



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

ORDER M-740

Appeal M_9500761

**Metropolitan Separate School Board
[Toronto]**



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Metropolitan Separate School Board (the Board) received a request for access to a copy of the letters written to the Board, and the Board's response, regarding an article that appeared in the September 1995 issue of *Catholic Insights* magazine. The article referred to the requester, who is a teacher employed by the Board.

Pursuant to section 21 of the Act, the Board notified the thirteen authors of the letters (the affected persons) of the request. Subsequently, the Board granted partial access to the records but denied access to the names, addresses and any other personal identifiers which appeared in the records pursuant to section 14 of the Act (invasion of privacy). The affected persons did not appeal the Board's decision to disclose the letters without identifying information. The requester appealed the Board's decision to deny access to the identifying information.

A Notice of Inquiry was provided to the appellant, the Board and the affected persons. Because the records appeared to contain the personal information of the appellant, the Notice of Inquiry raised the possible application of section 38(b) of the Act (invasion of privacy). Representations were received from the appellant and five of the affected persons.

One of the affected persons raises sections 12 and 38(c) as relevant to the circumstances of this appeal. Neither of these exemptions have been claimed by the Board.

The only information at issue in this appeal are the names, addresses and other identifying information of the authors of the letters which appear in the records.

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. I have reviewed the records, and I find that each contains information which satisfies the definition of personal information. In my view, the personal information is that of the appellant and the affected persons.

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 provides a number of exceptions to this general right of access.

Under section 38(b) of the Act, 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 another 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 can be overcome is if the personal information at issue falls under section 14(4) of the Act 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 institution must consider the application of the factors listed in section 14(2), as well as all other considerations that are relevant in the circumstances of the case.

The appellant states that previous to this matter her employment had been affected as the result of letters about her on one prior occasion. That matter was resolved through arbitration, during which the identity of the authors of the letters was disclosed. She believes that this factor assisted her in obtaining a favourable result in the arbitration. Consequently, she submits that in any future dealings with her, the Board may make use of the records in this appeal as evidence against her and, as a result, it is important that she receive access to the identity of the authors. She further argues that the "letter writing campaign ... is an attempt to try to influence the School Board to take action against [her]" and that the "letters present a direct threat to the continuance of [her] employment". Accordingly, the appellant submits that disclosure of the identity of the affected persons would allow her to defend herself and, thus, raises the considerations of section 14(2)(d) of the Act (fair determination of rights).

The affected persons raise several considerations. They submit that the records contain information about their personal recommendations or evaluations and their religious beliefs. Therefore, they argue that disclosure would be a presumed unjustified invasion of personal privacy under sections 14(3)(g) (personal or personnel evaluations) and 14(3)(h) (religious beliefs).

The affected persons further submit that their letters were provided in confidence (section 14(2)(h)), that they would be exposed unfairly to pecuniary or other harm (section 14(2)(e)) and that the information is highly sensitive (section 14(2)(f)).

Having carefully reviewed the representations and the records, I have made the following findings:

1. In a broad sense, it could be argued that some of the comments contained in the records are "evaluations" of the appellant. However, in my view, it is not possible to characterize these comments as "personal evaluations" or "personnel evaluations". Accordingly, in my view, section 14(3)(g) does not apply.
2. The narrative portions of the letters contain information which can be tied to religious beliefs, and this information has been disclosed to the appellant. Associating this information with the personal identifiers which have not been disclosed would bring the information within section 14(3)(h), and such disclosure would constitute a presumed unjustified invasion of privacy.

3. The appellant has received all of the information contained in the records which relates to her (the narrative portions of the letters). I am not convinced that the personal identifiers of the affected persons are required for a fair determination of her rights in any current or impending proceedings. Accordingly, section 14(2)(d), while relevant, does not weigh heavily in favour of disclosure in the circumstances of this appeal.
4. I have not been provided with any substantial basis for the assertion that disclosure of the information relating to the affected persons **would** expose them **unfairly** to pecuniary or other harm and, therefore, section 14(2)(e) does not weigh heavily in favour of privacy protection in the circumstances of this appeal.
5. The affected persons have indicated that they expected confidentiality when they provided their letters to the Board. In my view, section 14(2)(h) is a relevant consideration in the circumstances of this appeal.
6. I agree that the information contained in the records may be considered highly sensitive (section 14(2)(f)).
7. None of the personal information contained in the record falls under section 14(4) and the appellant has not raised the possible application of section 16 of the Act.

Having considered all of the circumstances of this appeal and balanced the appellant's right to access her personal information against the interests of the affected persons in protecting their privacy, I find that disclosure of the information remaining at issue, specifically the names, addresses and personal identifiers of the affected persons, would be an unjustified invasion of their personal privacy and, therefore, this information is exempt from disclosure under section 38(b) of the Act.

Because of the manner in which I have disposed of this issue, it is not necessary for me to consider whether one of the affected persons is entitled to rely on sections 12 and 38(c), or whether either of these sections apply.

ORDER:

I uphold the Board's decision.

Original signed by: _____

March 21, 1996

Holly Big Canoe
Inquiry Officer