Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3990

Appeal MA17-183

Waterloo Region District School Board

December 17, 2020

Summary: A reporter submitted a request to the Waterloo Region District School Board (the board) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the board's decision to cancel and then reinstate school trips to Vimy Ridge in the spring of 2017. The board granted partial access to the responsive records, relying on the exclusion for records relating labour and employment relations (section 52(3)3), and the mandatory personal privacy exemption (section 14(1)), to deny access. The requester appealed the board's decision and raised the application of the public interest override in section 16 of the *Act*, claiming that disclosure of the information was in the public interest.

In this order, the adjudicator upholds the board's decision to deny access to two records based on the exclusion in section 52(3)3. She also upholds the board's decision to withhold some information under the personal privacy exemption at section 14(1), but finds that the majority of the withheld information is not exempt on that basis because it is not "personal information" once identifiers are removed. She orders disclosure of that information.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 2(1) (definition of "personal information"), 14(1), 16, and 52(3)3.

Orders and Investigation Reports Considered: Order M-381.

OVERVIEW:

[1] This appeal arises out of a request that a newspaper reporter made to the Waterloo Region District School Board (the board) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the board's

decision to cancel and then to reinstate school trips to France and Belgium (the Vimy Ridge trips) in the spring of 2017. In particular, the requester sought access to:

> All emails and documents (reports, memos, briefing notes, letters to parents or staff, etc.) in relation to the review of Category III trips (to France and Belgium) from September 2016 through December 2016.

[2] In response, the board granted full access to a number of responsive records, including email correspondence between staff and trustees relating to the board's decision-making process about the school trips. However, the board denied access to 18 emails from students and parents to staff about the Vimy Ridge trip, and staff responses to those emails, on the basis of the personal privacy exemption at section 14(1) of the *Act*. The board also withheld a board general ledger account code in two emails on the basis of section 11 (economic or other interests) of the *Act*.

[3] The requester appealed the board's denial of access to this office.

[4] During the mediation stage of the appeal process, the appellant advised that he is not interested in access to the general ledger account code, or to identifying personal information (including names, email addresses, and contact information) of members of the public contained in the emails.

[5] The board then notified the students and parents whose information is contained in the emails pursuant to section 21(1) of the *Act*. The board invited those individuals (who are affected parties to this appeal) to provide their views on disclosure of their information to the appellant. Three affected parties consented to disclosure of some or all of their information, two objected to any disclosure of their information, and no response was received from the remaining affected parties. Based on the consent received, the board granted access to additional emails. The board also issued another revised decision in which it granted access to previously withheld portions of released emails (namely, the forwarding portions of email strings). The board also disclosed one additional email after receiving consent from a fourth affected party. Finally, the board identified one of the emails as being non-responsive to the appellant's request (as it is related to an outside agency organizing a field trip to France), and claimed section 52(3) (exclusion for employment or labour relations information) for two of the emails.

[6] The appellant advised the mediator that he does not seek access to the email identified as non-responsive to his request. He does, however, continue to seek access to the remaining thirteen emails withheld under sections 14(1) or 52(3). The appellant also claims a public interest in access to the emails withheld pursuant to section 14(1), thereby raising the application of the public interest override at section 16.

[7] As no further mediation was possible, this appeal was transferred to the adjudication stage of the appeal process for an inquiry under the *Act*. The adjudicator began an inquiry by seeking the representations of the board on the facts and issues in the appeal. She also invited six affected parties, who either did not consent or did not

respond to the board's notification, to participate in this appeal if they wished. She heard from one affected party, who did not consent to disclosure of her personal information to the appellant. The adjudicator then invited the appellant to provide written representations, responding to the Notice of Inquiry, as well as to the non-confidential portions of the board's submissions.[1] The board also provided representations in reply. The appeal was then transferred to me to conclude the inquiry.

[8] In the board's representations, it noted that record 13 includes a two-page attachment comprised of student names and email addresses. As the appellant had indicated during mediation that he is not interested in that information, the board determined that only the cover letter portion of record 13 is at issue. Upon a review of that portion of the record, the board advised that the information in the cover letter could be released with the exception of a vendor's personal cell phone number. In response, the appellant confirmed that he is not seeking access to the vendor's cell phone number or the students' names or emails addresses. Therefore, the board can proceed with disclosing record 13 with severances, as agreed, to the appellant, if it has not already done so. As a result, record 13 is no longer at issue in this appeal, and is not considered in the analysis that follows.

[9] In addition, the appellant reiterated that he is not interesting in accessing what the parties referred to as the "forwarding portions of email strings," which appear at the top of some of the email records, nor is he interested in accessing, "names, email addresses, contact information, or other identifying information about individuals who sent the emails," or "identifying information about people named in the emails who are not employed by the school board."

[10] For the reasons that follow, I uphold the board's decision that two of the records are excluded from the scope of the *Act* pursuant to the labour or employment relations exclusion in section 52(3)3. I find that once the identifying information is severed from the records to reflect the scope of the appellant's request, most of the records no longer constitute records of "personal information" that may subject to the exemption at section 14(1). However, I find that even when severed as described, one record contains personal information that is exempt under section 14(1). I find that there is no compelling public interest in the disclosure of the exempt information, and I uphold the board's decision to withhold it. I order disclosure of the non-exempt portions of the records at issue.

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[1] The parties' representations were shared in accordance with the IPC's *Code of Procedure* and *Practice Direction Number 7*. Portions of the representations were withheld because they fit within the confidentiality criteria.

RECORDS:

[11] Remaining at issue are 12 email strings that have been withheld in their entirety. I will refer to the records using the numbering applied by the board:

- Record 1 – dated October 28, 2016 (2 pages);
- Record 3 – dated November 10, 2016 (2 pages);
- Record 4 – dated November 12, 2016 (3 pages);
- Record 6 – dated November 15, 2016 (1 page with 4-page attachment);
- Record 7 – dated November 15, 2016 (1 page);
- Record 8 – dated November 15, 2016 (2 pages);
- Record 9 – dated November 17, 2016 [8:41:57 AM] (1 page);
- Record 10 – dated November 17, 2016 [3:58:45 PM] (1 page);
- Record 12 – dated November 24, 2016 (1 page);
- Record 14 – dated November 28, 2016 (1 page);
- Record 15 – dated November 29, 2016 (1 page);
- Record 17 – dated November 30, 2016 (2 pages).

ISSUES:

A. Does the labour and employment relations exclusion in section 52(3) exclude records 6 and 10 from the *Act*?

B. Do records 1, 3, 4, 7, 8, 9, 12, 14, 15, and 17 contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

C. Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue in record 4?

D. Is there a compelling public interest in disclosure of the exempt information that clearly outweighs the purpose of the section 14(1) exemption?

DISCUSSION:

Issue A: Does the labour and employment relations exclusion in section 52(3) exclude records 6 and 10 from the *Act*?

[12] The board claims that records 6 and 10 are excluded from the application of the *Act* under section 52(3)3. This section states:

> 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 ...
>
> > Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[13] If section 52(3) applies to the records, and none of the exceptions found in section 52(4) applies, the records are excluded from the scope of the *Act*. None of the exceptions in section 52(4) apply in the circumstances of this appeal.

[14] For the collection, preparation, maintenance or use of a record to be "in relation to" the subjects mentioned in paragraph 3, it must be reasonable to conclude that there is "some connection" between them.[2]

[15] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to analogous relationships. The meaning of "labour relations" is not restricted to employer- employee relationships.[3]

[16] The term "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.[4]

[17] If section 52(3) applied at the time the record was collected, prepared,

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[2] Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.). Note: The Notices of Inquiry were sent out, and representations received, prior to the Ontario Divisional Court's decision in *Brockville (city) v Information and Privacy Commissioner of Ontario*, 2020 ONSC 4413.

[3] *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.); see also Order PO-2157.

[4] Order PO-2157.

maintained or used, it does not cease to apply at a later date.[5]

[18] Section 52(3) may apply where the institution that received the request is not the same institution that originally "collected, prepared, maintained or used" the records, even where the original institution is an institution under the *Municipal Freedom of Information and Protection of Privacy Act*.[6]

[19] The exclusion in section 52(3) does not exclude all records concerning the actions or inactions of an employee simply because this conduct may give rise to a civil action in which the Crown may be held vicariously liable for torts caused by its employees.[7]

[20] The type of records excluded from the *Act* by section 52(3) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees' actions.[8]

Section 52(3)3: matters in which the institution has an interest

[21] For section 52(3)3 to apply, the institution must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;

2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; and

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

Representations

[22] In its non-confidential submissions, the board takes the position that records 6 and 10 are excluded from the scope of the *Act* pursuant to section 52(3)3. The board notes that record 6 is an email from a teacher to the board's senior administration, while record 10 is an email from the principal of a secondary school to a senior administrator regarding a teacher who was involved in planning the Vimy Ridge trip. The board provided affidavits from the principal and its Coordinating Superintendent of

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[5] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507.
[6] Orders P-1560 and PO-2106.
[7] *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).
[8] *Ministry of Correctional Services*, cited above.

Human Resource Services to support its position on this issue.

[23] The board maintains that even if the identifying information were severed from the records, there is a potential of identifying the staff connected to the content of the emails because of the small number of secondary schools (less than ten) involved in organizing field trips to Vimy Ridge. The board explains that only one or two staff at each school were identified as the trip contacts to the families in their school communities.

[24] The appellant's submissions did not address the board's decision to deny access to records 6 and 10 based on the exclusion in section 52(3)3.

Analysis and findings

[25] Based on my review of records 6 and 10, and the confidential and non-confidential portions of the board's submissions and affidavit evidence, I find that the two records are captured by the exclusion in paragraph 3 of section 52(3), such that they are excluded from the scope of the *Act*.

[26] I am satisfied that both records were collected, prepared, maintained, or used by the board in relation to meetings, consultations, or discussions, and that parts one and two of the three-part test are satisfied.

[27] I am also satisfied that the meetings, consultations, or discussions relate to "employment-related matters" regarding members of the board's workforce, and that the board has an interest in the records that is beyond a mere curiosity or concern. The employment-related matters arose from the relationship between the board, as an employer, and its employees. In particular, the matters addressed in records 6 and 10 pertain to employees' responses to the board's decisions to cancel and then reinstate the Vimy Ridge trips, and the board's response in turn. The board has an interest in these matters due to its role as the employer of the individuals whose actions required addressing through corrective means. Therefore, in my view, the records pertain to employment-related matters in which the board has an interest as employer. Accordingly, I am satisfied that part three of the test is also met. As a result, I find that section 52(3)3 applies to records 6 and 10 and I uphold the board's decision to withhold them on that basis.

Issue B: Do records 1, 3, 4, 7, 8, 9, 12, 14, 15, and 17 contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[28] The board relies on the personal privacy exemption at section 14(1) to withhold records 1, 3, 4, 7, 8, 9, 12, 14, 15 and 17.

[29] In order for section 14(1) to apply, it must first be shown that the records contain "personal information." The term "personal information" is defined in section 2(1) of the *Act* as, "recorded information about an identifiable individual," including

information that fits within the list of examples provided in paragraphs (a) to (h). The list of examples under section 2(1) is not exhaustive; information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[9]

[30] Exceptions to the definition of personal information exist for information about individuals that have been deceased for more than 30 years,[10] and information that would identify an individual in a business, professional, or official capacity.[11] However, even when information relates to an individual in a business, professional, or official capacity, it may still qualify as personal information if it reveals something of a personal nature about the individual.[12]

[31] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[13]

Representations

The board's representations

[32] The board submits that the records at issue were sent by individuals to various board employees, including senior administrators. According to the board, the records contain the authors' personal information, including, for example, their names, email addresses, personal opinions, and information about members of their families.

The appellant's representations

[33] The appellant maintains that he seeks access to the emails from students and parents to the board that have been withheld in their entirety based on the personal privacy exemption in section 14(1). He acknowledges that the emails likely include personal opinions or views, and therefore contain personal information as defined under section 2(1) of the *Act*.

[34] However, as set out above, he confirms that he is not interested in accessing "names, email addresses, contact information or other identifying information about individuals who sent the emails," or "identifying information about people named in the emails who are not employed by the school board."

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[9] Order 11.
[10] Section 2(2) of the *Act*.
[11] Sections 2(3) and 2(4) of the *Act*. To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official, or business capacity will not be considered to be "about" the individual. See, for example, Orders MO-1550-F and PO-2225.
[12] Orders P-1409, R-980015, PO-2225, and MO-2344.
[13] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

The board's reply

[35] In response, the board says the authors of records 1, 3, 4, 9, and 12 did not respond to the third party notice that the board sent them, and therefore it would "support the release of those records" so long as the authors' names, email addresses, and the names of any family members are withheld. The board provided a copy of these records with the suggested severances for my review.

[36] The board maintains that the authors of records 7, 8, 14, 15, and 17 responded to its third party notice, requesting that their emails be withheld in full, because they consider the content of their emails to be personal and do not want them to be disclosed. The board says that it supports those requests, as it agrees that the records contain personal information.

Analysis and findings

[37] Personal information is defined in section 2(1) of the *Act* as "recorded information about an identifiable individual," including:

- information relating to the religion, age, sex, sexual orientation or marital or family status of the individual (paragraph (a));
- information relating to the education […] or employment history of the individual […] (paragraph (b));
- an individual's address or telephone number (paragraph (d));
- the personal opinions or views of the individual (paragraph (e));
- correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature (paragraph (f)); and
- 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 (paragraph (h)).

[38] Having reviewed the records, I am satisfied that they contain personal information, as described above. These records consist of emails between individuals, including students or parents, to board employees, and generally include the authors' names, along with their email addresses, phone numbers, and other personal information, such as the author's view or opinions about the board's decisions relating to the Vimy Ridge trips. Therefore, I find that the above-mentioned records contain the personal information of those individuals as defined in paragraphs (a), (b), (d), (e), (f), and (h) of section 2(1) of the *Act*, as well as under the introductory wording of the definition.

[39] For clarity, I find that the information in these records that relates to board

employees is, with one exception, those individuals' professional, and not personal, information, under the exception in section 2(3) of the *Act*. I am satisfied that this information about board employees does not reveal anything of a personal nature about them.[14] This includes information such as their names, workplace mailing or email addresses, and responses to the correspondence they received.

[40] The one exception to this finding is in record 4, which contains a board employee's response to an email. Although the email was sent in the employee's professional or official capacity, I find that a portion of it includes information that reveals something of a personal nature about the employee, and that it therefore amounts to his personal information for the purposes of the *Act*.[15]

Some personal information has been removed from the scope of the request

[41] The appellant has indicated that he is not interested in obtaining access to "the forwarding portion" of email strings, "names, email addresses, contact information, or other identifying information about individuals who sent the emails," or "identifying information about people named in the emails who are not employed by the school board." As a result, this information is removed from the scope of the appellant's request.

[42] With this in mind, I find that the following identifying information can reasonably be severed from the records to reflect the scope of the appellant's request: names, email addresses, phone numbers, and other information that may identify individuals who are not board employees, such as that relating to their age, school, accomplishments, family history, and employment. I am satisfied that when this information is removed from the records, the remaining information consists of more than "meaningless snippets" of information.[16] And, with one exception (see paragraph 44, below), I find that once severed, the remainder of the records can be disclosed without revealing personal information.

[43] The extent of the severances set out above exceed those proposed by the board for records 1, 3, 4, 9, and 12 (names and email addresses). In my view, even after severing individuals' names and email addresses from those records, other information remains that could be used to identify individuals. However, I am satisfied that once severed as described above, records 1, 3, 7, 8, 9, 12, 14, 15, and 17 cannot be associated with "identifiable individuals," and therefore are not records of "personal information" as defined in section 2(1) of the *Act*. As the severed records no longer contain "personal information" for the purposes of the *Act*, they cannot qualify for

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[14] Order PO-2225.
[15] Orders P-1409, R-980015, PO-2225, and MO-2344.
[16] Order PO-1663.

exemption under the mandatory personal privacy exemption in section 14(1). I will order the board to sever these records and disclose them as described in my order provisions. Given my finding, I do not need to consider the application of the public interest override to this information.

[44] With respect to record 4, however, I found above that it contained the personal, and not just professional, information of a board employee. The appellant did not remove information about board employees from the scope of the appeal, and even when other individuals' identifying information is removed from record 4, as described above, the personal information of an identifiable board employee remains. I will consider whether this personal information is exempt from disclosure under the mandatory exemption in section 14(1), next.

Issue C: Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue in record 4?

[45] Above, I found that even when severed to remove the information that the appellant does not seek access to, record 4 remains a record of "personal information" for the purposes of the *Act*. Where a requester seeks access to the personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. The sections 14(1)(a) to (e) exceptions are relatively straightforward. The information at issue in this appeal does not fit within any of paragraphs (a) to (e) of section 14(1).

[46] The section 14(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 14. Sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy, while section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

[47] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies. None of the section 14(4) paragraphs are relevant in this appeal. The applicability of the public interest override is considered at Issue D, below.

[48] If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 14(2) must be present. In the absence of such a finding, the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies.

[49] The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).

Representations

[50] The board maintains that personal information in the records is subject to the mandatory personal privacy exemption in section 14(1). Although the board "supports" the release of records 1, 3, 4, 9 and 12 so long as individuals' names and email addresses are severed, it notes that the authors of records 7, 8, 14, 15, and 17 expressly declined their consent for the disclosure of those records.

[51] The appellant submits that once the records are severed to remove identifying information of individuals who sent emails to the board, or who are otherwise named in those emails, the remaining information in the records does not constitute personal information. Accordingly, he maintains that disclosing the severed records would not be an unjustified invasion of privacy as contemplated by section 14(1). He also cites the factor in section 14(2)(a), which favours disclosure of information where it is desirable for the purpose of subjecting the activities of the institution to public scrutiny.

Analysis and Findings

[52] To begin, I note that the parties' representations are based on the board's decision to withhold the records in full under section 14(1). They do not reflect my finding, above, that as a result of severing the records to reflect the scope of the appellant's request, only a small portion of one record (record 4) contains personal information to which the personal privacy exemption in section 14(1) may apply. Nevertheless, I will consider the evidence before me to determine whether that portion of record 4 is exempt under section 14(1).

[53] The personal information at issue in record 4 consists of a portion of an email that a board employee sent to an individual, in response to that individual's email to the board regarding its decision to cancel the Vimy Ridge trip. Above, I found that although the employee sent the email in his professional capacity, a portion of it includes information that reveals something of a personal nature about the employee, and therefore amounts to his personal information for the purposes of the *Act*.

[54] Based on my review of the parties' submissions and the information at issue, I am satisfied that the presumption in section 14(3)(d) applies to part of the board employee's personal information. This presumption states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
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> (d) relates to employment or educational history.

[55] In particular, I find that some of the withheld personal information relates to the board employee's employment history. Accordingly, I find that portion of record 4 is exempt under section 14(1), on the basis that its disclosure would be a presumed unjustified invasion of the employee's personal privacy under section 14(3)(d).

[56] I am not persuaded that any of the other presumptions in section 14(3) apply to the remaining personal information that I have identified in record 4. However, the personal information will be exempt under section 14(1), unless I find that its disclosure would not be an unjustified invasion of personal privacy under section 14(1)(f).

[57] In order to find that disclosure of personal information does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances *favouring* disclosure in section 14(2) must be present. In the absence of such a finding, the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies.[17]

[58] As noted above, the appellant cites the factor favouring disclosure at section 14(2)(a), which states:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether
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> > (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny.

[59] Considering the nature of the withheld personal information, however, I am not satisfied that its disclosure would be desirable for the purpose contemplated by section 14(2)(a). I am also not satisfied that any of the other listed or unlisted factors favouring disclosure in section 14(2) apply to it. Therefore, I find that the mandatory personal privacy exemption in section 14(1) applies to exempt from disclosure the portion of record 4 that consists of the board employee's personal information.

Issue D: Is there a compelling public interest in disclosure of the exempt information that clearly outweighs the purpose of the section 14(1) exemption?

[60] The appellant raised the application of the public interest override at section 16 of the *Act*. Although section 16 does not apply to the exclusions listed in the *Act,* including section 52(3)3, it may apply to "override" the application of certain exemptions. In particular, this section states:

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[17] Orders PO-2267 and PO-2733.

> An exemption from disclosure of a record under sections 7, 9, 9.1, 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. (emphasis added)

[61] For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[62] The *Act* is silent as to who bears the burden of proof in respect of section 16. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 16 applies. To find otherwise would be to impose an onus that could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.[18]

Compelling public interest

[63] In considering whether there is a "public interest" in disclosure of a record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[19] Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[20]

[64] A public interest does not exist where the interests being advanced are essentially private in nature.[21] Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.[22]

[65] The word "compelling" has been defined in previous orders as "rousing strong interest or attention."[23]

[66] Any public interest in *non*-disclosure that may exist also must be considered.[24] A

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[18] Order P-244.
[19] Orders P-984 and PO-2607.
[20] Orders P-984 and PO-2556.
[21] Orders P-12, P-347 and P-1439.
[22] Order MO-1564.
[23] Order P-984.
[24] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling."[25]

[67] A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation;[26]
- public safety issues relating to the operation of nuclear facilities have been raised;[27] and
- disclosure would shed light on the safe operation of petrochemical facilities[28] or the province's ability to prepare for a nuclear emergency.[29]

[68] A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations;[30]
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations;[31]
- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding;[32]
- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter;[33] and
- the records do not respond to the applicable public interest raised by the appellant.[34]

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[25] Orders PO-2072-F, PO-2098-R and PO-3197.
[26] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).
[27] Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.) and Order PO-1805.
[28] Order P-1175.
[29] Order P-901.
[30] Orders P-123/124, P-391 and M-539.
[31] Orders P-532, P-568, PO-2472, PO-2614 and PO-2626.
[32] Orders M-249 and M-317.
[33] Order P-613.
[34] Orders MO-1994 and PO-2607.

Purpose of the exemption

[69] The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

[70] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.[35]

Representations

[71] The board maintains that there is no compelling public interest in the disclosure of information that it withheld pursuant to the mandatory personal privacy exemption because, according to the board, disclosure would not "address any public interest concerns." Moreover, the board claims that a "significant amount of information has already been disclosed to the appellant," consisting of over 300 pages of emails relating to the board's decision to cancel and then reinstate the Vimy Ridge field trip.

[72] The appellant maintains that disclosure of the withheld information is in the public interest because the public has a right to expect the board's expenditures to be made in accordance with its carefully developed policies and procedures. The appellant explains that when the board cancelled the Vimy Ridge trip, it did so without public consultation. The appellant also notes that as a result of its decision, the board was prepared to spend more than $56,000 to cover cancellation fees and deposits. He claims that the board later reversed its decision after "community outcry."

[73] The appellant submits that "the board deserves public scrutiny for how it made its controversial Vimy [Ridge trip] decision and for how it reversed it." To allow for such scrutiny, the appellant says the public requires an understanding of how parents and students reacted to the board's decision, which cannot, he claims, be "fully told" without knowing what the students and parents said to the board in their emails. According to the appellant, withholding the emails allows the board to escape scrutiny over a decision that was "poorly received and later reversed."

[74] In response, the board notes that in order to find a compelling public interest in disclosure, the information at issue must serve the purpose of informing the public about the activities of their government. It further adds, citing Orders M-733 and M-1074, that a public interest is not automatically established where a requester is a member of the media.

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[35] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, cited above.

[75] The board submits that disclosure of the withheld personal information would not rouse a "strong interest or attention," since a considerable amount of information has already been disclosed, and the board has since made the decision to reinstate the trips.

Analysis and findings

[76] Again, I note that the parties' representations about the public interest override are based on the board's decision to withhold the records under section 14(1). They do not reflect my finding, above, that section 14(1) only applies to a small portion of record 4. Nevertheless, I will consider the evidence before me to determine whether there is a public interest in the disclosure of the exempt information in record 4.

[77] The first step in the section 16 analysis is to determine whether there is a compelling public interest in the disclosure of the withheld information. The appellant asserts that there is, as disclosure will subject the board's decisions to additional public scrutiny. Accordingly, I must decide whether it is in the public interest to disclose the exempt portion of the record in order to shed light on how the board made its decisions to cancel, and then reinstate, the school trips to Vimy Ridge.

[78] In Order M-381, Adjudicator John Higgins found that a significant factor to be considered when deciding whether the public interest override applies is the degree of public disclosure that has already taken place concerning a matter. When the public has already been provided with a considerable amount of information about a matter, there is unlikely to be a compelling public interest in disclosure that outweighs the purpose of an exemption.

[79] Based on my review of the evidence before me, I am satisfied that the appellant has already obtained access to a considerable amount of information regarding the board's decision to cancel and then reinstate the trips in question. In particular, the appellant obtained access to hundreds of pages of correspondence between board staff and trustees relating to the board's decision-making process about the school trips to Vimy Ridge.

[80] I am also mindful of the fact that I will be ordering the disclosure of severed records consisting of correspondence between individuals and board employees, which will reveal students' and parents' views and opinions regarding the board's decisions with respect to the trips.

[81] Considering the information that has been disclosed and that which will be disclosed as a result of this order, along with the nature of the exempt personal information in record 4, I find that there is no compelling public interest in the disclosure of the exempt information, as it will not meaningfully facilitate or contribute to public scrutiny of the board's decisions regarding the Vimy Ridge trips. As the first part of the test under section 16 is not met, it is not necessary for me to consider the second part. I find that section 16 does not apply. Accordingly, I uphold the board's

decision to withhold the personal information of its employee in record 4.

ORDER:

1. I find that records 6 and 10 are excluded from the *Act* under section 52(3)3.

2. I uphold the board's decision to withhold personal information under section 14(1), in part.

3. I order the board to disclose the portions of the records that are not exempt under section 14(1). I order the board to disclose the severed records to the appellant by **January 25, 2021** but not before **January 20, 2021.**

4. For clarity, a copy of highlighted records will be provided to the board. **The highlighted portions are to be withheld** on the basis that they can be severed to reflect the scope of the appellant's request, or are exempt under section 14(1). **Other information in the records that the parties have mutually agreed is no longer at issue, such as non-responsive information or the forwarding portions of emails, should also be withheld.**

5. In order to verify compliance with this order, I reserve the right to require the board to provide me with a copy of the records that I have ordered disclosed in order provisions 3.

6. The timelines in this order may be extended if the board is unable to comply in light of the current COVID-19 situation. I remain seized of the appeal to address any such requests.

Original signed by: December 17, 2020

Jaime Cardy
Adjudicator