



**Information and Privacy
Commissioner/Ontario**

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

INVESTIGATION REPORT

INVESTIGATION MC-980055-1

A Board of Education

September 30, 1999



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INTRODUCTION

Background of the Complaint

This investigation was initiated by the Office of the Information and Privacy Commissioner (the IPC) as a result of a complaint concerning a Board of Education (the Board). The complainant stated that a private investigator (the private investigator) was given access to her son's personal information by the Board without her permission, as the person with lawful custody of her son (the boy).

The private investigator advised our Office that he attended at the boy's school on June 26, 1998, and interviewed the boy's home room teacher and his second teacher (the teachers). This fact is not disputed by the Board. After this interview, the private investigator produced a report containing detailed and specific information about the boy before and after a specific incident. One specific portion of this report described the private investigator's meeting with the teachers. A partial copy of the report was provided to our Office by the complainant, through her counsel. The private investigator advised that the personal information about the boy contained in the portion of his report describing his meeting with the teachers, was provided by the teachers.

The complainant was concerned that her son's personal information was disclosed to the private investigator by the Board contrary to the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the IPC Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question the "personal information" of the boy, as defined in section 2(1) of the Act? If yes,
- (B) Was the disclosure of the boy's personal information in compliance with section 32 of the Act?

RESULTS OF THE IPC INVESTIGATION

Issue A: Was the information in question the "personal information" of the boy, 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, in part,

- ...
- (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,
- ...

- (g) the views or opinions of another individual about the individual, and
- (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;

The information appearing in the portion of the private investigator's report describing his meeting with the teachers includes the boy's name, together with specific facts and details about classes the boy had been in, his grades, skills and subjects, social abilities, behaviours and situations in and out of school, and about his involvement with specific relatives.

In order to make the Board aware of the type of information included in the private investigator's report, and to discuss the disclosure of the information, a Mediator from our Office met with the boy's two teachers. Also in attendance at this meeting were: an executive staff member of the Elementary Teachers' Federation of Ontario (the Federation); counsel for the Federation; and a Board Superintendent.

The Mediator asked each teacher a number of specific questions concerning their discussions with the private investigator and the information contained in his report. These questions dealt with matters such as the boy's marks or how he was doing in school, what grade and class he attended, the type of class he attended, any special attention he received, his strong subjects etc.

Counsel for the Federation takes the position that, because the information about the boy was provided by the teachers to the private investigator orally, it was not "recorded" information and therefore does not satisfy the requirements of the definition of the term "personal information" in section 2(1) of the Act. We disagree with this position. This Office takes the position that an oral disclosure of personal information falls under the privacy provisions of Part 2 of the Act, as long as the information in question exists or existed at one time in a recorded format. In our view, to decide otherwise would facilitate the circumvention of the non-disclosure rules contained in Part 2, and would be inconsistent with the purposes of the Act.

At a minimum, information such as the boy's marks, what grade and class he attended, or the type of class he attended, would be information that exists or existed in school records. In our view, it is reasonable to conclude that at least some, if not all, of the thirty discrete items of information allegedly disclosed by the teachers and outlined in the private investigator's report exist and/or existed in Board, school and/or teacher records.

Accordingly, I find that the information contained in the private investigator's report is the personal information of the boy, as defined in of paragraphs (b), (g) and (h) of the definition of "personal information" in section 2(1) of the Act. It is sufficient that some, and not necessarily all, of the thirty discrete items exist and/or existed in order to make this finding.

Conclusion: The information contained in the private investigator's report is the personal information of the boy, as defined in section 2(1) of the Act.

Issue B: Was the disclosure of the boy's personal information in compliance with section 32 of the Act?

Under the Act, an institution cannot disclose personal information in its custody or under its control except in the specific circumstances outlined in section 32.

As noted in Issue A, the Mediator met with the two teachers to inquire whether the boy's personal information had been provided by them to the private investigator. The teachers were each in turn asked whether they had disclosed each specified piece of personal information appearing in the portion of the private investigator's report describing his meeting with them. Each teacher was asked the same thirty questions in the presence of a Superintendent representing the Board in this matter.

One of the teachers said she told the private investigator that the boy had been in her class for a short time, but did not specify the number of days. The other teacher recalled telling the private investigator that the boy was in a small class and commenting on his mother being involved with the school. One of the teachers also recalled having told the private investigator which of the various subjects was the boy's best. The teachers maintained that they had either not disclosed the rest of the personal information, or in some cases that they could not recall having made the disclosure.

The Board's position has remained that, other than the information identified in the preceding paragraph, the boy's personal information was not disclosed by the teachers. The Board questions the accuracy of the private investigator's report, and has raised concerns about the report and its attribution of certain comments to the teachers.

Because the question of attribution of each statement to one or other of the teachers was raised, and because the wording of the private investigator's report attributes only a few statements to the specific teachers, the Mediator asked the private investigator which teacher had provided each piece of personal information. The private investigator could not recall, beyond the obvious and clear attributions in his report, but he was certain that all of the personal information contained in the portion of his report describing his meeting with the teachers was provided by one or both of the teachers.

The Mediator also asked the complainant whether the information about her son contained in this portion of the private investigator's report was accurate. The complainant confirmed that it was, and also confirmed that she herself did not provide the personal information to the private investigator and, to her knowledge, it was not provided by anyone else.

In response to a draft copy of this report, the Federation noted that at least one additional individual was interviewed by the private investigator, a teacher's aide at the Board, and that the teacher's aide may have been the source of the personal information. The Federation suggests that the IPC made no attempt to determine what additional information the teacher's aide provided to the private investigator. The IPC did, in fact, note that the private investigator's report was divided into sections, one of which details the private investigator's meeting with the teachers on June 28, 1998 and those comments attributed specifically to the two teachers, and another which details the private investigator's conversation with the teacher's aide on October 8, 1998, considerably after his meeting with the teachers. At the time of the private investigator's conversation with the teacher's aide, the private investigator was advised by the Board that the teacher's aide was no longer employed by the Board. Since the private

investigator's report is clearly divided into sections and specifically outlines the personal information provided to the private investigator during his meeting with the teachers, it is our view that it is unlikely to have been confused with any information provided by the teacher's aide, several months later.

In this case, the Board maintains that the teachers did not disclose most of the personal information to the private investigator. However, the private investigator states that the personal information in the portion of his report describing his meeting with the teachers did come from the Board teachers, and the complainant confirms that the personal information in the report is accurate.

Having considered all of the information obtained during the course of our investigation of the complaint, in our view, the teachers are the most likely source of the personal information provided to the private investigator and included in his report. There is no dispute that the teachers met with the private investigator and discussed issues relating to the boy. The private investigator relied on information provided by the teachers in producing his report, and the complainant has confirmed that the contents are accurate and were not provided by her. The private investigator has a clear recollection of obtaining the information about the boy during his interview with the teachers, and there is no suggestion of any alternative sources of this information. The information contained in the portion of the report describing the private investigator's meeting with the teachers is also the type of information which would logically be known by teachers involved with the boy's education. Therefore, on the balance of probabilities, I find that the teachers provided the personal information about the boy to the private investigator.

Our Office takes the position that the actions of an employee of an institution in the course of discharging employment-related responsibilities are considered to be the actions of the institution. Further, when considering a contravention of the privacy provisions of the Act, our Office makes findings with respect to the institution, in this case the Board, and not individuals. Accordingly, I find that the Board disclosed the personal information to the private investigator.

The Board has not provided any representations of the possible application of the provisions of section 32 to the disclosure of the boy's personal information. We have examined these provisions, and it is our view that none of the specific circumstances outlined in section 32 which permit the disclosure of personal information apply in the circumstances of this case. Therefore, I find that the Board's disclosure of the boy's personal information to the private investigator was not in compliance with section 32 of the Act.

Conclusion: The Board's disclosure of the boy's personal information was not in compliance with section 32 of the Act.

SUMMARY OF CONCLUSIONS

- The information contained in the private investigator's report is the personal information of the boy, as defined in section 2(1) of the Act.

- The Board's disclosure of the boy's personal information was not in compliance with section 32 of the Act.

RECOMMENDATIONS

We recommend that the Board take appropriate steps to ensure that all employees are aware of the personal information management practices required for compliance with Part 2 of the Act. These steps should include, but are not limited to, written notification to all teachers and staff members who handle personal information, reminding them of the limited circumstances under which the disclosure of personal information is permitted under the Act.

Within six months of receiving this report, the Board should provide the Office of the Information and Privacy Commissioner/Ontario with proof of compliance with the above recommendation.

Tom Mitchinson
Assistant Commissioner

September 30, 1999

Date
