from his home and place of employment.

As to the issue of the expectation of threat or harm, the Board has stated that the Director has been the subject of abuse and threats in the past. The Board has also provided specific evidence of written threats of harm made against the Director by one individual and has made reference to the Director of Education of another school board having had to obtain police protection at certain events.

Without discounting the real and valid concerns many public officials, including the Director, may have concerning their personal safety as a result of the duties of their employment, both sections 8(1)(e) and section 13 of the Act require me to objectively assess the connection between the disclosure of the records at issue and the endangerment or threat that is contemplated. The Act requires me to determine if the **disclosure** of the record could **reasonably be expected** to endanger the life or safety of a person in the case of section 8(1)(e) or in the case of section 13 to seriously threaten the health or safety of the individual.

I have reviewed the records carefully. I do not accept the Board's submissions that they disclose any pattern of dates of attendance at the establishments at which the charges were incurred. Nor do the records indicate any of the times at which the Director attended each of these establishments.

While the records show the restaurants which the Director frequented in 1992, given that the records themselves span the period of a year and are now almost two years old, they have no pattern of dates and contain no reference to time. I am, therefore, not satisfied that the records disclose any patterns of behaviour on the part of the Director that could **reasonably** be expected to endanger his life or physical safety, or seriously threaten his health or safety.

It is not so much the **disclosure** of a possible pattern of behaviour that may endanger or threaten, as it is the pattern itself that presents the possibility of harm. In my opinion, there is nothing in the records which would provide a sufficient degree of predictability to increase or enhance the possibility of harm which may be inherent in the individual's choice to frequent certain restaurants in the course of carrying out his employment duties or otherwise.

In summary, I find that the Board has not provided sufficient evidence to establish a clear and direct linkage between the disclosure of the records and the harms set out in sections 8(1)(e) and section 13 of the Act.

In addition, because the Board has made no submissions concerning the specific application of the law enforcement exemption (section 8(1)(l)), I find that the information does not qualify for exemption under this section either.

THIRD PARTY INFORMATION

The Board has claimed that section 10(1) of the Act applies to the information remaining at issue.

For a record to qualify for exemption under section 10(1)(a), (b) or (c) the institution and/or the affected party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of subsection 10(1) will occur.

[Orders 36, M-29 and M-37]

The Board submits that the records contain information which is commercial or financial. As the records provide information relating to a series of retail transactions I am satisfied that the first part of the test has been met.

With respect to part two of the test, the Board's representations state that the records were supplied to the Board implicitly in confidence. However, the representations are limited to referring to expectations of confidentiality held by the Director. If it is the Board's position that the Director supplied the records to it, part two of the test has not been satisfied as the information must have been supplied to the Board by a third party which, by definition, is not part of the institution (Order P-348).

If the records were supplied directly to the Board by the credit card company, I have no evidence on the confidentiality element of part two of the test. As such, I am not satisfied that part two of the test has been met and, therefore, the records do not qualify for exemption under section 10(1) of the Act.

Because of my finding that part two of the test has not been satisfied, and the exemption does not apply, it is not necessary to consider part three. However, the Board has made representations with respect to that part of the test which should be addressed. With obvious reference to section 10(1)(b) the Board submits with respect to the information in the records:

> ... its public disclosure could lead the Board no longer to require that this information remain on the credit card statements it receives, when it is in the public interest that the institution receive full information.

The Board is, in essence, suggesting that **it** would request that the information **not** be supplied in the future even when it acknowledges that it would be in the public interest for the Board to continue to be supplied with such information.

In my opinion, it is clear that section 10(1)(b) applies to those situations in which third parties might choose, as a result of the prospect of disclosure, to no longer provide an institution with similar information in the future. In my view, it does not apply to the scenario described by the Board in which the institution, to avoid disclosure, chooses not to be supplied with information that it has, itself, deemed to be in the public interest for it to have. It is clear that section 10(1) of the Act is designed to protect the interests of third parties and not those of an institution.

VALUABLE GOVERNMENT INFORMATION

In order to qualify for exemption under section 11(a) of the Act, the institution must establish that the information:

1. is a trade secret, or financial, commercial, scientific or technical information; **and**

2. belongs to an institution; **and**

3. has monetary value or potential monetary value.

[Order 87]

The Board has provided no specific representations with respect to the second element of the section 11(a) test. I cannot conclude that the information remaining at issue, the name of the retailer at which the Board expenses were incurred and the transaction number, "belongs to" the Board. Therefore, I do not find that the records contain valuable government information.

ECONOMIC AND OTHER INTERESTS

Sections 11(c) and (d) of the Act state:

> A head may refuse to disclose a record that contains,
>
> (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
>
> (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;

In order to qualify for exemption under sections 11(c) or (d) of the Act, the Board must successfully demonstrate a clear and direct linkage between the disclosure of the information contained in the records and the harms alleged which could result in injury to the Board's economic or financial interests.

The Board maintains that these harms would occur "if the information were released and the Director came to harm ...".

I have reviewed the representations of the Board in this context and find that they present no detailed or convincing evidence linking the suggested potential harm to the Director to any economic or financial interests of the Board itself. I find that the Board has failed to demonstrate that there is a reasonable expectation of harm to its economic or financial interests if the records at issue are disclosed. Therefore, the records do not qualify for exemption under sections 11(c) or (d).

To summarize, I have found that none of the exemptions claimed by the Board apply to the information at issue in this appeal. Therefore, the records, with the exception of the account number of the card member, the name of the credit institution and the retailer identification numbers, should be disclosed in their entirety to the appellant. I have highlighted the account number of the card member and the name of the credit institution on the copy of the records which are being sent to the Freedom of Information and Privacy Co-ordinator of the Board with a copy of this order. However, I am uncertain as to which, of several numbers on the records, constitutes the retailer identification numbers. The Board should remove this information as well prior to releasing the records to the appellant.

ORDER:

1. I order the Board to disclose the records in their entirety to the appellant with the exception of the retailer identification numbers and the portions that are highlighted on the copy of the records which is being forwarded to the Freedom of Information and Privacy Co-ordinator of the Board with a copy of this order.

2. I order the Board to disclose the records described in Provision 1 within thirty-five (35) days after the date of this order but not earlier than the thirtieth (30th) day after the date of this order.

3. In order to verify compliance with this order, I reserve the right to require the Board to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: June 16, 1994
Anita Fineberg
Inquiry Officer