

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER MO-3605-F

Appeal MA16-282

Near North District School Board

May 10, 2018

**Summary:** The sole issue in this final order is whether the Near North District School Board properly exercised its discretion. In Interim Order MO-3552-I, the adjudicator was unable to determine whether the board had properly exercised its discretion, based on a lack of evidence provided by the board. The board was ordered to exercise its discretion and to provide representations on this exercise of discretion to the appellant and this office within 30 days of the interim order. In this final order, the adjudicator upholds the board's exercise of discretion and dismisses the appeal.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56., sections 38(a) and 38(b).

**Orders and Investigation Reports Considered:** Interim Order MO-3552-I.

### OVERVIEW:

[1] The sole issue in this final order is whether the Near North District School Board (the board) properly exercised its discretion. On January 26, 2018, I issued Interim Order MO-3552-I. In that order, I partially upheld an access decision made by the board in response to a request made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). In addition to making a number of findings regarding the application of certain exemptions, I also found, based on a lack of representations, that I was unable to determine whether the board had properly exercised its discretion under sections 38(a) or 38(b).

[2] In Order provision 4, I ordered the board to exercise its discretion and to provide representations on this exercise of discretion to the appellant and to this office within 30 days of the date of Interim Order MO-3552-I. I also remained seized of this matter in order to determine whether the board exercised its discretion properly.

[3] I subsequently received representations from the board regarding its exercise of discretion. The board states that it took the following into consideration in exercising its discretion to withhold certain records under sections 38(a) or 38(b):

- The nature of the information and why the appellant is seeking it;
- The information withheld in the records contains the personal and sensitive information of other individuals; and
- There is no compelling public interest in the disclosure of the withheld information in the records, and disclosure would only satisfy the personal interest of the appellant.

[4] The appellant did not respond to the board's representations on its exercise of discretion.

[5] An institution's exercise of discretion must be made in full appreciation of the facts of the case, and upon proper application of the applicable principles of law.<sup>1</sup> It is my responsibility to ensure that this exercise of discretion is in accordance with the *Act*. If I conclude that discretion has not been exercised properly, I can order the institution to reconsider the exercise of discretion.<sup>2</sup>

[6] Based on the board's representations, I am satisfied that it properly exercised its discretion because it took into account relevant considerations and did not take into account irrelevant considerations. I am satisfied that the board considered the possible public interest in the disclosure of the records, as well as the privacy interests of the personal information of individuals contained in the records. I also note that the board disclosed several records to the appellant, in which it withheld only portions of them. In addition, further records have been disclosed to the appellant as a result of Interim Order MO-3552-I. Lastly, I find that the board took into consideration the purposes of the *Act*, including the principle that exemptions from the right of access should be limited and specific.

[7] Consequently, I uphold the board's exercise of discretion.

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<sup>1</sup> Order MO-1287-I.

<sup>2</sup> Order 58.

**ORDER:**

1. I uphold the board's exercise of discretion and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Cathy Hamilton  
Adjudicator

\_\_\_\_\_ May 10, 2018