



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

---

---

# INVESTIGATION REPORT

INVESTIGATION I96-040M

A POLICE SERVICES BOARD

---

---

September 5, 1996



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/Téloc: 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 Police Services Board (the Police). The complainant was a teacher employed by a separate school board (the Board). One of the Board's former students accused the complainant of rape. The Police investigated the allegations, interviewing several witnesses, and taking their statements. The complainant was arrested and when the matter went to trial, he was acquitted.

After the trial, the Police provided copies of the witness statements to the Board's Director of Education, for the purposes of a Board disciplinary hearing. The complainant was of the view that the witness statements contained his personal information, and that the actions of the Police breached 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 the Police disclose the personal information in compliance with 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, that "personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- ...
- (d) the address, telephone number, fingerprints or blood type of the individual,
- ...

- (e) the personal opinions or views of the individual except if they relate to another individual,
- ...
- (g) the views or opinions of another individual about the individual, and
- (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 information in question was contained in a series of witness statements provided to the Police. The statements identified the witness, the complainant and other individuals by name, and provided accounts of various incidents involving the complainant, the alleged victim and other individuals.

The Police submitted:

The statements made by the witnesses where they speak of the accused were considered to be observations made by the witnesses as to their knowledge of the alleged criminal offences committed by the accused and not statements of opinion or personal view of the accused. Therefore, these observations were considered the personal information of the witnesses and not the accused. It is true there is some personal information of the accused contained in the disclosure, but this was information already in the possession of the Board ie. address, date of birth, employment history.

I do not believe a witness' observations of a crime committed by an individual can be deemed the personal information of that individual and thus the individual afforded the protection of privacy as set out in the in Municipal Freedom of Information and Protection of Privacy Act in order to avoid detection and/or prosecution.

It is our view that the witness statements contained the personal information of both the witnesses and other individuals, including the complainant.

In their statements, the witnesses make various references to other individuals, e.g. "she was the type of girl who kept to herself"; [the complainant] socialized too much with his students"; [the complainant] was like a father figure to her." These are the views or opinions of the witnesses about the individuals, and they constitute the individuals' personal information, including the complainant's.

The witnesses gave accounts of various incidents involving other individuals, including the complainant. These accounts are the views of the witnesses about the individuals. They also constitute the personal information of the individuals, including the complainant.

The witnesses also provided information about themselves, e.g. name, address, employment history, their views about how they felt about the situation. In our view, this information constitutes the personal information of the witnesses.

In our view, the information in question met the requirements of paragraphs (a),(b),(d),(e),(g), and (h) of the definition of personal information in section 2(1) of the Act.

**Conclusion:** The information in question was the witnesses' and the complainant's "personal information", as defined in section 2(1) of the Act.

**Issue B: Did the Police disclose the personal information in compliance with the Act?**

Under the Act, an institution shall not disclose personal information except in the circumstances outlined in section 32. Section 32 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;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- ...
- (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;

The Police submitted that each of the witnesses had been contacted and that only the statements of the witnesses who consented to the disclosure were provided to the Board. The Act provides under section 32(b) that the person to whom the information relates may consent to the disclosure of his or her personal information. It is our view, therefore, that the witnesses' personal information was disclosed in compliance with section 32(b) of the Act.

The position of the Police was that the complainant's personal information had been disclosed in compliance with section 32(e) of the Act, for the purpose of complying with an Act of the Legislature, the Education Act. The Police cited various provisions of the Education Act and its Regulations. The Police stated that the Education Act "compels principals to investigate and report incidents (to the Minister) [of Education] where teachers are suspected of offences which put children at risk."

We examined section 170m of the Education Act, under Duties and Powers of Boards, which states in part:

Every Board shall,

promptly notify the Minister in writing when the board becomes aware that a teacher who is or has been employed by the board has been convicted of an offence under the Criminal Code (Canada) involving sexual conduct and minors, or any other offence that in the opinion of the board indicates that pupils may be at risk.

It is our view that the above section of the Education Act does not apply in the circumstances of this case. The complainant and the Police agree that the complainant was acquitted of the charge against him. Therefore, he could not be said to have been “convicted of an offence involving sexual conduct and minors.” Thus, in our view, there was no requirement under section 170m of the Education Act for the Board to comply with; nor was there a requirement for the Police to disclose personal information to the Board.

In any case, had the complainant been convicted, it is our view that the duty to comply with the Education Act by notifying the Minister would rest with the Board, rather than the Police. We examined the other sections of the Education Act cited by the Police, (dealing mainly with the duties of principals) and found that none applied to the disclosure of personal information by the Police in the circumstances of this case. Therefore, it is our view that the complainant’s personal information was not disclosed by the Police in compliance with section 32(e) of the Act.

The Police further stated:

A common law principle would apply here. When a child is at risk because of the actions of a teacher, that teacher must be removed from their position so other children will not be at risk. The public would expect and demand that the police would provide school authorities with their reports so that they (school authorities) can take appropriate action. A principal can not do that unless he has reports from the police, including witness statements, which would give him cause or grounds to remove a teacher from the classroom.

We asked the Police to explain which common law principle they were referring to in their submission. They indicated that it was a generalized statement, but did not cite any legal authority to explain or support the application of any particular common law principle.

The common law principle which the Police appear to be relying on is known as *parens patriae*. In Canada, this principle gives superior courts an inherent jurisdiction to act in the best interests of children and others who have legal incapacities. In some cases, this may also be extend to the Attorney General of a province. It has never been extended to a police officer or to a police force, and therefore, it is our view that it does not apply in this case.

The Police submission as quoted above also refers to what “the public would expect and demand.” In raising this issue, the Police appear to be advancing an argument for disclosure under section 32(c) of the Act. Section 32(c) provides for disclosure of personal information for a consistent purpose. In this case, the personal information about the complainant had been collected indirectly, from the witnesses. Where personal information has been collected indirectly, a consistent purpose is one that is reasonably compatible with the purpose for which the personal information was collected.

The personal information was collected by the Police for law enforcement purposes to investigate allegations of criminal behaviour. The personal information was disclosed by the Police for the purpose of providing evidence to the Board for the complainant's disciplinary hearing.

Although the law enforcement investigation and the Board's disciplinary hearing may have been related because both concerned the conduct of the complainant, they would serve different purposes; one, to enforce the law; the other, to serve the interests of the Board as an employer. In our view, these purposes are not reasonably compatible. Therefore, it is our view that the complainant's personal information was not disclosed for a consistent purpose, in compliance with section 32(c).

We examined the remaining provisions of section 32 and found that none applied to the disclosure of the complainant's personal information. Therefore, it is our view that the complainant's personal information was not disclosed in compliance with section 32 of the Act.

**Conclusions:** The witnesses' personal information was disclosed in compliance with section 32(b) of the Act.

The complainant's personal information was not disclosed in compliance with section 32 of the Act.

## SUMMARY OF CONCLUSIONS

- The information in question was the witnesses' and the complainant's "personal information", as defined in section 2(1) of the Act.
- The witnesses' personal information was disclosed in compliance with section 32(b) of the Act.
- The complainant's personal information was not disclosed in compliance with section 32 of the Act.

## RECOMMENDATION

In this case, the Police had sought consent of the witnesses for the disclosure of their statements to the employer. We recommend that the Police advise staff, for example, in a memo, that if a similar situation arises, the Police should contact the witnesses for their permission to provide only the witness names and witness contact information to the employer. Such an approach would allow the employer to approach each witness who is willing to come forward for the purpose of a disciplinary hearing, rather than having the Police disclose the witness statements.

Within six months of receiving this report, the Police 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

September 5, 1996  
Date

\*\*\*\*\*