



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

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# **INVESTIGATION REPORT**

## **INVESTIGATION I93-053M**

### **A SEPARATE SCHOOL BOARD**

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## **INTRODUCTION**

### **Background of the Complaint**

This investigation was initiated as a result of a complaint concerning a separate school board (the Board).

The complainant, a trustee for the Board, had informed a newspaper reporter of certain budgetary measures that the Board had been considering. The complainant became privy to this information during an in camera meeting of the Board. This information subsequently appeared in a newspaper article.

Since the complainant had apparently not been at liberty to release this information, the Board subsequently reprimanded her for this "indiscretion". The reprimand occurred during one of the Board's regular open meetings. While the members of the Board discussed the reprimand in camera, the Board made the following resolution in open session:

That (the named complainant) be reprimanded for her lack of discretion concerning the comments made during a recent interview as published in the (named newspaper) ...

The above resolution was also recorded in the minutes of the Board's meeting, which were available to the public.

The complainant believed that the Board had disclosed her personal information during the open meeting, contrary to the Municipal Freedom of Information and Protection of Privacy Act (the Act).

### **Issues Arising from the Investigation**

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Did section 27 of the Act apply to this personal information?
- (C) Was the Board's disclosure of the personal information, in accordance with section 32 of the Act?

## **RESULTS OF THE INVESTIGATION**

**Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?**

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name if 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; ("renseignements personnels")

The Board stated that the information in question was not the complainant's "personal information", since it concerned the complainant in her professional rather than her private capacity.

In Order 170, Inquiry Officer John McCamus found that notes of proposed disciplinary action against an employee were considered to be the personal information of that employee. It is, thus, our view that similarly, in this case, the complainant's name together with information about her reprimand was information which met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

**Conclusion:** The information in question was personal information as defined in section 2(1) of the Act.

**Issue B: Did section 27 of the Act apply to this personal information?**

Section 27 of the Act states that the privacy provisions of the Act do not apply to personal information that is maintained for the purpose of creating a record that is available to the general public. Specifically, section 27 states:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

It was the Board's view that section 27 of the Act applied in the circumstances of this case. The Board stated that since the complainant had gone to the newspaper and made this issue public, any subsequent disclosure by the Board would not have contravened the Act since the information was already public.

In our view, it cannot be said that the Board was maintaining the information concerning the complainant's reprimand, for the purpose of making that information available to the general public. Thus, the Board may not rely on section 27 of the Act to exempt this information from the privacy provisions of the Act.

**Conclusion:** Section 27 of the Act did not apply to the personal information.

**Issue C: Was the Board's disclosure of the personal information, in accordance with section 32 of the Act?**

Under the Act, an institution cannot disclose personal information in its custody or under its control except in the specific circumstances outlined in section 32 (see Appendix A for the full text).

The Board advised that it had reprimanded the complainant in compliance with its policy entitled "Confidentiality of Information". The Board provided us with a copy of this policy, which stated, in part, that discussions during a Committee of the Whole meeting (i.e., an in camera meeting) are "absolutely confidential". The policy further stated that the Chairman, with the Board's support, may reprimand a trustee for his or her indiscretion and lack of solidarity. Based on these policies, the Board stated that it had reprimanded the complainant in a public meeting because she had disclosed discussions of an in camera meeting to the newspaper reporter.

The Board submitted that it had to follow these policies which were in place before the Act came into effect. The Act came into force in January 1991. Institutions covered by the Act are required to comply with the Act's privacy provisions regarding the collection, use and disclosure of personal information. Thus, any disclosure by the Board of personal information in its custody or under its control must be in compliance with the disclosure provisions of section 32 of the Act.

We have examined section 32 and have found that none of the exceptions listed applied to the Board's disclosure. It is, therefore, our view that the Board disclosed the complainant's personal information at an open meeting contrary to section 32 of the Act.

**Conclusion:** The Board's disclosure of the personal information was not in accordance with section 32 of the Act.

## **SUMMARY OF CONCLUSIONS**

- The information in question was personal information as defined in section 2(1) of the Act.
- Section 27 of the Act did not apply to the personal information.
- The Board's disclosure of the personal information was not in accordance with section 32 of the Act.

## **RECOMMENDATIONS**

We recommend that the Board take steps to ensure that disclosures of personal information are in accordance with the Act, for example, by amending or clarifying its policies accordingly.

Within six months of receiving this report, the Board should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original signed by: \_\_\_\_\_  
Susan Anthistle  
Compliance Review Officer

January 24, 1994  
Date

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## APPENDIX A

32. An institution shall not disclose personal information in its custody or under its control except,
- (a) in accordance with Part I;
  - (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
  - (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
  - (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;
  - (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or treaty;
  - (f) if disclosure is by a law enforcement institution,
    - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
    - (ii) to another law enforcement agency in Canada;
  - (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
  - (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;
    - (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
  - (j) to the Minister;
  - (k) to the Information and Privacy Commissioner;
  - (l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs.