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

ORDER MO-1444

Appeal MA-000214-1

South Central Catholic District School Board

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NATURE OF THE APPEAL:

The South Central Catholic District School Board (the Board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of all documents and applications pertaining to the recruitment for the position of Director of Administrative and Financial Services, which took place in the fall of 1999. The Director's position was designated by the Board as bi-lingual. The requester also asked for copies of any notes or comments on file pertaining to this matter. The requester was an applicant for this position, but was not among those selected for an interview.

The Board located a number of responsive records and granted access to the following: (i) the description of the competition; (ii) the job description relating to the position in question; (iii) the job advertisement; and (iv) the requester's application.

The Board denied access to the remainder of the responsive records pursuant to section 14(1) (invasion of privacy) of the *Act*, referring to the presumptions in sections 14(3)(d) (employment or educational history) and 14(3)(g) (personal recommendations or evaluations).

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

During mediation, the appellant clarified that he was only seeking access to records relating to each of the five candidates who were granted an interview (the affected persons). The scope of the requested records was also narrowed to include only the resumes of the affected persons and the scores they received for the various components of the job competition. Specifically, the scores relate to the following four components: (i) personal interview; (ii) telephone interview; (iii) budget presentation; and (iv) sample letter.

The appellant also indicated that he is not seeking access to the names, addresses and social insurance numbers of any of the affected persons.

A Notice of Inquiry was sent to the Board and the five affected parties initially, and representations were received from the Board only. I then sent a Notice of Inquiry, along with a severed copy of the Board's representations, to the appellant. The appellant also provided me with representations in response.

RECORDS:

The records at issue in this appeal consist of:

- The resumes of the five affected persons; and
- Portions of a one-page record listing the scores received by the five affected persons on the components of the job competition. Only the four components listed above continue to be at issue.

DISCUSSION:

PERSONAL INFORMATION

The section 14(1) personal privacy exemption only applies to "personal information". "Personal information" is defined in section 2(1) of the *Act*, in part, to mean recorded information about an identifiable individual, including information relating to the education or the employment history of the individual [paragraph (b)], private or confidential correspondence sent to an institution by the individual [paragraph (f)], the views or opinions of another individual about that individual [paragraph (g)] and the individual's name where it appears with other personal information relating to the individual [paragraph (h)].

As set out above, the appellant has indicated that he is not seeking access to the names, addresses and social insurance numbers of any of the affected persons.

None of the records contain any personal information of the appellant.

Resumes

The Board submits that the information contained in the resumes is the personal information of the affected persons. It identifies that the resumes were provided to the Board on a confidential basis in response to advertisements which identified that they would be treated as such. The Board also argues that the resumes contain the personal information of the affected persons based on previous orders of this Office (eg. Orders P-727 and P-766).

I concur with the Board's position that the resumes contain the personal information of the affected persons.

However, the appellant has stated that he is not seeking access to any personal identifiers contained in the records (ie. the names, addresses, phone numbers, and other identifiers of the affected persons). In his representations, the appellant states: "I expressly request that this information be struck out to the extent that I would not be able to recognize these individuals." He takes the position that, by severing out the personal identifiers, concerns about the disclosure of personal information can be eliminated.

The Board disputes this by stating:

> Even if the appellant is not requesting the names of the persons concerned, the market in French for a position of this sort in Toronto is so limited that one or more of the job applicant's names would still very likely be revealed directly or indirectly.

Former Commissioner Tom Wright addressed a similar issue in Order P-328. In that appeal, a request was made for certain information, including resumes, and the requester similarly asked that certain personal identifiers be severed so as to remove the records from the category of "personal information". This issue was addressed in Order P-328 as follows:

> As far as the various applications and resumes are concerned, I find that the information which would remain, even if the categories of personal information identified by the appellant are severed, would still satisfy the requirements of the definition of personal information. In my view, applications and resumes by their very nature consist predominately of personal information, and I am not convinced that severance of certain categories of information such as those identified by the appellant would be sufficient to render the record no longer relating to "identifiable individuals".

Commissioner Wright's reasoning is also applicable in this appeal. Resumes by their nature consist of personal information, and I find that it is not possible to remove personal identifiers from the resumes of the five affected persons in a way which would be sufficient to remove them from the category of "personal information".

Accordingly, I find that the information in the resumes is the personal information of the five affected persons.

Test score results

The Board submits that the scores of the four components of the job competition are also the personal information of the affected persons, because they amount to the opinions of the selection panel about the candidates, and therefore fit within paragraph (g) of the definition of personal information. The appellant again suggests that names be removed from the records to address any personal privacy concerns.

A number of previous orders have reviewed whether it is possible to disclose the score results of job competitions without disclosing the personal information of identifiable individuals. One such order is Order P-1076, where I decided that this issue must be examined in the context of the specific situation. I stated:

> It is clear from the definition of personal information in section 2(1) of the *Act* that a number such as a test score would only constitute an individual's personal information if that number could be linked to the identity of that individual. Whether or not such a linkage exists is a factual determination which must be made in the circumstances of an individual appeal, based on representations provided by the parties and an independent review of the record by the Commissioner's officer.

None of the five candidates whose scores were at issue in Order P-1076 nor the institution chose to provide representations during the course of my inquiry in that appeal. After reviewing the records, I found that, in the absence of any evidence establishing a reasonable likelihood that a particular test score could be linked to one of the five candidates in the competition, the test scores alone did not contain recorded information about any identifiable individual, and I ordered the "total score" of the five candidates to be disclosed.

Other appeals involving similar requests have resulted in different determinations based on their own particular facts and circumstances. For example, in Order P-1045, Adjudicator Laurel

Cropley found that the anonymised scores of four candidates for a job competition could, in those circumstances, be referable to identifiable individuals. She went on to find that the test scores did constitute the personal information of those individuals.

As far as the circumstances of the current appeal are concerned, the Board submits:

> Even if the appellant is not requesting the names of the persons concerned, the market in French for a position of this sort in Toronto is so limited that one or more of the job applicant's names would still very likely be revealed directly or indirectly. ... Furthermore, even without a name, it is possible to identify the documents and evaluations of the successful candidate.

The Board also identifies that the scores of the tests would disclose personal information of the successful candidate, in light of the fact that the successful candidate had achieved the highest score.

Given the nature of the information already provided to the appellant, and the fact that the highest test scores would be referable to the successful candidate, I am satisfied that the disclosure of all five candidates' test scores, even with the names removed, would reveal personal information about an identifiable individual, namely the successful candidate.

However, if the successful candidate's test score results are severed, along with the names of all five affected persons and the dates of their interviews, in my view, this would successfully remove all information referable to any identifiable individual. Although the Board states that the anonymized test scores could reveal the identity of the candidates, I am not persuaded that this would be the case. Unlike resumes which would be extremely difficult to anonymize, test scores themselves, without any linkage to the identity of the candidates, are simply a set of numbers and, absent evidence to the contrary which has not been provided by the Board, I do not accept that these raw numbers constitute personal information. Rather, I find that a record severed in this manner would no longer contain any "personal information", as defined by section 2(1) of the *Act* and, because the section 14(1) exemption claim only applies to personal information, I find that the severed record cannot qualify for exemption under this section, and should be disclosed to the appellant.

INVASION OF PRIVACY

Where a requester seeks the personal information of another individual, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies. The only section with potential application in the circumstances of this appeal is section 14(1)(f) which reads:

> 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.

Sections 14(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of privacy. Section 14(2) provides some criteria for the institution to consider in making this determination, and section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure under section 14(3) has been established, it cannot be rebutted by either one or a combination of the factors set out in 14(2) (*John Doe* v. *Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

Sections 14(3)(d) and (g) of the *Act* read:

> (3) 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;
>
> (g) consists of personal recommendations or evaluations, character references or personnel evaluations;

With respect to the resumes, the Board submits that the information contained in them constitutes the employment history of the affected persons. The Board refers to previous orders in support of this position (Orders M-7, M-319 and M-1084).

I concur with the Board and find that resumes contain the employment history of the individuals, and that their disclosure would constitute a presumed unjustified invasion of privacy under section 14(3)(d) of the *Act*.

As far as the test scores of the successful candidate are concerned, the Board submits that this information falls within the scope of the section 14(3)(g) presumption. The test score results are clearly referable to the successful candidate, and disclose the scores obtained by this individual in the competition. Several previous orders of this Office have dealt with requests for information contained in job competition files generally, and pertaining to the scores awarded to individual candidates (Orders P-485, P-722, P-940 and P-1045). In Order P-722, Adjudicator Donald Hale found that interview scores constituted personnel evaluations and the presumption in section 21(3)(g) of the provincial *Freedom of Information and Protection of Privacy Act* [the equivalent to section 14(3)(g) of the *Act*] applied to them. I agree with this interpretation, and I adopt it for the purposes of this appeal.

In my view, the test scores of the successful candidate are accurately characterized as personnel evaluations of this individual, and their disclosure would constitute a presumed unjustified invasion of personal privacy under section 14(3)(g) of the *Act*.

In his representations, the appellant questions why the Board has not disclosed the record, and suggests that it is important that this information be released to ensure that the selection process is transparent. He also asserts that the requested information should be in the public domain, and not excluded from the *Act*. As well, the appellant refers to the importance of the public being able to review the Board's actions. The appellant appears to be raising the possible relevance of

section 14(2)(a), which applies where disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny. Even if I were to agree with the appellant and find that this factor is relevant in the circumstances of this appeal, the Divisional Court's decision in *John Doe, supra*, has determined that the factors in section 14(2) cannot be used to rebut a presumption in section 14(3).

In summary, I find that disclosure of the resumes of the five affected persons and the portions of the one-page record containing the test score results of the successful candidate and the names and interview dates for all five affected persons would constitute an unjustified invasion of the privacy of these individuals, and these records and partial record qualify for exemption under section 14(1) of the *Act*.

PUBLIC INTEREST IN DISCLOSURE

The appellant's representations refer to a public interest in reviewing the actions of the Board. He points to the purpose of the *Act* which, in his view, is to allow access to public documents held by government agencies. Although he does not specifically refer to section 16 of the *Act*, the appellant appears to be raising the "public interest" issue found in that section.

Section 16 of the *Act* states:

> An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

In Order P-984, Adjudicator Officer Holly Big Canoe examined the component parts of section 23 of the provincial *Act*, which is the equivalent of section 16 of the *Act*. She held that:

> There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

"Compelling" is defined as "rousing strong interest or attention" (Oxford). In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information which the public has and can use to effectively express public opinion or make political choices.

In support of his position, the appellant states:

> Transparency is a fundamental element of administrative law and it is in the public's interest to have access to the documents in question. The very intent of the *Act* is to allow public access to public agencies' "public" documents. I understand that the protection of privacy has to be taken into account; however, there must be a means, as proposed in this case, to achieve the proper balance between the right of access to information and the rights of the person concerned.

While I agree with the appellant that one of the purposes of the *Act*, as set out in section 1, is to provide members of the public with the right of access to information held by the government, another purpose set out in that same section is to protect the personal privacy of individuals. The appellant's view that the proper balance will be achieved in this appeal by severing the names and other identifiers from the records is not supported by my findings that the records covered by section 14(1) of the *Act*, even absent the identifiers, will still identify the affected persons.

Having considered the appellant's submissions, in my view, he appears to be interested in obtaining access to the records for his own purposes, and the interests he advances are essentially private in nature. I find that the appellant has failed to establish the existence of a public interest in disclosure of the information contained in the records. Even if a public interest does exist, I find that it is not compelling and would not clearly outweigh the purpose of the personal information exemption in the circumstances of this appeal. Accordingly, section 16 of the *Act* is not applicable.

ORDER:

1. I order the Board to disclose the test scores of the four unsuccessful candidates, with their names and dates of their interviews removed. I have attached a highlighted version of the one-page record containing this information with the copy of this order sent to the Board's Freedom of Information and Privacy Co-ordinator which identifies the portions that should **not** to be disclosed. This disclosure is to be made to the appellant by **July 27, 2001** but not before **July 23, 2001**.

2. I uphold the decision of the Board to deny access to the resumes of the five affected persons, and to the names of the five affected persons, the dates of their interviews, and the test scores of the successful candidate contained on the one-page record.

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 record which is disclosed to the appellant pursuant to Provision 1, upon request.

Original signed by: June 21, 2001
Tom Mitchinson
Assistant Commissioner