



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

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT PC-010018-1

Ministry of Education

March 28, 2002

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PRIVACY COMPLAINT NO. **PC-010018-1**

MEDIATOR: **Jim Mac Kenzie**

INSTITUTION: **Ministry of Education**

SUMMARY OF COMMISSIONER INITIATED COMPLAINT:

A school board (the Board) contacted the Office of the Information and Privacy Commissioner/Ontario (the IPC) about the Ministry of Education's (the Ministry) *Guide to Provincial Report Card Grades 9-12, 1999* (Guide). This Guide requires that the name of the School Council Chair (the Chair) appear on report cards for students attending each school. The Guide states:

“The opening section contains a space for the name of the school council chair. This name is provided for parents' information only; the school council chair does not receive copies of students' report card or answer parents' questions regarding report cards.”

The Board takes the position that the name of the Chair is personal information. The Board is of the view that the disclosure of the name of the Chair via the Provincial Report Card is inconsistent with the purpose for which this information is collected and, without the consent of the Chair, is contrary to section 32 of the *Municipal Freedom of Information and Protection of Privacy Act (the Act)*

The Board indicates that it had received complaints from Chairs who had received phone calls from parents of students after the report cards were distributed, wishing to discuss academic progress with the Chairs.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Is the information “personal information” as defined in section 2(1) of the *Act*? If yes,

- (B) Was the disclosure of the personal information in accordance with section 32 of the *Act*?

RESULTS OF THE INVESTIGATION:

Issue A: Is the information “personal information” as defined in section 2(1) of the *Act*?

Discussion:

Section 2(1) of the *Act* defines “personal information” as recorded information about an identifiable individual including,

...

- (h) The individual’s name where 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;

During our investigation, the Mediator spoke with the Executive Director of the Ontario School Council who indicated that an individual becomes a Chair in an open electoral process, or by volunteering where no other candidates come forward to contest an election, and the duties of a Chair are clearly set out in *Ontario Regulation 612/00* under the *Education Act*. There are five specific areas of responsibility all of which can either in part or totally be related to students and their level of academic performance or lack of performance and how it might be improved or altered, areas such as behaviour and conduct, teacher conduct, ethics, qualifications, school uniforms, discipline, etc.

Further, the Executive Director stated his view that the Chairs have opted to hold a lead role in a public position and therefore should expect disclosure of their names. The Executive Director indicated that, in order to perform the duties of the office of Chair, such as asking questions and making statements about certain issues, the Chair would need to be open and accessible to parents, guardians, students, educators, Ministry staff and from time to time other community members. It is reasonable to expect that the Chair would make statements and pursue interests of parents, students and the Council as a whole. These expectations parallel the expectations of any appointed or elected official in the community.

Analysis:

Many decisions of the IPC apply the personal/professional-business distinction to decide whether information about a person’s job activities is their personal information, but it has also been applied to decide whether the fact of holding a particular position or office is personal information.

The following are some of the pertinent orders and privacy complaints.

Order P-80

The identity of individuals who were officers of the Council on Mind Abuse was at issue in this order. The adjudicator found that this was not their personal information. The order states:

The institution submits that "...the name of the individual, where it is linked with another identifier, in this case the title of the individual and the organization of which that individual is either executive director or president, is personal information defined in section 2 of the FIO/PPA."

Having carefully reviewed the contents of these three letters and the circumstances surrounding their submission to the institution, in my view, the names of the individuals do not qualify as "personal information" in the circumstances of this appeal. All pieces of correspondence concern corporate, as opposed to personal, matters (i.e. funding procedures for COMA), as evidenced by the following: the letters from COMA to the institution are on official corporate letterhead and are signed by an individual in his capacity as corporate representative of COMA; and the letter of response from the institution is sent to an individual in his corporate capacity. In my view, the names of these officers should properly be categorized as "corporate information" rather than "personal information" under the circumstances.

Order P-157

This order dealt with information in the context of an investigation by the Ontario Securities Commission. It found that the identity of individuals in their professional or business capacities was not personal information:

In all instances, except for one portion of the investigator's report (both draft and final), either these records are publicly available (such as Personal Property Security Act searches, Land Title Act searches, Corporations Information Act records) or the records identify individuals in their professional or business capacities. Letters from the appellant's previous employers, for example, are signed by individuals as corporate or Ministry representatives. Names and telephone numbers of individuals in this latter context cannot be categorized as "personal information" as defined in subsection 2(1) of the Act and do not qualify for personal privacy protection. [emphasis added]

Order P-300

The information at issue in this order included the name of the author of a letter, who was an officer of a local organization. The Assistant Commissioner stated:

“Personal information” is defined under section 2(1) of the Act to mean recorded information about an “identifiable individual”. The meaning of the term “individual” in the context of the Act has been considered in previous orders and found not to include a sole proprietorship, partnership, unincorporated association or corporation (Orders 16, 113); a trade union, corporation or law firm (Order 42); or the names of officers of a corporation writing in their official capacity (Orders 80, 113).

In my view, correspondence submitted to an institution by a representative of a group or association such as the body represented by the appellant in this appeal, is not the personal information of the author of the correspondence. The correspondence was submitted to the institution by the local organization on the letterhead of the organization, and signed by the appellant in her capacity as a spokesperson of the organization. Consequently, I find that the record does not qualify as the appellant’s “personal information”, and it is not necessary for me to consider the possible application of section 21 of the Act. [emphasis added]

Order M-1132

This order concerned a request for information about a police investigation of comments made at a Girl Guides meeting. One of the records at issue was a letter from the Chief of Police to a Guides leader. The order found that only the leader’s home address constituted her personal information and ordered disclosure of the remainder of the letter, stating,

Record 1 is addressed to an individual in her capacity as a Girl Guide leader and refers to activities concerning the Girl Guides. In my view, this information does not qualify as personal information. Therefore, it is not exempt under either section 14(1) or 38(b).

Order P-1409

In this order, references to several affected persons “...related exclusively to their professional and/or official capacity” and therefore were not personal information. The order summarizes the IPC’s approach to this issue:

To summarize the approach taken by this office in past decisions on this subject, information, which identifies an individual in his or her employment, professional or official capacity, or provides a business address or telephone number, is usually not regarded as personal

information. This also applies to opinions developed or expressed by an individual in his or her employment, professional or official capacity, and information about other normal activities undertaken in that context. When not excluded from the Act under section 65(6), other employment-related information, whether of an evaluative nature, or in relation to other human resources matters, has generally been found to qualify as personal information. [emphasis added]

Based on the above, I am satisfied that the name of the School Council Chair is not “personal information” as defined by section 2(1) of the *Act*.

Conclusion: The information in question is not personal information as defined by section 2(1) of the *Act*.

Issue B: Was the disclosure of the personal information in accordance with section 32 of the *Act*?

In light of my findings above that the information in question is not personal information as defined in section 2(1) of the *Act*, it is not necessary for me to address this issue.

SUMMARY OF CONCLUSIONS:

- The information in question is not personal information as defined by section 2(1) of the *Act*.

Jim Mac Kenzie
Mediator

March 28, 2002