



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

INVESTIGATION REPORT

INVESTIGATION I96-057M

A BOARD OF EDUCATION

November 28, 1996



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INTRODUCTION

Background of the Complaint

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

The Board had been considering introducing "year-round education" in one or two of its elementary schools. The complainant's child's school had met certain criteria, such as size and accessibility, to qualify as a possible pilot school.

The Board had then sent out questionnaires for its "Year-Round Education Survey" (the Survey) to parents of children attending the potential pilot schools asking them for their opinions and/or concerns about a year-round education program. The parents were also asked to provide their names and telephone numbers on their completed questionnaires.

The complainant questioned the Board's authority to collect the information requested on the Survey. He also noted that the Survey questionnaires did not contain a "notice of collection". He believed that notice was required under 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) Was the Board's collection of the personal information in compliance with section 28(2) of the Act?
- (C) Did the Board provide notice of the collection of personal information, as required by section 29(2) 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, that "personal information" means recorded information about an identifiable individual, including,

- (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,
- (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 Survey questionnaire asked parents (including the complainant) for their names and telephone numbers, the age and grade level of their children, and their opinions and/or concerns about year-round education. It also asked whether the parents wanted additional information about year-round education, and whether they were interested in working on a committee or in participating in follow-up discussions regarding the proposed program.

In our view, the information in question met the requirements of paragraphs (d), (e), and (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: Was the Board's collection of the personal information in compliance with section 28(2) of the Act?

The Board advised us that it was a "growth board" that had been examining more efficient uses of its facilities because of a current moratorium on capital funding. One of the options that it had been exploring was year-round education. The Board stated that in order to determine the level of interest for such a program, it had been necessary to consult with parents. The Survey had been conducted to determine parents' interest in year-round education if this were available in their schools and to ascertain how many and which schools would be interested in setting up the program.

Section 28(2) of the Act sets out the circumstances under which an institution can collect personal information. This section 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).

The Board stated that the collection of the personal information in the Survey was both "expressly authorized by statute" and "necessary to the proper administration of a lawfully authorized activity."

The Board advised us that section 58(2) of the Education Act provides it with the statutory authority to undertake collections of personal information that are necessary to the functioning of a school board. This section states:

A board of education may be established in a secondary school district that is not a school division to perform the duties of a secondary school board for the district and the duties of a public school board for the school section or sections situated within the boundaries of the district and, where a board of education is established, subsection 56(3) applies, with necessary modifications.

Section 56(3) of the Education Act states:

Every divisional board is a corporation and has all the powers and shall perform all the duties that by this or any other Act are conferred or imposed upon,

- (a) a public school board for public school purposes; and
- (b) a secondary school board for secondary school purposes.

The Board also referred to sections 170 and 171(1) of the Education Act (EA) and Regulation 304. Section 170 of the EA states, in part, that every board shall:

- 6. provide instruction and adequate accommodation during each school year for pupils who have a right to attend a school under the jurisdiction of the board;
- 10. ensure that every school under its charge is conducted in accordance with this Act and the regulations;
- 11. keep open its schools during the whole period of the school year determined under the regulations, except where it is otherwise provided under the Act;
- 15. ascertain and report to the Ministry at least once in each year in the manner required by the Minister the names ages of all children of compulsory school age within its jurisdiction who are not enrolled in any school or private school and the reasons therefor;

Section 171(1) of the EA states, in part, that a board may,

- 7. determine the number and kind of schools to be established and maintained and the attendance area for each school, and close schools in accordance with policies established by the board from guidelines issued by the Minister;
- 24. permit the school building and premises and school buses owned by the board to be used for any education or other lawful purpose;

Section 5(1) of Regulation 304 under the EA states:

For one or more schools under its jurisdiction a board may designate a school year and school holidays that are different from those prescribed in section 2 and, where a board does so, the board shall submit to the Minister on or before the first day of March a proposed school calendar for the school year next following in

respect of such school or schools, identifying thereon each day of the school year as an instructional day, a professional activity day or a school holiday, and the board may, upon approval thereof by the Minister, implement such a school calendar.

We accept that the Board has the authority to determine the kind of schools it wishes to establish and maintain, as well as the designation of the school year and school holidays (with the approval of the Minister) in those schools, including school all year round. However, in our view, the phrase "expressly authorized by statute" in section 28(2) of the Act requires either that specific types of personal information collected be expressly described in the statute, or a general reference to the activity be set out in the statute, together with a specific reference to the personal information to be collected in a regulation under the statute; i.e., in a form or in the text of the regulation.

It is our view that the sections referred to by the Board in the EA and Regulation 304 do not specifically provide for the Board's collection of the complainant's personal information and, therefore, in our view, the Board's collection of the complainant's personal information was not "expressly authorized by statute" within the meaning of section 28(2) of the Act.

The Board also relied upon the third condition of section 28(2) of the Act, stating that the collection of the personal information on the Survey had been "necessary to the proper administration of a lawfully authorized activity."

The Board stated that when making a decision about year-round education, it needed to get as close to 100% response rate as possible on the Survey. The Board was of the view that therefore the parents' names and telephone numbers were required so that it could follow up on any outstanding questionnaires. In addition, the Board needed the names so that it could identify those parents who wished to receive additional information about year-round education and those who had expressed an interest in working with a year-round education committee and/or in participating in subsequent discussions.

However, the Board informed us that the information from the Survey was keyed into the computer by school and not by parental name and telephone number. The results of the Survey were then presented in a report at a Board meeting by the Acting Superintendent of Operations. This report stated that preliminary results had shown that additional time was required to discuss and evaluate the interest that had been generated in year round education and to determine the most appropriate model that would fit each school's particular situation.

The report also indicated that additional time was required to complete the evaluation of all survey questionnaires returned before a selection of pilot schools could be finalized. Further consultation would then be required with parents of those schools being evaluated to ascertain the kind of year-round education they preferred and to ensure that the interest generated reflected the views of a strong majority of parents.

It is our view that, under the EA, the Board may designate a school year and school holidays that are different from those prescribed by the legislation with the approval of the Minister, including

having school all year round. It is also our view that Board's activity of conducting a survey to determine the level of parental interest and to solicit their views about year-round education before implementing such a program is a "lawfully authorized activity".

We, note, however, that the names and telephone numbers of parents were not required nor used in the analysis and preliminary results of the Survey. It is our view that in the circumstances of this case, the Board could have determined parental interest and opinion without collecting personal information such as parental names and telephone numbers. It is also our view that without this personal information, parents could have, nevertheless, been reminded about completing the questionnaire by other means, such as a notice from the schools involved. Parents could also have been advised to contact a specific individual at the Board if they wished to have additional information or to participate further in discussions about year-round education.

Therefore, in our view, it cannot be said that the Board's collection of personal information was "necessary" to the proper administration of a lawfully authorized activity, i.e. conducting the Survey in order to determine parental interest and opinion, in compliance with section 28(2) of the Act.

Conclusion: The Board's collection of the personal information was not in compliance with section 28(2) of the Act.

Issue C: Did the Board provide notice of the collection of personal information, as required in section 29(2) of the Act?

The complainant was also concerned that he had not received any notice of the collection, as required in section 29(2) of the Act. Section 29(2) states:

If personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection.

The Board advised us that, as the result of an oversight, a notice of collection was not included on the Survey questionnaire. The Board explained that the Survey was originally developed as an "anonymous" survey, with no parents' names and telephone numbers required.

In our view, as the Board did not provide notice of the collection of personal information on the Survey, it did not comply with the requirements of section 29(2) of the Act.

Conclusion: The Board did not provide notice of the collection of the complainant's personal information, as required by section 29(2) of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information", as defined in section 2(1) of the Act.
- The Board's collection of the personal information was not in compliance with section 28(2) of the Act.
- The Board did not provide notice of the collection of the complainant's personal information, as required by section 29(2) of the Act.

RECOMMENDATION

Based on the information provided to us, it is our view that, in the circumstances of this case, it was not necessary to collect personal information in order for the Board to determine the level of parental interest and opinion about year-round education. We, therefore, recommend that the Board collects personal information only if it is necessary to do so. However, if the Board feels that the collection of personal information is required, for example, on future surveys, the Board should take steps to ensure that the collection is in compliance with sections 28(2) and 29(2) of the Act.

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: _____
1996 Susan Anthistle
Compliance Review Officer

November 28,
Date