

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4707

Appeal MA22-00611

Waterloo Region District School Board

October 16, 2025

Summary: An individual made a request to a school board under the *Municipal Freedom of Information and Protection of Privacy Act* for access to records relating to the board's finding that one of its trustees breached the Code of Conduct and the Integrity Commissioner's investigation of the breach. The board issued a decision letter to the appellant denying access to the responsive records on the basis that it did not have custody or control of the records or that the records qualified for the closed meeting exemption under section 6(1)(b) of the *Act*.

In this order, the adjudicator finds that the board does not have custody or control of the Integrity Commissioner's working papers and as a result finds that under section 4(1) of the *Act* the appellant does not have a right of access to these records. However, the adjudicator orders the board to disclose a copy of the Integrity Commissioner's final report and the meeting minutes as neither the discretionary closed meeting exemption under section 6(1)(b) or the mandatory personal privacy exemption under section 14(1) apply. Finally, the adjudicator dismisses the appellant's claim that the board did not conduct a reasonable search as required by section 17 of the *Act*.

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), 4(1), 6(1)(b), 14(1) and 17.

Orders and Investigation Reports Considered: Orders MO-4447, PO-4577-F, and PO-4655.

Cases Considered: *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25 (CanLII), [2011] 2 SCR 306 and *Ontario Criminal Code Review Board v. Hale*, 1999 CanLII 3805 (ON CA).

OVERVIEW:

[1] This order resolves an appeal of a decision issued under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) by the Waterloo Region District School Board (the board) for records related to an investigation of a trustee's conduct completed by an Integrity Commissioner (IC).

[2] The request sought access to:

All records in the custody or control of the Waterloo District School Board ("Board") relating to the votes of the Board made on or about June 6, 2022 to censure and sanction [a named trustee], including but not limited to:

- a) The complaint against [named trustee];
- b) All records of interviews conducted pursuant to the complaint;
- c) All notes and records of the Board's Integrity Commissioner investigating the complaint into the conduct of Trustee [named trustee]; and
- d) The report of the Integrity Commissioner.

[3] In response to the appellant's request, the board conducted a search of its record holdings and located a written complaint against the trustee and the report of the Integrity Commissioner (IC report). The board issued an access decision withholding these records claiming that the closed meeting exemption under section 6(1)(b) applied. The board took the position that any other records created by the IC, such as notes and interview records are not in its custody or control.

[4] The appellant appealed the board's decision to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was assigned to the file to explore settlement with the parties. During mediation, the board identified a further record as responsive to the appellant's request. However, the board took the position that this record, the minutes of a closed board meeting, qualifies for exemption under section 6(1)(b).

[5] At the end of mediation, the appellant confirmed that he was no longer pursuing access to a copy of the complaint¹. However, the appellant confirmed that he continues to seek access to the IC's report and meeting minutes the board says qualify for exemption under section 6(1)(b) along with any records the board says are not in its custody or control. The appellant also claims that the board's search should have located

¹ The appellant confirmed that he was not pursuing access to the complaint form as it was posted it on the internet.

additional responsive records.

[6] As mediation did not resolve the appeal, the file was transferred to the adjudication stage of the appeals process in which an adjudicator may conduct an inquiry. During the adjudication stage, I sought and received written representations from the parties.²

[7] In this order, I find that the IC's working papers are not in the board's custody or control, including the records the appellant says the board should have located in its search. As a result, the appellant does not have a right of access to these records under the *Act*. I order the board to disclose the IC report and closed meeting minutes as I find that the discretionary closed meeting exemption at section 6(1)(b) and the mandatory personal privacy exemption at 14(1) do not apply.

RECORDS:

[8] The board takes the position that it does not have custody or control of the working papers created by the IC, such as its notes, interview records and other documents including draft reports created by it in the course of the work it performed for the board. The board says that it does not have physical possession of these records.

[9] The board provided the IPC with a copy of the IC's report (39 pages) and Minutes of "Special In Camera Board Meeting" (3 pages) and takes the position that these records qualify for exemption under the closed-meeting exemption at section 6(1)(b).

ISSUES:

- A. Are the Integrity Commissioner's working papers in the custody or under the control of the board?
- B. Did the board conduct a reasonable search for records?
- C. Does the discretionary closed meeting exemption at section 6(1)(b) apply to the IC's report and the closed meeting minutes?
- D. Does the mandatory personal privacy exemption at section 14(1) apply to portions of the IC's report and closed meeting minutes?

² The parties' representations were shared in accordance with the IPC's *Code of Procedure*.

DISCUSSION:

Issue A: Are the Integrity Commissioner's working papers in the custody or under the control of the board?

[10] Section 4(1) provides for a general right of access to records that are in the custody or under the control of an institution governed by the *Act*. It reads, in part:

Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless . . .

[11] Under section 4(1), the right of access applies to a record that is in the custody **or** under the control of an institution; the record need not be both.³

[12] There are exceptions to the general right of access set out in section 4(1).⁴ The record may be excluded from the application of the *Act* by section 52, or may be subject to an exemption from the general right of access.⁵ However, if the record is not in the custody or under the control of the institution, none of the exclusions or exemptions need to be considered since the general right of access in section 4(1) is not established.

[13] The courts and the IPC have applied a broad and liberal approach to the custody or control question.⁶ In deciding whether a record is in the custody or control of an institution, the IPC has developed a non-exhaustive list of factors to be considered in the particular context of a request and in light of the purposes of the *Act*.⁷ Some of these factors may not apply in a specific case, while other factors not listed may apply.

[14] Some of the relevant factors in this appeal include whether the record was created by an officer or employee of the institution⁸ and what use the creator intended to make of the record.⁹ Also relevant is whether the content of the record relates to the institution's mandate and functions and the extent the institution relied on the record.¹⁰

[15] In addition to the above referenced factors, the Supreme Court of Canada has adopted the following two-part test on the question of whether an institution has control of records that are not in its physical possession:

³ Order P-239 and *Ministry of the Attorney General v. Information and Privacy Commissioner*, 2011 ONSC 172 (Div. Ct.).

⁴ Order PO-2836.

⁵ Found at sections 6 through 15 and section 38 of the *Act*.

⁶ *Ontario Criminal Code Review Board v. Hale*, 1999 CanLII 3805 (ON CA); *Canada Post Corp. v. Canada (Minister of Public Works)*, 1995 CanLII 3574 (FCA), [1995] 2 FC 110; and Order MO-1251.

⁷ *City of Ottawa v. Ontario*, 2010 ONSC 6835 (Div. Ct.), leave to appeal refused (March 30, 2011, Doc. M39605 (C.A.)).

⁸ Order 120.

⁹ Orders 120 and P-239.

¹⁰ *Ministry of the Attorney General v. Information and Privacy Commissioner*, cited above, and Orders 120 and P-239.

1. Do the contents of the record relate to a departmental matter?
2. Could the government institution reasonably expect to obtain a copy of the document upon request?¹¹

[16] There are additional factors that may be relevant in determining the custody or control issue when another individual or organization holds the record. These additional factors include who paid for the creation of the record¹² and who has possession of the record.¹³ Also relevant are the circumstances surrounding the creation, use and retention of the record,¹⁴ including any contractual arrangement giving the institution the express or implied right to possess or otherwise control the record and arrangements relating to the record's confidentiality.¹⁵ Finally, the issue of whether a finding that the records are outside the institution's control would undermine the purposes of the *Act* should be considered.¹⁶

The parties' representations

[17] The board takes the position that it does not have custody or control of any notes, records or documents the IC created or used to prepare its final report. The board says that the IC was hired to produce a final report addressing whether a trustee's conduct had breached the Code of Conduct.

[18] The board provided a copy of its policy¹⁷ with the non-confidential portions of its representations. The policy outlines the formal complaint process when the board is in receipt of a written complaint about a trustee. The policy requires that any formal review of an allegation of a breach of the Code of Conduct must be performed by the IC. The definition section of the policy says that the term "Integrity Commissioner means a neutral, independent officer who is contracted to conduct formal investigations of allegations of a breach of the Code of Conduct."

[19] The board also provided a copy of the relevant contract for the IC's services with the non-confidential portion of its representations. The board asserts that the contract demonstrates that in the circumstances of this appeal, the IC did not act as its agent and had no authority to bind the board. The board also says that the contract requires the IC to conduct its investigation "privately and without interference from the Trustees or the

¹¹ *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25 (CanLII), [2011] 2 SCR 306. (*National Defence*)

¹² Order M-506.

¹³ Order PO-2683.

¹⁴ Order PO-2386.

¹⁵ *Greater Vancouver Mental Health Service Society v. British Columbia (Information and Privacy Commissioner)*, 1999 CanLII 6922 (BC SC), Orders M-165 and MO-2586.

¹⁶ Order MO-4447.

¹⁷ The Waterloo Region District School Board Policy G201 – Trustee Code of Conduct, sets out the board's expectations relating to trustees' conduct and the process to make an allegation that a breach of the code has occurred. The policy sets out an informal and formal complaint process.

Board's administration."

[20] The appellant does not assert that the board has physical possession of the IC's working papers. Instead, the appellant says that the IC's working papers are under the board's control and that the board should be required to search for these records in the IC's record holdings.

[21] The appellant says that the contract does not specifically address the issue of custody or control of the IC's working papers. The appellant says that he has seen contracts between other IC's and institutions that contain specific provisions about custody and control.¹⁸ The appellant asserts that the lack of specific provisions in the relevant contract in the circumstances of this appeal suggests that the board has control of the IC's working papers. The appellant says that, in this case, the provisions in the contract directing the IC to retain its records upon the termination of the contractual terms suggests that the IC's records and final report are within the custody and control of the board.¹⁹ In support of his position, the appellant states:

If the [board] had no custody or control of the records of the Integrity Commissioner, there would be no reason for provisions in the [contract] for records retention or disposal. Indeed, the very reason for requiring the Integrity Commissioner to retain records following the completion of an investigation would be to facilitate production of such records pursuant to a *MFIPPA* request.

[22] The appellant also says that the board's policy²⁰ requiring third party contractors

¹⁸ The appellant refers to a contract between the Toronto District School Board (TDSB) and its IC.

¹⁹ Sections 8(b) and (c) of the Agreement for Professional Services of July 25, 2016 between the Corporation of the City of Kitchener and the Integrity Commissioner states:

8(b) Upon any termination of this Agreement, the Commissioner shall provide to the City's next Commissioner all material/documentation related to any investigations underway and such documentation/material shall become the property of the new Commissioner of the City. In the event of the City not having contracted the services of a new Commissioner, upon termination of this Agreement the Commissioner shall make arrangements with the City to transfer documentation/material relating to ongoing investigations to the City Clerk in a manner that satisfies the Commissioner's concerns respecting confidentiality of the records while allowing their use for the purpose for which they were created.

8(c) The Commissioner shall retain all other records and documentation relating to Services following termination of this Agreement for a retention period to be set by the City, and then shall dispose of such records in accordance with the City's Records Retention Schedule and in a secure fashion utilizing the City's confidential records destruction program.

²⁰ Section 11.2 of the Waterloo Region District School Board Administrative Policy 1110, Records Information Management, provides that the board maintains its responsibility for protecting personal information in accordance with privacy legislation when its contracts with a third parties and in doing requires staff to ensure that any contracts or agreements with third parties contain minimum limitations and safeguards to safeguard the collection, use and disclosure of personal information. The policy, in part, states:

Third party service providers who collect, use, retain, and/or disclose personal information on behalf of the Board are to do so only for specified purposes. Notice to individuals stating

who receive or collect personal information on behalf of the board to comply with its policies suggests that the board's "intent that its records management policy extends to independent contractors receiving or collecting personal information on behalf of the Board."

[23] The appellant questions the board's decision to withhold the IC's report given that other school boards routinely make the final reports regarding the conduct of its trustees publicly available with no or little redactions.²¹

Analysis and Findings

[24] The IPC has previously considered the issue of whether or not records created by an IC in the context of conducting an independent investigation are under the control or custody of the institution retaining its services. In MO-4447²², the adjudicator held that the Toronto District School Board (TDSB) did not have control over documents created by the IC retained to investigate the conduct of investigation of a trustee. In that appeal, the requester sought access to documents exchanged between the IC and a third-party investigator retained by the IC. The adjudicator in that appeal, after applying relevant factors and the two-part *National Defence* test found that the TDSB did not have control of the requested records. I find the adjudicator's analysis of the factors for control in MO-4447 to be instructive for the purposes of this appeal.

Part 1: Do the contents of the document relate to a departmental matter?

[25] Though the appellant's representations do not specifically address this issue, there is no dispute that the records relate to the IC's investigation in whether a trustee breached the board's Code of Conduct. Given the board is responsible under the *Education Act* to investigate allegations regarding the actions and behaviour of its trustees, I find that the records relate to a departmental matter. This finding is consistent with the analysis in

the purpose(s) for which the personal information is collected, used, and/or disclosed must be provided. WRDSB staff will ensure contracts and agreements completed with these third party providers, at a minimum, include the following:

- a written confidentiality statement;
- acknowledgement of and adherence to the Municipal Freedom of Information and Protection of Privacy Act (or applicable privacy legislation);
- limitations for the collection, use, and disclosure of personal information;
- a description of the safeguards in place for the protection of personal information;
- a description of the third party's breach protocol including audit reviews, their commitment to containing the breach and making corrective actions, and notification to the Board of any actual or suspected breach; and a description of the retention period and disposal of personal information.

²¹ In support of this position, the appellant refers to IC reports prepared for the Toronto District School Board, Toronto Catholic District School Board, York Region District School Board, Durham District School and Ottawa-Carleton District School Board.

²² Order MO-4447 was upheld recently in *Teper v. Information and Privacy Commissioner of Ontario*, 2025 ONSC 1717 (Div. Ct.).

Order MO-4447. Accordingly, I find that the first part of the test has been met.

Part 2: Could the board reasonably expect to obtain a copy of the document upon request?

[26] To answer this question, I will consider the relevant factors mentioned above to determine “custody or control” when another individual holds the record.

Was the record created by an officer or employee of the institution?²³ What use did the creator intend to make of the record?²⁴

[27] I find that the adjudicator’s findings in Order MO-4447 regarding the IC’s independence from the TDSB relevant to the circumstances of this appeal. I have reviewed the evidence of the parties and am satisfied that the contractual arrangement between the board and IC was structured to ensure that the IC conducted its formal investigation without the interference of the board. Accordingly, I find that the IC is not the board’s agent. As a result, it cannot be said that the IC’s records were created by an officer or employee of the board.

[28] In the absence of evidence of the contrary, I find that the notes and other records, including any draft reports the IC created, were intended for its own use in documenting and advancing the work it performed to prepare its final report. As noted above, the IC provided its final report to the board and this version of the report, not the IC’s working papers, were considered at a board meeting.

[29] I also agree with the adjudicator’s use of the terms “vital” and “foundational” in Order PO-4447 to describe the importance of the principle of independence in relation to the work performed by an IC outside the influence of the board.²⁵

[30] I find that these factors weigh heavily against a finding that the board could reasonably expect to obtain a copy of the IC’s working papers.

Does the content of the records relate to the institution’s mandate and functions?²⁶

[31] There is no dispute between the parties that the IC’s working papers relate to the board’s mandate and functions to ensure compliance with the *Education Act*. Accordingly, evidence establishing a connection between the records and the board’s duties would

²³ Order 120.

²⁴ Orders 120 and P-239.

²⁵ See paras 87 and 90 of Order MO-4447.

²⁶ *Ministry of the Attorney General v. Information and Privacy Commissioner*, cited above; *City of Ottawa v. Ontario*, cited above, and Orders 120 and P-239.

Similar factors identified by the IPC and courts ask: Does the institution have a statutory power or duty to carry out the activity that resulted in the creation of the record? (Order P-912, upheld in *Ontario Criminal Code Review Board v. Hale*, cited above.)

weigh in favour of a finding that the board controls the IC's working papers.²⁷ The adjudicator in Order MO-4447 considered similar factors and stated:

While it is true that the board itself has the statutory duty to ensure compliance with the Education Act, it has set up the IC as an independent body to carry out the function of investigating and reporting on allegations of misconduct. Ultimately, the board carries out its own statutory duties by receiving the IC's reports and recommendations and taking whatever actions the board deems appropriate.

As a result, this factor can be considered to weigh in favour finding that the board controls the records. However, because of the distinction between the board's and the IC's roles, I find that it carries low weight.

[32] I agree and adopt this reasoning and give little weight to this factor weighing in favour of control related to the board's duties. In making this decision, I took into account that the IC's working papers were not created by an officer or employee of the board and the circumstances in which they were created was to facilitate an independent investigation outside the influence of the board.

To what extent has the institution relied on the record?²⁸

[33] The appellant's representations did not specifically address this issue. The adjudicator in Order MO-4477 considered this issue and stated:

I find that the board has not relied on any of the records. It is clear from reviewing the applicable process that the IC uses the records as part of the IC's investigation and reporting functions, and there is no indication that the board directly uses these records in this or any other investigation matter. The board submits, and I accept, that it has not seen, used or relied on any of these records. The fact that the board relies on the IC's ultimate report, which contains information that may be derived from the records

²⁷ In my view, the evidence of the parties along with the circumstances of this appeal answer the following questions in the affirmative:

- Does the institution have a statutory power or duty to carry out the activity that resulted in the creation of the record?
- Is the activity in question a "core," "central" or "basic" function of the institution?
- Does the content of the record relate to the institution's mandate and functions?
- Does the institution have physical possession of the record, because its creator provided it voluntarily or pursuant to a statutory or employment requirement?

²⁸ *Ministry of the Attorney General v. Information and Privacy Commissioner*, cited above, and Orders 120 and P-239.

(for example, the investigator's report) does not mean that the board has relied on the actual records.

[34] Having regard to the evidence before me, there is no indication that the board used or relied on the IC's working papers. In addition, I accept the board's evidence that it did not ask for the IC's working papers and that such records were used by the IC to prepare its final report.

[35] I adopt the reasoning in Order MO-4447 and agree that evidence that the board considered the IC's final report does not mean that the board relied on the IC's working papers. Accordingly, I find that this factor weighs against a finding that the board could reasonably expect to obtain a copy of the IC's working papers.

Who paid to create the record²⁹ and who has physical possession it, and why?³⁰

[36] The parties do not dispute that the IC, not the board, has physical possession of the working papers. In addition, there is no dispute that the board retained and paid the IC for its services and in the course of this service the IC's working papers were created.

[37] In my view, the board's payment of the IC's fee does not suggest that the board is entitled to obtain a copy of the IC's working papers. Again, the context in which the IC's working papers were created are highly relevant in the circumstances of this appeal. The IC has physical possession of its working papers given its requirement to conduct an independent investigation outside the influence of the board.

[38] Having regard to the above, I find that these factors weigh against a finding that the board could reasonably expect to obtain a copy of the IC's working papers.

What are the circumstances surrounding the creation, use and retention of the record?³¹ Are there any contractual provisions between the institution and the individual who created the record that give the institution the express or implied right to possess or otherwise control the record?³²

[39] The board says that it had no expectation that the IC's working papers would be provided to it given the requirement that the IC is to conduct an independent investigation. The board confirms in its representations that it did not ask the IC to provide it copies of its working papers.

[40] The appellant takes the position that the provisions in the contract addressing the retention and disposal of the IC's records suggests that in the circumstances of this appeal, the board has a right to request and obtain copies of the IC's working papers.

²⁹ Order M-506.

³⁰ Order PO-2683.

³¹ Order PO-2386.

³² *Greater Vancouver Mental Health Service Society v. British Columbia (Information and Privacy Commissioner)*, 1999 CanLII 6922 (BC SC).

The appellant also says that the municipality's policy in the region the board operates which requires third party contractors to adhere to its record management policy concerning the collection of personal information supports his position. The appellant appears to suggest that the board would not require the IC to adhere to its record management policies unless there was an intention to make all of the IC's records, including its working papers, subject to the *Act*. In my view, evidence of record management policies particularly policies which protect the use, collection and disclosure of personal information does not demonstrate an intention to make records subject to the *Act*. Instead, these policies are in place to promote modern record management expectations and legislative requirements.

[41] However, I note that the board's record management policies, if breached, could potentially lead to a circumstance in which the board may direct the IC to provide it with its working papers. Accordingly, similar to the finding in MO-4447, I find that the board's record management policies could amount to an indication that the board could potentially obtain a copy of the IC's working papers. However, I attribute little weight to this factor given the foundational principle of the IC's independence in the circumstances of this appeal.

Does a finding that the records are outside the board's control undermine the purposes of the Act?³³

[42] The appellant says that a finding that the IC's records are outside the scope of the *Act* obstructs the public's ability to scrutinize the board's decision regarding the allegations made against the trustee. The appellant says that the board:

... refused to provide the public with any meaningful information regarding its reasons for censuring and sanctioning [the trustee]. Specifically, the [board] refused to disclose the contents of the complaint, the identity of the trustee who was the complainant, the material facts of the complaint, or even the name of the integrity commissioner who was engaged to hear the complaint.

[43] In support of his position, the appellant referred to a news article that raised questions regarding the lack of transparency of the board's decision-making process.

[44] The adjudicator in Order MO-4447 considered this factor and found that finding the TDSB had control of the IC's records in that case would "seriously undermine the IC's role and function as an independent investigator."³⁴ I agree with this reasoning and find that this factor weighs against a finding that the board could reasonably expect to obtain a copy of the IC's working papers.

³³ Order MO-4447 quoting *Ontario (Children's Lawyer) v. Ontario (Information & Privacy Commissioner)*, 2018 ONCA 559.

³⁴ See paragraph 100, Order MO-4447.

Summary

[45] I found that a few factors weigh in favour of the board having a reasonable expectation to obtain a copy of the IC's working papers. However, I attributed little weight to these factors given the circumstances of this appeal and the foundational principle that the IC is to operate independently from the board. Balancing these factors with the factors I found weighing against the board having control, I find that there is no reasonable expectation that the board could obtain a copy of the IC's working papers. Accordingly, part 2 of the test has not been met and I find that the IC's working papers are not in the board's control for the purposes of section 4(1).

[46] Accordingly, I find the appellant has no right of access to the IC's working papers under the *Act*. Given my finding, it is not necessary that I also make a finding regarding custody.

Issue B: Did the board conduct a reasonable search for records responsive to the request?

[47] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.³⁵ If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[48] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.³⁶

[49] The *Act* does not require the institution to prove with certainty that further records do not exist.³⁷ However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;³⁸ that is, records that are "reasonably related" to the request.³⁹

[50] The appellant takes the position that the board failed to conduct a reasonable search for records that would respond to his request. In support of this position, the appellant identifies five documents he says the trustee who was the subject of the complaint published online.⁴⁰ The appellant says that the board's search for records in

³⁵ Orders P-85, P-221 and PO-1954-I.

³⁶ Order MO-2246.

³⁷ *Youbi-Misaac v. Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9, on the analogous requirement in the provincial equivalent of the *Act*.

³⁸ Orders P-624 and PO-2559.

³⁹ Order PO-2554.

⁴⁰ The appellant confirmed in his representations that he not requesting that the board providing him copies of these records.

response to his request should have identified these records in its record holdings.

[51] For the same reasons I found the IC's working papers are not under the control of the board, I find that the records identified by the appellant in support of his reasonable search claim are not records within the board's custody or control. The records are either correspondence exchanged between trustees⁴¹ or correspondence the IC sent to the trustees⁴² and I find that the board does not have a reasonable expectation to obtain a copy of the IC's working papers.

[52] Section 17 does not require the board to demonstrate that it conducted a reasonable search for records not in its custody or control. Accordingly, I find that the appellant's evidence fails to establish a reasonable basis that additional records in the board's record holdings respond to his request.

[53] Given my finding, I do not need to address the appellant's evidence questioning the board's search methods as the appellant's concerns do not relate to records under the custody or control of the board. As a result, the appellant's reasonable search claim is dismissed.

Issue C: Does the discretionary closed meeting exemption at section 6(1)(b) apply to the IC's report and meeting minutes?

[54] The parties do not dispute that the board held a special meeting on June 6, 2022 to discuss a Trustee Code of Conduct Complaint and portions of that meeting was held in the absence of the public.⁴³ The board takes the position that the IC report reviewed at the closed session and the meeting minutes of that portion of the meeting qualify for exemption under section 6(1)(b). Section 6(1)(b) protects certain records relating to a closed meeting of a council, board, commission or other body. It reads:

A head may refuse to disclose a record,

that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

[55] For this exemption to apply, the institution must show that:

1. a council, board, commission or other body, or a committee of one of them, held a meeting,

⁴¹ The appellant says that the four documents consist of the formal written complaint, two emails from the board's Chair to trustees notifying and updating them about the special meeting and the Chair's letter to the trustee who the subject of the complaint regarding the outcome of the special meeting.

⁴² The appellant says that this document is an email the IC sent to the trustees inviting them to participate in an interview.

⁴³ This information is also confirmed on the Notice of Special Meeting Agenda posted on the board's website.

2. a statute authorizes the holding of the meeting in the absence of the public, and
3. disclosure of the record would reveal the actual substance of the deliberations of the meeting.⁴⁴

Held a meeting in camera (parts 1 and 2 of the test)

[56] The institution must show that it held a meeting, and that it was authorized by law to hold the meeting *in camera*.⁴⁵ For the meeting to be authorized to be held *in camera*, its purpose must have been to deal with a matter for which a closed meeting is authorized by statute.⁴⁶

[57] The board says that it was authorized to hold the meeting *in camera* and cites section 207(2)(b) of the *Education Act*. This section states:

A meeting of a committee of a board, including a committee of the whole board, may be closed to the public when the subject-matter under consideration involves, the disclosure of intimate, personal or financial information in respect of a member of the board or committee, an employee or prospective employee of the board or a pupil or his or her parent or guardian

[58] The board also references section 17.1(b) of its bylaws⁴⁷ which provides that the board may hold a meeting in the absence of the public for the same reasons provided for in the *Education Act*.

[59] The appellant says that the trustee has told the media on several occasions that he consents to the IC's report being in the public domain and that he consents to the release of his personal information. In support of this position, the appellant provided website links to the relevant news articles.

[60] The appellant suggests an individual's consent is relevant in determining whether a board has properly closed a meeting under section 207(2)(b) of the *Education Act* for reasons of protecting the disclosure of personal information. This is not the case. Section 207(2)(b) provides that the board has discretion to close a meeting if it determines that the subject-matter of the meeting may disclose intimate, personal or financial information of an individual. In other words, section 207(2)(b) gives the board the discretion to determine whether it should discuss matters which may impact the personal information of individuals in the absence of the public.

[61] Previous IPC decisions have held that information relating to an individual in a

⁴⁴ Orders M-64, M-102 and MO-1248.

⁴⁵ Order M-102.

⁴⁶ *St. Catharines (City) v. IPCO*, 2011 ONSC 2346 (Div. Ct.).

⁴⁷ The board provided a copy of *Bylaws Board of Trustees Waterloo Region District School Board* with the non-confidential portion of its representations.

professional, official or business capacity qualifies as personal information if the information reveals something of a personal nature about them.⁴⁸ I am satisfied that the subject-matter of the meeting involved the discussion of information would reveal a personal nature about the trustee even though the conduct being discussed related to the trustee's official capacity.

[62] As noted above, the parties do not dispute that the board held a meeting. Based on the evidence before me, I am satisfied that the board was authorized by law to hold this meeting in the absence of the public given that its purpose was to deal with a matter for which a closed meeting is authorized by the *Education Act*. Accordingly, I find that parts 1 and 2 of the test in section 6(1)(b) has been met.

Substance of deliberations (part 3 of the test)

[63] For section 6(1)(b) to apply, it must be established that disclosure of the record would reveal the actual substance of deliberations that took place at the *in camera* meeting, and not just the subject of the meeting or the deliberations.⁴⁹ "Deliberations" refer to discussions conducted with a view towards making a decision.⁵⁰

[64] Section 6(1)(b) does not protect records merely because they refer to matters discussed at a closed meeting, and it does not protect the names of individuals attending meetings, and the dates, times and locations of meetings.⁵¹

[65] The board made brief submissions on this issue. The board stated:

The report prepared by the IC into the Trustee Code of Conduct investigation was reviewed, discussed and questions of legal clarification were sought from the Board council. The report was the substance of the deliberations and the only reason for the in camera meeting.

... disclosure of the record would reveal the actual substance of deliberations and personal information contained in the report ... there is no part of the record that could be disclosed as it would reveal confidential information.

[66] The appellant says that in the circumstances of this appeal, disclosing the meeting minutes and the IC report would not reveal the actual substance of deliberations. The appellant says that the Code of Conduct requires that any IC report prepared for the board's consideration "shall outline the findings of fact, but not contain a recommendation or opinion as to whether the Code of Conduct has been breached. This will be determined

⁴⁸ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁴⁹ Orders MO-703, MO-1344, MO-2389 and MO-2499-I.

⁵⁰ Order M-184.

⁵¹ Order MO-1344.

by the Board of Trustees as a whole”.⁵²

[67] The appellant goes on to state that:

[a]s a solely factual report, the IC Report therefore did not, and could not, reveal the actual substance of the deliberations of the Board, as it merely provided the set of facts based on which deliberations could take place.

The Integrity Commissioner's Report

[68] I have read the IC's report and confirm that it does not contain any recommendations or suggested courses of action for the board to consider. Instead, the IC sets out its understanding of the facts and circumstances of the complaints made against the trustee and the trustee's responses. About a third of the report contains the IC's recitation of the relevant provisions of the Code of Conduct and survey of similar complaints handled by other IC's. In my view, disclosure of the IC report would not reveal the actual substance of deliberations or discussions the board members had for the purpose of deciding whether the trustee in question breached the Code of Conduct. Though disclosure of the report would reveal the subject matter of the meeting, including potential questions the board members may choose to consider, the information in the report does not reveal the actual deliberations that took place at the closed meeting.

[69] The board says that disclosure of the report would reveal the personal information of identifiable individuals. I confirm that the IC's report contains information which would identify the trustee whose conduct is at issue along with the information of other trustees, including the trustee who file the formal complaint. However, the purpose of the discretionary closed meeting exemption is not to protect the personal information of identifiable individuals. The purpose of the exemption is to protect the actual substance of deliberations occurring in meetings authorized to be held in camera. Later in this order, I will consider whether the mandatory personal privacy exemption under section 14(1) applies to any personal information that is in the report.

[70] I find that the closed meeting exemption at section 6(1)(b) does not apply as disclosure of the report would not reveal the actual substance of the deliberations taking place at the closed meeting.

Minutes of the Closed Session

[71] In its representations, the board says that during deliberations “questions of legal clarification were sought from [its counsel].” The public meeting minutes confirm that counsel was present at the meeting. I have read the closed minutes and find that the minutes do not reveal any legal advice provided to the board. In addition, the closed minutes do not document any questions, recommended course of action, advice or discussion that counsel or any another individual may have voiced during the

⁵² Paragraph 54 of the Trustee Code of Conduct.

deliberations. I have reviewed the remaining portions of the closed minutes and found no instances where the actual substance of the deliberations that took place are revealed. In my view, the closed minutes merely record the general subject-matter discussed at the meeting and the various individuals in attendance.

[72] As noted above, section 6(1)(b) does not protect records merely because they refer to matters discussed at a closed meeting or identify the individuals in attendance. In any event, I note that the public minutes of the same meeting posted on the board's website identifies all individuals in attendance, including the IC and identifies the trustee who was the subject of the complaint. The public minutes confirm that the motion to find that the trustee was in breach of the Code of Conduct was voted on at the public session. The public minutes also confirm which way each named trustee cast their vote in finding the trustee in breach of the Code and the sanction.

[73] Having regard to the above, I find that the closed meeting exemption at section 6(1)(b) does not apply as disclosure of the closed minutes would not reveal the substance of the deliberations at the portion of the meeting held in the absence of the public.

Summary

[74] I find that the closed meeting exemption in section 6(1)(b) does not apply to the IC's report or closed minutes. As the exemption does not apply, it is not necessary that I consider whether the board properly exercised its discretion.

[75] As section 6(1)(b) does not apply and the IC's report and the closed minutes might contain personal information, I will go on to determine whether the mandatory personal privacy exemption at section 14(1) applies to the records.

Issue D: Does the mandatory personal privacy exemption at section 14(1) apply to portions of the IC's report and minutes?

[76] The first question to determine in deciding whether the personal privacy exemption applies is whether the record contains information that constitutes the "personal information" of an identifiable individual. Only personal information is subject to the exemption at section 14(1).

[77] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.⁵³ Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official or business

⁵³ See the definition of "record" in section 2(1).

capacity is not considered to be “about” the individual.⁵⁴

[78] Sections 2(2.1) and (2.2) provide further guidance when assessing information related to an individual’s professional, official or business capacity. These sections state:

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[79] In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be “personal information” if it reveals something of a personal nature about the individual.⁵⁵ Information is about an “identifiable individual” if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.⁵⁶

Analysis and findings

The records contain the personal information of only two individuals

[80] Though the board does not specifically make the claim that the IC’s report and closed meeting minutes contain personal information they suggest that the records should not be disclosed for privacy reasons.

[81] The appellant says that the trustee whose conduct was censured consents to the release of any information about him relating to the Code of Conduct breach.

[82] As noted above, the public minutes of the meeting already identify all individuals in attendance at the special meeting, including the IC and the trustee who was the subject of the complaint. As the vote to censure the trustee in question was taken at the public portion of the meeting, the public meeting minutes also reveal which way each trustee cast their vote in finding the trustee in breach of the Code of Conduct and the sanction. I have reviewed the IC’s report and minutes and find that the only information which the mandatory personal privacy exemption at section 14(1) could apply to is the information relating to the trustee whose conduct was being considered and the trustee who filed the formal complaint with the board.

[83] I am satisfied that information relating to these two individuals contained in the

⁵⁴ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁵⁵ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁵⁶ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

IC's report constitutes their "personal information" as it reveals something of a personal nature about them though the information relates to their official capacities. In the case of the trustee being complained about, the information relates to their employment history along with their name (paragraphs (b) and (h) of the definition of "personal information" in section 2(1)). Similarly, I find that any information identifying the name of the trustee who filed the complaint in the records constitutes this individual's "personal information" as the information constitutes their views or opinions of another individual along with their name (paragraphs (g) and (h)).

[84] I find that the portions of the records which identify other trustees, including any information they provided the IC and is attributed as being provided by them in the records does not constitute their personal information. In my view, this information relates to these individuals in their professional or official capacities. Accordingly, the mandatory personal privacy exemption cannot apply to this information. As the board has not claimed that any other exemption could apply and I am satisfied that no other mandatory exemption applies, I will order the board to disclose these portions of the records to the appellant.

The personal information relating to the two individuals does not qualify for exemption under section 14(1)

[85] One of the purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions.

[86] Section 14(1) of the *Act* creates a general rule that an institution cannot disclose personal information about another individual to a requester. This general rule is subject to a number of exceptions. If any of the five exceptions covered in sections 14(1)(a) to (e) exist, the institution must disclose the information.

[87] The exception at section 14(1)(a) reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except, upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access

[88] For this exception to apply, the individual whose personal information is contained in the record must consent to the release of their personal information. This consent must be in writing. The consent must be given in the specific context of the access request, meaning that the consenting individual must know that their personal information will be disclosed in response to an access request under the *Act*.⁵⁷

[89] During the inquiry of this appeal, I contacted the two trustees whose personal information appears in the IC's report. Both trustees responded by providing me their

⁵⁷ Order PO-1723.

written consent. Accordingly, I find that the exception at section 14(1)(a) applies as disclosure of the trustees' information to the appellant would not constitute an unjustified invasion of personal privacy.

[90] As the board has not claimed that any other exemption applies to this information and I am satisfied that no other mandatory exemption could apply, I order the board to disclose the IC report and closed meeting minutes to the appellant.

ORDER:

1. I order the board to disclose the IC report and closed meeting minutes to the appellant by **November 20, 2025**, but not before **November 15, 2025**.
2. I find that the IC's working papers are not under the board's custody or control and uphold the board's decision to deny these records under section 4(1).
3. I uphold the board's search for responsive records.
4. In order to verify compliance with this order, I reserve the right to require the board to provide me with a copy of records disclosed to the appellant in accordance with provision 1.

Original Signed by: _____
Jennifer James
Adjudicator

October 16, 2025 _____