



**Information and Privacy  
Commissioner/Ontario**

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

# **INTERIM ORDER MO-1521-I**

**Appeal MA-010249-1**

**Toronto District School Board**



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## **NATURE OF THE APPEAL:**

The Toronto District School Board (the Board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from a Ratepayers' Association. The request was for copies of various records relating to the lease of a school property by an identified tenant. The request specified the types of responsive records that may exist including a lease, offer to lease, memorandum of understanding, letter of agreement, Board Staff reports, Board calculations and analyses of value, appraisals, agreement in principle, minutes of Board meetings, Board resolutions, and minutes of the Facilities Committee meetings. Some of the meeting minutes and reports were further specified by date.

The Board located responsive records and granted access to the minutes of two public meetings of the Board dated August 30, 2000 and November 22, 2000, respectively. The Board further directed the Appellant to its website in order to obtain copies of the agenda of more recent public Board meetings and indicated that the minutes of public Board meetings will be posted on the website when they become available.

The Board denied access to the remainder of the records, namely minutes of Board meetings held in private session and information pertaining to the lease of the School. In denying access the Board relied on the following sections of the *Act*:

- Section 6(1)(b) – closed meeting;
- Section 7 – advice or recommendations;
- Section 10 – third party information; and
- Section 11 – economic or other interests.

The Appellant appealed the decision, in part, on the following grounds:

- The appellant attended at least one of the “closed” meetings of the Board thus preventing the Board from relying on section 6(1)(b);
- The appellant requested a copy of “any supporting appraisals” provided to the Board, which information would fall within the exception to section 7 in section 7(2)(c).
- Since the records pertain to the disposition of a “valuable public asset”, section 10(1) is not available. Moreover, the Board has not confirmed that the provisions of section 10(2) have been adhered to;
- The Board will suffer no adverse effect from disclosure of the details of the transaction pursuant to section 11 since the value of the lease and its duration are already on the public record.

During mediation, the Appellant acknowledged receipt of copies of meeting minutes from the two publicly held Board meetings referred to above. The Appellant expressed dissatisfaction with being referred to the Board's web site for a number of the responsive records. The Board agreed to provide the Appellant with hard copies of those responsive records found on the Board's web site.

Further mediation could not be effected and this appeal was moved into adjudication. I sought representations from the Board and the tenant (as a third party), initially. Both parties submitted representations in response.

## **ISSUE:**

The Board initially requested that I withhold all of its submissions. The Board later asked that I withhold only specific portions of these submissions. The purpose of this interim order is to rule on this latter confidentiality request.

## **DISCUSSION:**

### **Sharing of representations procedure**

In the Notice of Inquiry cover letter to the Board, I stated:

The representations you provide to this office may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in the attached document entitled *Inquiry Procedure at the Adjudication Stage*. Please refer to this document when preparing your representations.

The *Inquiry Procedure* document states:

In its representations, the first party must indicate clearly, and in detail:

- which information in its representations, if any, the party wishes the Adjudicator to withhold from the second party; and
- its reasons for this request (see confidentiality criteria below).

The document later sets out the criteria for withholding representations, as follows:

The Adjudicator may withhold information contained in a party's representations where:

- (a) disclosure of the information would reveal the substance of a record claimed to be exempt or excluded;
- (b) the information would be exempt if contained in a record subject to the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*; or
- (c) the information should not be disclosed to the other party for another reason.

For the purposes of paragraph (c) above, the Adjudicator will apply the following test:

- (i) the party communicated the information to the IPC in a confidence that it would not be disclosed to the other party; and
- (ii) confidentiality must be essential to the full and satisfactory maintenance of the relation between the IPC and the party; and
- (iii) the relation must be one which in the opinion of the community ought to be diligently fostered; and
- (iv) the injury to the relation that would result from the disclosure of the information would be greater than the benefit thereby gained for the correct disposal of the litigation.

### **The Board's confidentiality request**

Initially, the Board asked that I keep its submissions confidential on the basis that they address the content of the documents which it has declined to disclose. In amending its request for confidentiality, the Board stated:

It is submitted that the words marked in blue above should not be released as they effectively disclose a term [of the record] which is found in record 8. The information ... is itself proprietary information that has a commercial value. The release of this information may cause other parties to seek to interfere with the [matter].

Essentially, the Board takes the position that the information it has identified in its representations is not otherwise known and its disclosure would cause the Board harm as contemplated under sections 11(a), (c) and (d) of the *Act*.

### **Findings**

The portions of the representations that the Board wishes to remain confidential refer to the status of the matter to which the requested records relate. This information is not specifically found on the record at issue. Therefore, it does not fall under criterion (a).

The Board contends that this information would be exempt under sections 11(a), (c) and/or (d) if it were contained in a record (criterion (b)). This information may or may not be generally known. The mere fact that certain information is not generally known does not, in and of itself, bring it under the protection of the *Act*. I do not accept the Board's claim that this information is proprietary information of the Board or that it would necessarily be exempt if contained in a record. Consequently, I find that criterion (b) is not applicable in the circumstances.

Even if it were applicable, this information is directly relevant to the issue of harm under the Board's section 11 claim. I am of the view that fairness requires that the appellant be made aware of the basis for the Board's argument, and that it be given an opportunity to address the particulars of this argument. On this basis, I find that the information is not otherwise confidential based on the four part "Wigmore" test for confidential communications set out above (criterion (c)).

For the above reasons, I have decided that the portions of the Board's representations which have not been highlighted in yellow in the attached material should be shared with the appellant. The remaining portions of the material will not be shared with the appellant due to confidentiality concerns.

**PROCEDURE:**

I have attached to the copy of this interim order which is being sent to the Board a copy of the Board's representations. The portions that I have highlighted in yellow indicate the passages which I will withhold from the appellant. I intend to send the attached material, with the exception of the yellow highlighted information, together with the information in Tabs 2 and 4 to the appellant, together with a Notice of Inquiry, no earlier than **March 21, 2002**.

Original Signed By: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_ March 6, 2002