



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

INVESTIGATION REPORT

INVESTIGATION I96-032M

A REGIONAL POLICE SERVICES BOARD

September 6, 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/Télé: 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 regional police services board (the Police). The complainant is the father of a 13-year-old boy who was arrested and charged by the Police with assault after a fight between himself and another boy at a shopping centre.

The complainant's wife later made a complaint to the Police about how the arresting officers had conducted themselves. The Police investigated the matter, and sent an internal investigation report to the mother. After the father read the Police investigation report, he concluded that the Police had collected information from his son's Ontario Student Record (OSR) from the local school board during the course of the investigation into the assault.

The father believed that such a collection by the Police would have been improper, because the OSR is a privileged record under the Education Act. The father also believed that in responding to the Police complaint, the Police had improperly used information from his son's OSR.

The father's view was that the actions of the Police breached the provisions of 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) Does the Act prevail over a confidentiality provision in the Education Act?
- (B) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (C) Did the Police collect the personal information in compliance with section 28(2) of the Act?
- (D) Did the Police collect the personal information in compliance with section 29(1) of the Act?
- (E) Did the Police use the personal information in compliance with section 31 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Does the Act prevail over a confidentiality provision in the Education Act?

Section 53(1) of the Act states:

This Act prevails over a confidentiality provision in any other Act unless the other Act or this Act specifically provides otherwise.

Thus, the privacy provisions of the Act would prevail over a confidentiality provision in the Education Act, unless the Education Act or the Act specifically provides otherwise. We examined sections 266(2) and 266(10) of the Education Act to determine whether they are confidentiality provisions over which the Act would prevail.

Section 266(2) of the Education Act states in part:

(2) A record is privileged for the information and use of supervisory officers and the principals and teachers of the school for the improvement of the instruction of the pupil, and such record,

- (a) subject to subsections (3) and (5), is not available to any other person; and
- (b) except for the purposes of subsection (5), is not admissible in evidence for any purpose in any trial, inquest, inquiry examination, hearing or other proceeding, except to prove the establishment, maintenance, retention or transfer of the record, without the written permission of the parent.

Section 266(2) above sets out the privileged status of the OSR. In our view, this section is not a confidentiality provision (over which the Act would prevail); it is a simple prohibition against the OSR being admissible as evidence in a trial, etc., without the written permission of the parent.

Section 266(10) of the Education Act states:

Except as permitted under this section, every person shall preserve secrecy in respect of the content of a record that comes to the person's knowledge in the course of his or her duties or employment, and no such person shall communicate any such knowledge to any other person except,

- (a) as may be required in the performance of his or her duties; or
- (b) with the written consent of the parent or guardian of the pupil where the pupil is a minor; or
- (c) with the written consent of the pupil where the pupil is an adult.

It is our view that section 266(10) of the Education Act is a confidentiality provision, and that the Act prevails over this confidentiality provision, because neither the Act nor the Education Act specifically provides otherwise. Thus, we are of the view that the privacy provisions of the Act would apply to any disclosures of personal information by the school board and conversely to any collections of that personal information by the Police, where the personal information was contained in a pupil's OSR.

Conclusion: The Act prevails over the confidentiality provision in section 266(10) of the Education Act.

Issue B: 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,
- ...
- (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 notes from the complainant's son's behaviour file, which formed part of his OSR. The notes contained references not only to him, but also to various other individuals, for example, his parents, other pupils, the parent of another pupil, and teachers.

In our view, the information in question met the requirements of paragraphs (a),(b),(e),(g) and (h) of the definition of personal information in section 2(1) of the Act, and thus was the complainant's son's and other individuals' “personal information”.

Conclusion: The information in question was the complainant's son's and other individuals' “personal information”, as defined in section 2(1) of the Act.

Issue C: Was the personal information collected in compliance with section 28(2) of the Act?

Under the Act, no person can collect personal information on behalf of an institution unless the collection meets one of the conditions given in section 28(2). Specifically, section 28(2) of the Act states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, **used for the purposes of law enforcement** or necessary to the proper administration of a lawfully authorized activity.[emphasis added]

Section 2(1) of the Act states:

In this Act,

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

In separate responses to this complaint, both the board and the Police agreed that the investigating officer had not been shown the complainant's son's OSR, nor had he received copies of the OSR from the school principal. The principal stated that he did not have the OSR present when he spoke to the police officer, nor did he read to the police officer from the OSR. Any information that was disclosed by the principal was disclosed verbally. After comparing the OSR records with the police investigation report, we concluded that some personal information that had been recorded in the OSR had been collected by the Police, as a result of verbal disclosures by the principal.

In the circumstances of this case, the Police collected information about the complainant's son to investigate an alleged assault. It is our view that the personal information collected would have been used for the purposes of law enforcement, in compliance with section 28(2) of the Act.

Conclusion: The personal information was collected in compliance with section 28(2) of the Act.

Issue D: Was the personal information collected in compliance with section 29(1) of the Act?

Section 29(1) of the Act states in part:

An institution shall collect personal information only directly from the individual to whom the information relates unless,

- ...
- (f) the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal;
 - (g) the information is collected for the purpose of law enforcement; or

In this case, the personal information at issue was collected indirectly, from the school principal and other witnesses. The Police submitted that the personal information had been collected in accordance with sections 29(1)(f) and (g) of the Act for the purposes of a proceeding in a court and for the purpose of law enforcement. We agree with the Police that the personal information was collected in compliance with sections 29(1)(f) and (g) of the Act.

Conclusion: The personal information was collected in compliance with sections 29(1)(f) and (g) of the Act.

Issue E: Did the Police use the personal information in compliance with section 31 of the Act?

The complainant was concerned that information that had been collected by the Police from his son's OSR had been improperly used by the Police when one of the police officers complained about responded to the mother's complaint. Part of the mother's letter to the Police had stated:

This case should have been conducted with some sensitivity because after all it is about a 13 year old boy who has never been in trouble before.

The police officer, at page 13 of the Police investigation report, refuted the mother's statement that the son had "never been in trouble before". The police officer indicated that although the

complainant's son had not been arrested, he was "continuously in trouble". The officer then made reference to various items of information about the son which the Police had collected during the course of their investigation, which supported the view that the son had previously been "in trouble". Some of the information referred to by the police officer had been verbally disclosed by the school principal, and some had been collected from other sources (i.e. witnesses, other police investigations).

The Police had then used the information they had collected for the purposes of law enforcement, i.e., its investigation into an alleged assault, to respond to the mother's complaint about how the investigating officers had conducted that same law enforcement investigation.

Under the Act, an institution shall not use personal information except in the circumstances outlined in section 31. Section 31 states in part:

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

- ...
- (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or

Section 33 of the Act further provides that:

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.

Where personal information has been collected indirectly, a “consistent purpose” is one which is “reasonably compatible” with the purpose for which the personal information was obtained. In this case, the Police had obtained the personal information for the purposes of law enforcement, in the investigation of an alleged assault. The personal information had then been used to respond to a complaint about the conduct of the officers conducting the **same** investigation.

It is our view that these purposes are reasonably compatible, and that the personal information was used for a consistent purpose, in compliance with section 31(b) of the Act.

Conclusion: The personal information was used in compliance with section 31(b) of the Act.

Other matters

Protocol Between The Police and The School Board

A protocol exists between the Police and the local school board. The protocol supports the principle that all students and staff deserve a safe learning environment. The purpose of the protocol is to clarify the roles of the Police and the board. At page 18, the protocol states:

If the police are conducting an investigation for the purpose of law enforcement proceedings, the school Principal may rely upon section 32(g) of the Municipal Freedom of Information and Protection of Privacy Act to release “general information” (such as the name, address and phone numbers of a student or staff) to the law enforcement official. This does not allow the release of the O.S.R.

It is our view that the examples of “general information” referred to in the protocol constitutes “personal information” as defined in section 2(1) of the Act (i.e. recorded information about identifiable individuals).

SUMMARY OF CONCLUSIONS

- The Act prevails over the confidentiality provision in section 266(10) of the Education Act.
- The information in question was the complainant's son's and other individuals' "personal information", as defined in section 2(1) of the Act.
- The personal information was collected in compliance with sections 29(1)(f) and (g) of the Act.
- The personal information was used in compliance with section 31(b) of the Act.

RECOMMENDATION

At page two, the protocol between the Police and the school board states that the police/school liaison committee will monitor the implementation of the protocol and meet periodically thereafter to deal with any problems and issues that might arise.

We recommend that the Police review its protocol with the school board to ensure that the wording of the protocol is clear as to what constitutes "personal information" under the Act.

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 6, 1996 _____
Date
