

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4480

Appeal MA22-00730

Waterloo Region District School Board

January 11, 2024

Summary: The Waterloo Region District School Board (the board) received a request from an individual under the *Act* for records related to a specified social media post. The board located one responsive email and denied access to it in full under section 7(1) (advice or recommendations). The board later disclosed additional responsive records and a portion of the initial email, but the appellant continued to seek access to the remainder of the email.

In this order, the adjudicator finds that the withheld information in the email is exempt from disclosure under section 7(1) and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, section 7(1).

OVERVIEW:

[1] The Waterloo Region District School Board (the board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

All internal records (emails, minutes, notes, memoranda, etc.) related to the tweet sent by the WRDSB Twitter Account on October 7, 2022, stating 'We hope all of our #WRDSB students, staff and families can find some time to rest and be grateful this holiday long weekend. You deserve it! See you Tuesday!' I [the requester] do not require any external correspondence or

any documents from individual schools rather than staff working for central HQ and/or in a communications role for the Board.

[2] The board issued a decision stating that it had located one responsive record and denied access to it pursuant to section 7(1) (advice or recommendations) of the *Act*. The requester, now the appellant, appealed the board's decision to the Information and Privacy Commissioner of Ontario (IPC).

[3] During the mediation stage of the appeal, the appellant confirmed that he was seeking full access to the email, and also stated that additional records responsive to the request should exist. The board conducted another search and located three additional pages, granting access to them in full. The appellant stated that he continued to believe that additional records should exist.

[4] Further mediation was not possible and the appeal was transferred to the adjudication stage of the appeals process where an adjudicator may conduct an inquiry. I decided to conduct an inquiry and sought and received representations from the board. In its representations, the board agreed to provide further access to the email at issue, with one portion remaining withheld. A new decision letter was issued to the appellant disclosing the additional portion of the record.

[5] The board's representations were shared with the appellant in accordance with the IPC's *Code of Procedure*. After reviewing the board's representations, the appellant stated that he was no longer disputing the board's search efforts, and accordingly whether the board conducted a reasonable search for records is no longer at issue in the appeal. The appellant stated that he continued to seek access to the information that the board continued to withhold, but he did not provide further representations.

[6] For the reasons that follow, I uphold the board's decision and dismiss the appeal.

RECORDS:

[7] The only information at issue is the redacted portion of a one-page email between board staff. A portion of the email was disclosed during the inquiry, but the remaining portion remains at issue.

DISCUSSION:

[8] With the appellant no longer disputing the reasonableness of the board's search efforts, the sole issue in this appeal is whether to uphold the board's decision to withhold the redacted portion of the email on the basis of the discretionary exemption at section 7(1) for advice or recommendations.

[9] Section 7(1) of the *Act* exempts certain records containing advice or

recommendations given to an institution. This exemption aims to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.¹

[10] Section 7(1) states:

A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

[11] "Advice" and "recommendations" have distinct meanings. "Recommendations" refers to a suggested course of action that will ultimately be accepted or rejected by the person being advised. Recommendations can be express or inferred.

[12] "Advice" has a broader meaning than "recommendations." It includes "policy options," which are the public servant or consultant's identification of alternative possible courses of action. "Advice" includes the views or opinions of a public servant or consultant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.²

[13] "Advice" involves an evaluative analysis of information. Neither "advice" nor "recommendations" include "objective information" or factual material.

[14] Section 7(1) applies if disclosure would "reveal" advice or recommendations, either because the information itself consists of advice or recommendations or the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.³

[15] Examples of the types of information that have been found *not* to qualify as advice or recommendations include:

- factual or background information,⁴
- a supervisor's direction to staff on how to conduct an investigation,⁵ and

¹ *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.

² See above at paras. 26 and 47.

³ Orders PO-2084, PO-2028, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563.

⁴ Order PO-3315.

⁵ Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.).

- information prepared for public dissemination.⁶

[16] Sections 7(2) and (3) create a number of mandatory exceptions to the section 7(1) exemption. If the information falls into one of these categories, it cannot be withheld under section 7(1). None of these exceptions were argued, or in my view apply, in the circumstances of this appeal.

Representations, analysis and finding

[17] Only the board provided substantive representations in this appeal. The board submits that the information in the email contains advice and recommendations from a staff member to other staff members in the Communication Department, and that the recommendations were with respect to a specific course of action. It submits that the advice underlying the recommendations was given by a Director and Associate Director to Communication Department staff members. The board submits that the withheld portion of the email does not contain a body of facts separate and distinct from the advice and recommendations.

[18] I have reviewed the withheld portion of the email and I agree with the board's submission that it contains advice or recommendations within the meaning of section 7(1). The portion at issue discusses the staff member's reasoning for a recommended course of action, invites other staff to either accept or reject the action, and explains that the suggested action is directly based on the advice of the Director and Associate Director, which it also summarizes. Additionally, I find that there is no body of facts separate and distinct from the advice and recommendations in the withheld portion of the email. Indeed, the board has already disclosed the bulk of the email, which arguably did contain a separate body of facts, to the appellant.

[19] Section 7(1) is a discretionary exemption, meaning that the board could decide to disclose information even if it qualifies as exempt. I have, therefore, also reviewed the board's exercise of discretion to withhold the information I have found exempt under section 7(1) in the email.

[20] The board argues that it properly exercised its discretion to deny access to this information with the following considerations:

- the information at issue is not personal information,
- it is not related to the requester,
- there is no sympathetic or compelling reason for disclosing the information,

⁶ Order PO-2677

- the information is advice and recommendations that is sensitive to the institution, and
- disclosure would not increase public confidence.

[21] The board submits that it did not exercise its discretion in bad faith or for an improper purpose, and that it considered all relevant considerations while not taking into account any irrelevant considerations. The appellant did not make submissions about the board's exercise of discretion.

[22] Considering the board's representations and the withheld information, I agree that the board properly exercised its discretion. The information at issue consists of advice and recommendations related to the operations of the board, and although it is about the board's interactions with the public, it does not directly relate to the appellant. Based on its representations, it is clear that the board considered the purposes of the *Act* and sought to balance the appellant's general right of access to information with the limited exemptions to access in the *Act*.

[23] I find that the board did not exercise its discretion to withhold the information for any improper purpose or in bad faith, and that there is no evidence that it failed to take relevant factors into account or that it considered irrelevant factors. Accordingly, I uphold the board's exercise of discretion in denying access to the remaining portion of the email.

ORDER:

I uphold the decision of the board and dismiss the appeal.

Original signed by: _____
Chris Anzenberger
Adjudicator

_____ January 11, 2024