



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-428

Appeal M-9400443

York Region Roman Catholic Separate 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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester sought access to all records held by the York Region Roman Catholic Separate School Board (the Board) pertaining to the Board's investigation of her complaint of sexual harassment. The Board located nine records responsive to the request and denied access to all of them relying on the following exemption contained in the Act:

- invasion of privacy - sections 14 and 38(b)

The requester appealed the decision to deny access to the records.

During the mediation stage of the appeal, the Board decided to disclose all but two of the records. The records which remain at issue relate, in part, to the respondent to the complaint (the affected person). They consist of four pages of typed notes from an interview with the affected party and a two-page "Summaries and Conclusions" document submitted by the affected party to the interview panel which conducted the investigation.

A Notice of Inquiry was provided to the appellant, the Board and the affected person, who consented to the release of the "Summaries and Conclusions" document. This record was subsequently disclosed to the appellant. The four pages of typed interview notes remain the only record at issue. Representations were received from the Board and the affected person only.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where 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.

I have reviewed the information at issue and I find that it satisfies the definition of "personal information". In my view, the personal information relates to both the affected party **and** the appellant.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 of the Act provides a number of exceptions to this general right of access.

Under section 38(b), where a record contains the personal information of both the appellant and another individual and the Board determines that the disclosure of the information would constitute an unjustified invasion of the other individual's personal privacy, the Board has the discretion to deny the requester access to that information.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal

information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions contained in section 14(3) apply, the Board must consider the application of the factors listed in section 14(2) of the Act, as well as all other factors which are relevant in the circumstances of the case.

The Board claims the application of three of the factors listed in section 14(2) which favour the protection of privacy. These factors are:

- the information is highly sensitive - section 14(2)(f)
- the information has been supplied in confidence - section 14(2)(h)
- the information, if disclosed, may unfairly damage the reputation of anyone referred to - section 14(2)(i)

The Board also indicates that it has provided the appellant with a summary of the comments made by the affected person in direct response to the allegations made against him.

The affected person made representations opposing the disclosure of his personal information. He submits that the presumptions set out in sections 14(3)(d) and (g) apply to the personal information contained in the record as it relates to his employment history and may be considered a personnel evaluation. In addition, he also submits that the factors listed in sections 14(2)(f) and (h) favouring the protection of privacy are relevant and that the disclosure of the record could detrimentally affect the work environment at the school where he is employed.

Having reviewed all of the evidence before me, I have made the following findings:

- (1) While the record contains information concerning employment related incidents, it cannot accurately be characterized as employment history or a personnel evaluation. Accordingly, I find that sections 14(3)(d) and (g) do not apply to the record.
- (2) I have not been provided with any evidence to support the Board's reliance on section 14(2)(i). In the absence of such evidence, I find that this is not a relevant consideration. The affected person has not made reference to this factor.
- (3) Many past orders have indicated that certain information in connection with harassment investigations may be considered to be highly sensitive within the meaning of section 14(2)(f) and that certain information collected in the context of such investigations may have been provided in confidence within the meaning of section 14(2)(h). However, it has also been found that it is not

possible for such an investigation to proceed if the complaint is not made known to the person complained against, and the direct response to the allegations made in the complaint is not made known to the complainant (the appellant in this case) (Orders M-82 and P-685). I find that the Board made considerable attempts to summarize this information and did so quite accurately. However, as the record itself can be reasonably severed, the information contained in the record which directly responds to the complaint should be disclosed to the appellant (Order M-82).

- (4) I find that sections 14(2)(f) and (h) are considerations weighing in favour of privacy protection respecting information which does not directly respond to the complaint.
- (5) In summary, I have found that sections 14(2)(f) and (h) of the Act are relevant only to the information in the record which does not relate directly to the affected person's responses to the complaint. I find that disclosure of this information, which I have highlighted in the copy of the record provided with this order to the Board's Freedom of Information and Privacy Co-ordinator, would be an unjustified invasion of the personal privacy of the affected person. It is, therefore, properly exempt under section 38(b) of the Act.

ORDER:

1. I order the Board to disclose to the appellant those portions of the record which are **not** highlighted on the copy of the record provided to the Freedom of Information and Privacy Co-ordinator, within thirty-five (35) days of the date of this order but not earlier than the thirtieth (30th) day of the date of this order.
2. In order to verify compliance with this order, I reserve the right to require the Board to provide me with a copy of the record disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ December 6, 1994