



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

ORDER M-797

Appeal M_9600117

**The Kirkland Lake_Timiskaming District 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

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

NATURE OF THE APPEAL:

The Kirkland Lake-Timiskaming Roman Catholic School Board (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for a copy of an early retirement package provided to the Board's former Superintendent of Finance (the Superintendent).

The Board identified two responsive records. They consist of a three-page proposal and covering letter submitted by the Superintendent, and the Board's two-page response. The proposal describes the rationale for the Superintendent's proposal and the figures used to calculate the proposed early retirement package. The Board's response represents an acceptance of the proposal and restates the calculations. The proposal was adopted by the Board on May 23, 1995.

The Board denied access to both records on the basis of the following exemption:

- invasion of privacy - section 14(1)

The requester (now the appellant) appealed the Board's decision.

This office sent a Notice of Inquiry to the appellant, the Board and the Superintendent. Because the Appeals Officer assigned to the file identified the possibility that the records might fall within the scope of section 52(4) of the Act, this issue was included in the Notice. If section 52(4) applies, and none of the exceptions listed in section 54(4) are present, then the records are excluded from the scope of the Act and are not subject to the Commissioner's jurisdiction.

Representations were received from the Board and the Superintendent. The appellant did not submit representations.

PRELIMINARY ISSUE:

JURISDICTION

Sections 52(3) and (4) of the Act read as follows:

- (3) Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
 1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
 2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a

- person, bargaining agent or party to a proceeding or an anticipated proceeding.
- 3 Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.
- (4) This Act applies to the following records:
1. An agreement between an institution and a trade union.
 2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.
 3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.
 4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment.

Sections 52(3) and (4) are record-specific and fact-specific. If a record which would otherwise qualify under any of the listed paragraphs of section 52(3) falls within one of the exceptions enumerated in section 52(4), then the record remains within the Commissioner's jurisdiction and the access rights and procedures contained in Part 1 of the Act apply.

The Board's representations state:

Although this document constitutes a communication made in the course of negotiations relating to [the Superintendent's] employment, it also constitutes the final agreement between the school Board and [the Superintendent] resulting from those negotiations. The document requested by the appellant would appear to fall within the ambit of paragraph 52(4)3 of the Act, and is therefore subject to the application of the Act.

Having reviewed the records and the Board's representations, I agree. In my view, the two records at issue in this appeal, considered together, constitute the agreement between the Board and the Superintendent with respect to his early retirement. This agreement resulted from negotiations about a matter which clearly relates to the Superintendent's employment with the Board. I find that the records fall within the scope of the exception to the section 52(3) exclusion found in paragraph 3 of section 52(4), and are therefore subject to the Act. Accordingly, I have jurisdiction to consider the issue of denial of access by the Board, and I will now determine whether these records qualify for exemption under section 14(1) as claimed by the Board.

PERSONAL INFORMATION

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 find that they contain the personal information of the Superintendent only, and not the appellant or any other identifiable individual.

Section 14(1) 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 the section. In my view, the only exception to the section 14(1) mandatory exemption which has potential application in the circumstances of this appeal is section 14(1)(f), which reads as follows:

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.

Because section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 14(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of the Superintendent's personal privacy.

Section 14(4)(a) of the Act identifies particular types of information, the disclosure of which does not constitute an unjustified invasion of personal privacy. In circumstances where section 14(4) does not apply, sections 14(2) and (3) provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Even if a record qualifies for exemption under section 14(1), this exemption may be overridden where a finding is made that section 16 (public interest override) of the Act applies to the personal information. The appellant did not raise the application of section 16.

Section 14(4)(a) reads:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution;

The Board submits that the entitlements reflected in the records were not received by the Superintendent as a result of his being employed by the Board. Rather, they were negotiated in exchange for his acceptance of an early retirement package. Consistent with previous orders dealing with similar issues, I find that the entitlements outlined in the records do not constitute "benefits" within the meaning of section 14(4)(a) of the Act (Orders M_173, M_204, M_278 and M-419).

As noted earlier, the appellant did not make representations in response to the Notice of Inquiry.

Having found that the records contain information which qualifies as personal information, and in the absence of any representations from the appellant or other evidence weighing in favour of a finding that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy, I find that the exception contained in section 14(1)(f) does not apply in the circumstances of this appeal, and the records are properly exempt from disclosure under the mandatory requirements of section 14 of the Act.

ORDER:

I uphold the Board's decision.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ June 28, 1996