



Information and Privacy
Commissioner/Ontario

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

INVESTIGATION REPORT

INVESTIGATION I95-013M

A PUBLIC BOARD OF EDUCATION

June 7, 1995



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a public board of education (the Board). The complainants are the mother and father of one of Board's eight-year-old students. In this case, the husband is representing his wife as her agent.

Over time, there had been several incidents at school that involved altercations between the complainants' child and other children. The parents were concerned about these incidents, and had ongoing contact with Board staff in attempts to resolve the matter to their satisfaction.

On March 8, 1994, the complainant (the father) wrote to the Board's Director of Education (the Director), requesting that the Director meet with him and his wife on March 10, 1994. The letter stated:

...I am looking forward to this opportunity to have private meeting between the three of us, at which time I hope that a number of issues can be removed from the table.

I have included a series of questions for your perusal that form the basis of some of our concerns about the administration of [a named school]. I will not be pressing you to provide any feedback on these questions in our meeting but these questions are amongst those for which we would be seeking answers if we were forced to escalate our issues with [the school]. I am requesting that the enclosed information not be distributed to anyone else without my permission.

The enclosure contained a list of thirteen questions related to the altercations between the complainants' child and other children. The majority of the questions dealt with the responses of officials of the Board to concerns that were raised by the complainant and his wife.

On April 7, 1994, the Director wrote to the complainant, enclosing written answers to the questions. The Director's letter referred to the meeting of March 10, and stated:

I outlined to you on that date that it would take me a few weeks to have staff review the questions raised because of the two-week March Break. That review has taken place and I am providing to you, with this letter, answers to each of your questions, as provided to me following the review.

The complainants concluded from this letter that the questions had been disclosed to Board staff other than the Director. They believed that such disclosures would have breached the Municipal Freedom of Information and Protection of Privacy Act (the Act).

The Board acknowledged that the questions had been disclosed to Board staff other than the Director, but took the view that the disclosures had been in compliance with the Act.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Did the list of questions contain the complainants' "personal information", as defined in section 2(1) of the Act?
- (B) If yes, was the "personal information" disclosed in compliance with the Act?

RESULTS OF THE INVESTIGATION

Issue A: Did the list of questions contain the complainants' "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information" as 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;

The list of questions related to several school incidents concerning the child, and the complainants' attempts to resolve the matter with various school staff. The questions referred to both the complainants and their child by name. Therefore, it is our view that the questions contained the personal information of the complainants and their child, as defined in section 2(1)(h) of the Act.

Conclusion: The questions contained the personal information of the complainants and their child, as defined in section 2(1)(h) of the Act.

Issue B: Was the "personal information" disclosed in compliance with the Act?

Section 32 of the Act sets out the various circumstances under which an institution under the Act may disclose personal information. Section 32 of the Act states in part:

An institution shall not disclose personal information in its custody or under its control except,

...

- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;

...

In the circumstances of this case, the complainant had identified the information in particular (the questions), at the time he wrote his letter, and had **not** consented to its disclosure. The Board acknowledged that in the complainant's letter, he had requested that the enclosed information not be distributed to anyone else without his permission. Nevertheless, the Director had disclosed the information to other Board staff. It is our view that such a disclosure would not have been in compliance with section 32(b) of the Act. However, section 32(b) is only one of several sections permitting the disclosure of personal information which must be considered in this case.

Despite its acknowledgment on the issue of (non) consent, the Board indicated that it believed that the disclosures had been in compliance with sections 32(c) and 32(d) of the Act. Therefore, we have examined whether these, or any other sections of the Act which permit disclosure, apply in the circumstances of this case.

Sections 32(c) and 32(d) state:

An institution shall not disclose personal information in its custody or under its control except,

...

- (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;

....

The Board's view was that the disclosure had been made for a consistent purpose. Since the information in question was collected directly from the complainant, section 33 of the Act, which defines consistent purpose, applies. Section 33 of the Act states:

The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31(b) and 32(c) only if the individual **might reasonably have expected such a use or disclosure**. [emphasis added]

In other words, the complainant would have had to reasonably expect the disclosure in order for the disclosure to have been made for a consistent purpose, in compliance with the Act. The evidence we have received on this matter from the Board and the complainant is contradictory. The parties to the meeting of March 10 appeared to have come away from the meeting with different views of what should happen next concerning the complainant's questions.

The complainant maintains that at no time during the meeting did the Director indicate that he would have his staff review the questions. He also states that during the March 10 meeting, that they (himself, his wife and the Director) had collectively agreed to put a number of items aside, including the issues that were contained in the series of questions. In response to our draft report, the complainant re-iterated his view that the items outlined in the questions had been removed from the table and that the Director had no reason or permission to pursue them any further.

As we stated in our draft report, if the issues had already been resolved, or put aside, then in the complainant's view, there would have been no reason for his questions to be answered, and thus no reasonable expectation of disclosure on his part. If we were to take only the complainant's position into account, our view would be that the disclosure was not made for a consistent purpose, in compliance with section 32(c) of the Act, since there was no reasonable expectation on the part of the complainants.

The Act also provides under section 32(c) that personal information may be disclosed for the purpose for which it was **obtained** or compiled. Therefore, in drawing our conclusions, we also considered the Director's view of how the meeting ended, and his view of the Board's purpose for which the personal information had been obtained, since his actions following the meeting are the focus of this complaint. In contrast to the complainant's view, the Director's letter of April 10 indicated that he had "outlined" to the complainant that subsequent to the March 10 meeting, he would be taking steps to answer the complainant's questions, and that to do so, he would be seeking input from Board staff. The Board's submission further indicated that it was the Director's opinion that the serious nature of the questions did require an answer, and that the questions were not posed on a purely rhetorical basis. The Board's view was that it was acting responsibly in trying to provide accurate responses to the questions posed by the complainant.

The complainant's letter of March 8 states that he had "included a series of questions for [the Director's] perusal that form the basis of some of our concerns". It appears, then, that the complainant was anxious that the Director acquaint himself with those concerns. In our view, there would have been no constructive purpose in the complainant's providing the questions outlining his concerns to the Director unless he desired the Director to take some action to resolve those concerns. It is our understanding that the complainants sincerely wanted the problem to be resolved.

In the circumstances of this case, the action taken by the Director **following the meeting with the complainants**, is at issue. Therefore, having considered the complainant's views, we also took into account what the Director believed to be the case **at the time the meeting ended**. In the Director's view, despite the fact that the complainant's **letter** requested non-disclosure of the questions, the **meeting** had ended with agreement that the Director would find answers to the questions, and report back to the complainant. The Director's course of action in disclosing the questions to his staff, and writing to the complainant with the answers, is consistent with that view, although it is not the same view the complainants may have had when the meeting ended.

It is our view that the personal information was obtained and disclosed for the same purpose - to bring the complainant's concerns to the attention of Board staff, and to resolve the issues the

complainant had raised in his questions. Therefore, we are of the view that the personal information was disclosed in compliance with section 32(c) of the Act.

The complainant submitted that the information was compiled by himself, his wife, and his lawyer, for submission to the Ministry of Education, and that his purpose in providing the questions to the Director was to show him what issues, in part, would be escalated to the Ministry of Education. We are of the view that while this may have been the **complainant's** purpose in providing the questions, the **Director's** view was that he had received the questions in order to answer them, and he took action accordingly. Therefore, we remain of the view that the disclosure to staff was in compliance with section 32(c) of the Act, for the purpose for which the personal information was obtained.

The Board also submitted that the disclosures to staff were in compliance with section 32(d) of the Act, which permits disclosure to employees who need the record in the performance of their duties. The Board indicated that the questions had been disclosed only to the following Board staff: the Superintendent of Schools and the child's school Principal, because they were the individuals who knew the answers to, and could appropriately respond to the questions, and the Director's Executive Secretary, who handled all confidential matters for the Director and who prepared the Director's response in this case.

In response to our draft report, the complainant submitted that there was a discrepancy between the above list of individuals the Board had provided to our office, and the list the complainant had been provided by the Board's Chair. We were aware of this discrepancy at the time we issued our draft report. However, we are satisfied with the expanded list of individuals provided to us for the purpose of this investigation.

We stated in our draft report that the individuals listed above would have had to know what the questions were in order to be able to answer them, or to prepare the Director's reply. The complainant submitted that "...there is no justification for releasing any section of my information to an employee who is not able to supply the required information nor in a position to evaluate the conduct of a person named in those questions". The complainant is in effect, saying that only certain questions should have been provided to the Superintendent and Principal.

In our view, disclosure of the personal information contained in the questions to an employee who did not need the record in the performance of his duties would be a breach of section 32(d) of the Act. In the circumstances of this case, the complainant has stated in his comments on our draft report that the majority of his questions were about responses from officials of the Board. Both the Principal and Superintendent involved are Board officials whose conduct is at issue. It is our understanding that there is a reporting relationship between these two individuals.

It is our view that in certain circumstances, an appropriate approach would have been to provide only certain questions to these employees. However, it is also our view that the complete context and breadth of the questions would have been important for both the Superintendent and Principal to understand, given the serious nature of the complainant's concerns, and the fact that both would have to deal with the situation in the future.

Therefore, we remain of the view that the disclosures to the above employees were in compliance with section 32(d) of the Act.

We are also of the view that no other sections of the disclosure provisions of the Act apply to the disclosures in question.

Conclusion: The personal information was disclosed in compliance with sections 32(c) and (d) of the Act.

SUMMARY OF CONCLUSIONS

- The questions contained the personal information of the complainants and their child, as defined in section 2(1)(h) of the Act.
- The personal information was disclosed in compliance with sections 32(c) and (d) of the Act.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

June 7, 1995
Date