ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 99-032

January 24, 2000

CALGARY BOARD OF EDUCATION

Review Number 1498

I. BACKGROUND

[para 1.] On October 20, 1998, the Applicant complained to my Office that the Calgary Board of Education (the "Public Body") had disclosed the Applicant's personal information in violation of Part 2 of *the Freedom of Information and Protection of Privacy Act* (the "Act").

[para 2.] The Applicant's complaint arose out of the Public Body's alleged disclosure to the Calgary Herald of letters the Applicant had written to a number of the trustees of the Public Body. The letters allegedly contained the Applicant's personal information, consisting of the Applicant's name and home address, home and business telephone numbers, family status, and the Applicant's opinions or views about the Public Body's policy on safety and security for homosexual youth and staff.

[para 3.] Under section 51(1)(a) and section 51(2)(e) of the Act, I assigned a Portfolio Officer to investigate and attempt to resolve the Applicant's complaint. The Portfolio Officer produced an investigation report, which was sent to the Applicant and the Public Body.

[para 4.] It is my practice to publicly release an investigation report once a public body and an applicant have concurred with the recommendations contained in the report.

[para 5.] While the Public Body was deciding how to implement the recommendations contained in the investigation report, one of the trustees of the Public Body, Trustee Tilston, disagreed with the conclusions and recommendations. By letter dated March 9, 1999, Trustee Tilston served notice on my Office not to release the report publicly, claiming that, to the best of her recollection, the alleged disclosure of the Applicant's personal information occurred the last week of August 1998. Since the Act did not apply to educational bodies such as the Public Body before September 1, 1998, Trustee Tilston concluded that I had no jurisdiction in the matter of the Applicant's complaint.

[para 6.] Subsequently, by letter dated March 16, 1999, the Applicant stated that his concerns in the matter had not been resolved to his satisfaction, and requested that I conduct a public inquiry. I proceeded with the Applicant's request to conduct an inquiry under the authority of section 62(3) of the Act, which reads:

> *62(3) A person who believes that the person's own personal information has been collected, used or disclosed in violation of Part 2 of the Act may ask the Commissioner to review that matter.*

[para 7.] The Notice of Inquiry said that the inquiry would be conducted in two parts: (i) the May 31 and June 1, 1999 inquiry would be limited to the issue of whether the Public Body disclosed the Applicant's personal information before or after September 1, 1998, which is the date the Act was extended to and applied to the Public Body (the "jurisdictional issue"); and (ii) if the jurisdictional issue was resolved by a finding that the disclosure occurred on or after September 1, 1998, I would proceed to conduct that part of the inquiry dealing with whether the Public Body had disclosed the Applicant's personal information in violation of Part 2 of the Act.

[para 8.] On May 31 and June 1, 1999, I conducted an oral inquiry in which I heard the witnesses' evidence *in camera* and the parties' submissions without the public being present.

[para 9.] On June 1, 1999, at the conclusion of the inquiry, I rendered an oral decision on the jurisdictional issue, with written reasons to follow. I decided that the Public Body disclosed the Applicant's personal information to the Calgary Herald after September 1, 1998. Having made that finding, I ruled that I had the jurisdiction to consider whether the Public Body disclosed the Applicant's personal information in violation of Part 2 of the Act.

[para 10.] On July 8, 1999, I sent the parties my written reasons for my oral decision (Order 99-019).

[para 11.] The second part of the inquiry was scheduled as an oral, public inquiry, to be held on October 7, 1999. I received advance, written submissions from the Public Body and the Applicant by the September 17, 1999 deadline for those submissions.

[para 12.] On August 19, 1999, the Minister of Learning dissolved the Calgary Board of Education. Consequently, the Affected Party, who had participated as a trustee in the first part of the inquiry, declined to participate in the second part of the inquiry held on October 7, 1999.

[para 13.] This Order proceeds on the basis of the Act as it existed before the amendments to the Act came into force on May 19, 1999.

II. RECORDS AT ISSUE

[para 14.] The records at issue are letters, as follows, that are located at Tabs 1, 3 and 7 contained in the binder of documentary evidence (the "Exhibit Binder") presented during the first part of the inquiry held on May 31 and June 1, 1999:

- Tab 1 is a letter from the Applicant, addressed to Trustee Connie Rosenstein, dated April 17, 1997

- Tab 3 is a letter from the Applicant, addressed to Trustee Diane Danielson, dated May 12, 1997

- Tab 7 is a letter from Judy Tilston, Chair of the Board of Trustees, addressed to the Applicant, dated November 26, 1997

[para 15.] In this Order, I will refer to the letters individually by Tab number, as necessary, and will refer to all the letters collectively as the "Records".

III. ISSUE

[para 16.] There is one issue in this inquiry:

> Did the Public Body disclose the Applicant's personal information in violation of Part 2 of the *Freedom of Information and Protection of Privacy Act*?

IV. DISCUSSION OF THE ISSUE

1. The parties' positions

[para 17.] The Public Body submits two main arguments as to why disclosure of the Applicant's personal information is not in violation of Part 2 of the Act:

> (i) The records are excluded from the application of the Act by section 4(1)(i) (record of an elected official of a local public body that is not in the custody or under the control of the local public body), and
>
> (ii) The Applicant's personal information is available to the public, as provided by section 38(1)(z).

[para 18.] The Applicant submits that the Public Body did not have the authority under any of the provisions of section 38(1) to disclose the Applicant's personal information.

[para 19.] The Applicant also argues that the Public Body did not comply with numerous other provisions of the Act. However, the issue raised for this inquiry was the Public Body's disclosure of the Applicant's personal information. Consequently, I do not intend to deal with the Applicant's other issues, which I also find are not relevant in this case.

2. Application of section 4(1)(i)

a. General

[para 20.] Section 4(1)(i) reads:

> *4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*
>
> *…*
>
> *(i) a record of an elected official of a local public body that is not in the custody or under the control of the local public body.*

[para 21.] Section 4(1)(i) raises a jurisdictional issue. Under section 4, a record is either subject to the Act or it is not. If a record is not subject to the Act, I have no jurisdiction over that record.

[para 22.] Section 4(1)(i) requires that:

> (i) there be a record of an elected official of a local public body, and
>
> (ii) the record not be in the custody or under the control of the local public body.

[para 23.] In other words, even if there is a record of an elected official of a local public body, section 4(1)(i) will not remove that record from the application of the Act if the record is also in the local public body's custody or under its control. A record that is both a record of an elected official and also in the local public body's custody or under its control will be subject to the Act.

b. Is there a record of an elected official of a local public body?

i. "Record"

[para 24.] "Record" is defined in section 1(1)(q) of the Act, as follows:

> *1(1)(q) "record" means a record of information in any form and includes books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records.*

[para 25.] Tabs 1 and 3 are letters the Applicant sent to individual trustees. Tab 7 is a letter sent to the Applicant by the chair of the board of trustees.

[para 26.] I find that Tabs 1, 3 and 7, all of which are letters, are "records" for the purposes of section 4(1)(i).

ii. "Local public body"

[para 27.] I also must decide who is the "local public body" for the purposes of section 4(1)(i). The answer is arrived at by the following lengthy route:

- section 1(1)(p)(vi) of the Act defines "public body" to mean a "local public body".

- section 1(1)(j)(i) of the Act defines "local public body" to mean an "educational body".
- section 1(1)(d)(v) of the Act defines "educational body" to mean a board as defined in the *School Act*.
- section 1(1)(b) of the *School Act*, S.A. 1988, c. S-3.1, defines "board" to mean a board of trustees of a district or division.

[para 28.] Therefore, the "local public body" is the board of trustees, which in this case is the "Calgary Board of Education" (the "Public Body" for the purposes of this Order).

[para 29.] The Public Body would have me make a distinction between the Calgary Board of Education administration and the "board of trustees", for the purposes the Act. I believe that this submission arises from the fact that the superintendent of the Calgary Board of Education, who has administrative or management responsibilities, as set out under section 94 of the *School Act*, is also the head of the Public Body for the purposes of the Act. Neither the board of trustees nor any of the individual trustees is the head under the Act.

[para 30.] Under section 89(a) of the Act, a local public body (the board of trustees in this case) must, by by-law or other legal instrument by which the local public body acts, designate a person or group of persons as the head of the local public body for the purposes of the Act. The head's function is to oversee the administration or management of the Act on behalf of the local public body. The head acts on behalf of the local public body for the purposes of the Act.

[para 31.] The board has appointed its superintendent as head of the Public Body for the purposes of the Act. The head and the superintendent are one and the same person. The board directs the superintendent/head, who acts on behalf of the board under either the *School Act* or the Act.

[para 32.] Given that the relationship between the board and the superintendent/head are the same, I see no reason to make a distinction between the Calgary Board of Education administration and the board of trustees for the purposes of the Act.

iii. "Record of an elected official"

[para 33.] Before I consider the words "elected official", I first want to discuss generally the meaning of the words "record <u>of</u>" [my emphasis]. Black's Law Dictionary says that "of" has been held to mean "belonging to" or "in possession of". Therefore, "record of an elected official" must

mean that the record "belongs to" the elected official, or the elected official is "in possession of" the record.

[para 34.] To be "in possession of" a record is another way of saying that a person has "custody" of the record. One of the definitions of "custody", as set out in Black's Law Dictionary, is the "keeping" of something.

[para 35.] A record that "belongs to" a person can be said to be in that person's "control". One of the definitions of "control", as set out in Black's Law Dictionary, is the ability to "regulate" something.

[para 36.] Therefore, another way of determining whether there is a "record of" an elected official is to look at whether the elected official has custody or control of the record. However, it is first necessary to determine the meaning of the words "elected official".

[para 37.] The Public Body argues that it is sufficient that the Records are those of individual trustees, who are "elected officials". The Public Body says that the Act does not restrict the meaning of "record of an elected official".

[para 38.] The Act does not define "elected official". However, section 224(a) of the *School Act* says that all general elections held under the *School Act* are governed by the *Local Authorities Election Act*, S. A. 1983, c. L-27.5.

[para 39.] Section 1(g)(iii) of the *Local Authorities Election Act*, defines "elected authority" to mean a board of trustees under the *School Act*. Black's Law Dictionary defines "official" to mean an officer or a person invested with the authority of an office. Therefore, an "elected official" means an individual trustee of the board of trustees (the elected authority), who is invested with the authority of an office.

[para 40.] On that definition alone, it could be said that a record of an elected official is any record of a trustee. Should "record of an elected official" be given such a broad interpretation?

[para 41.] The Act is to be interpreted as being remedial, that is, affording a remedy, and is to be given the fair, large and liberal interpretation that best ensures the attainment of its objectives: see section 10 of the *Interpretation Act*, R.S.A. 1980, c. I-7.

[para 42.] However, one of the purposes of the Act is to control the manner in which a public body may collect personal information from

individuals, to control the use that a public body may make of that information and to control the disclosure by a public body of that information: see section 2(b) of the Act.

[para 43.] If any record of a trustee was excluded from the Act for the reason only that a trustee is an elected official, very few records of a board of trustees would be subject to the Act. That interpretation would defeat the purpose of section 2(b). Consequently, I believe that section 4(1)(i), which is an exclusion under the Act, should be given a narrow interpretation.

[para 44.] To support its position that the Records are those of individual trustees, acting in their elected capacities, the Public Body cites Ontario Order M-813. In that case, a city councillor received letters and documents, portions of which he read aloud at a council meeting, without identifying the author. On a request for access to those letters and documents, access was denied.

[para 45.] The case held that the municipal councillor was not, at law, an officer of the institution, nor was he functioning as an officer in that case. Instead, the muncipal councillor was functioning in his individual capacity as a representative of his constituents, such that the letters and documents could not be said to be in the custody or control of the institution.

[para 46.] The Public Body argues that a similar analysis applies to a trustee. The Public Body maintains that a trustee of the board of trustees is neither an officer nor an employee of the Calgary Board of Education, but rather a member of the board. The Public Body says that the Act does not apply to individual trustees.

[para 47.] I have already said that the Calgary Board of Education and the board of trustees are one and the same entity. However, I will consider the Public Body's argument from the viewpoint of the capacity in which trustees were functioning relative to the Records in this case.

[para 48.] Under section 1(1)(y) of the *School Act*, "trustee" is defined to mean a member of the board. Under section 100 of the *School Act*, a trustee is not an employee of the board for the purposes of the *Employment Standards Code* or the *Labour Relations Code*.

[para 49.] Is the trustee an "officer" of the board, that is, an "officer" of the Public Body?

[para 50.] The Act uses the words "elected official" instead of "officer". However, I have said that an individual trustee is someone invested with

the authority of an office under the *School Act* and would be an officer of the board of trustees/local public body/Public Body, by definition.

[para 51.] The Act applies to public bodies. However, public bodies are comprised of members, employees or officers, who act on behalf of public bodies. A public body can act only through those persons. In Order 98-014, I said that a public body makes a decision only figuratively as a public body. Someone within the public body makes the decision. The Public Body in this case makes decisions through the trustees.

[para 52.] An individual trustee is not a public body, but a trustee is nevertheless a member or officer of the Public Body, who makes decisions and acts on behalf of the Public Body. Therefore, the Act applies to a trustee, although it is the Public Body that is accountable under the Act for the decisions of a trustee.

[para 53.] However, some records of certain persons or bodies are not subject to the Act, such as a "record of an elected official". The words "elected official" imply that a trustee may also function in a capacity other than as a member or an officer of the Public Body.

[para 54.] Ontario Order M-813 determined that records were not accessible from a public body when it was found that the records were those of an elected municipal councillor who was functioning in his "elected" capacity, that is, as a representative of his constituents.

[para 55.] I have said that an individual trustee is also an "elected official". An individual trustee may function in that person's capacity as an elected official or as member or officer of the board, carrying out the mandate and functions of the board.

[para 56.] I have further said that section 4(1)(i), which is an exception to the Act, should be interpreted narrowly. Therefore, section 4(1)(i) should be confined to records relating to that aspect of the official's role related to being "elected". Another way of looking at this is to say that the records intended to be encompassed by section 4(1)(i) should not relate to the role of the official in carrying out the local public body's mandate and functions.

[para 57.] Therefore, I find that section 4(1)(i) should be interpreted to exclude from the application of the Act only those kinds of records that can clearly be distinguished as the records of an "elected official", and not records that pertain to the mandate and functions of the local public body. Some of the kinds of records of an "elected official" are discussed at pages 8 and 9 of the *Freedom of Information and Protection of Privacy Policy and Practices* manual (the "FOIP Manual"), published by the

Information Management and Privacy Branch of Alberta Labour in August 1998.

[para 58.] The subject matter of the Records in this case pertains to the board's policy on safety and security for homosexual youth and staff. Section 44(1)(a) of the *School Act* states that a board of trustees must establish policies respecting the provision of educational services and programs. Therefore, I find that the Records pertain to the mandate and functions of the board (the local public body), and are not the kinds of records that can be said to be records of an elected official of a local public body.

[para 59.] As the Records are not those of an elected official, section 4(1)(i) does not exclude the Records from the application of the Act. The Act applies to the Records.

c. Are the Records also in the custody or under the control of the local public body?

[para 60.] Section 4(1)(i) contemplates that a record may be in the custody or control of an elected official of a local public body and also in the custody or under the control of the local public body. Given my finding that the Records are not those of an elected official of a local public body, I would not normally find it necessary to consider whether the Records are also in the custody or under the control of the local public body. However, in case I am wrong in my interpretation of "record of an elected official", I intend to discuss the issue of whether the record is also in the custody or under the control of the local public body, as provided by section 4(1)(i).

[para 61.] The Public Body argues that the following factors are relevant to its determination that it does not have custody or control of the Records:

> (i) The fact that the letters have been sent to the trustees at the Board's office is not determinative of custody or control,
> (ii) The records are not in the custody of the Calgary Board of Education administration, and
> (iii) Only Trustee Tilston gave instructions to release the letters after informal discussions. There was never a formal board decision.

[para 62.] Once again, the Public Body relies on Ontario Order M-813 for the factors to consider in determining whether records are also in a public body's custody or control.

[para 63.] Ontario Order M-813 cites Ontario Order 120, in which a former Ontario Commissioner set out a number of factors to assist in deciding whether a record is also in the custody or control of an institution (the equivalent of "public body"):

> 1. Was the record created by an officer or employee of the institution?
>
> 2. What use did the creator intend to make of the record?
>
> 3. Does the institution have possession of the record either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?
>
> 4. If the institution does not have possession of the record, is it being held by an officer or employee of the institution for the purposes of his or her duties as an officer or employee?
>
> 5. Does the institution have a right to possession of the record?
>
> 6. Does the content of the record relate to the institution's mandate and functions?
>
> 7. Does the institution have the authority to regulate the records used?
>
> 8. To what extent has the record been relied upon by the institution?
>
> 9. How closely is the record integrated with other records held by the institution?
>
> 10. Does the institution have the authority to dispose of the record?

[para 64.] Page 5 of the FOIP Manual discusses the interpretation of custody and control, in similar terms as Ontario Order 120.

[para 65.] On the evidence, the Records were in a file dealing with the Public Body's policy on safety and security for homosexual youth and staff, located in the Public Body's filing system. Therefore, it is clear that the Public Body has custody of the Records. Having decided that the Public Body has custody of the Records, it is not necessary that I also decide whether the Public Body has control of the Records.

[para 66.] Nevertheless, I also find that the Public Body has control of the Records, for the following reasons:

- one of the Records was created by an officer or member of the Public Body
- the Records are in the possession of the Public Body
- the Records are closely integrated with other records of the Public Body
- the Records relate to the Public Body's mandate and functions

[para 67.] I agree with the Public Body that the fact that the letters were sent to the trustees at the Board's office is not itself determinative of custody or control. However, that is a factor that may be considered. The Public Body's next argument about the records not being in the custody of the Calgary Board of Education administration is not relevant, as I have not found it necessary to make a distinction between the Calgary Board of Education administration and the board of trustees for the purposes of the Act. Finally, it is not relevant to the issue of custody or control that the Public Body believes that Trustee Tilston gave instructions to release the Records after informal discussions, without a formal board decision.

[para 68.] Finally, the Public Body argues that, even if the Public Body had a copy of the original records, the copy would be excluded from the Act, based on Order 97-008. That Order deals with the issue of access to Ombudsman's records held by another public body. In that Order, I found that the Ombudsman's specialized legislation protects the Ombudsman's records from disclosure in the hands of another public body, whether or not the other public body has an original record or a copy of the Ombudsman's record.

[para 69.] Section 4(1)(i) contemplates that a record of an elected official may also be in the custody or under the control of a local public body. Therefore, the matter of who has the original and who has the copy is irrelevant on an interpretation of section 4(1)(i). Consequently, I do not accept the Public Body's argument that Order 97-008 applies to the interpretation of section 4(1)(i) and to this case.

d. Conclusion under section 4(1)(i)

[para 70.] I find that the Records are not those of an elected official of a local public body. I further find that the Records are in the custody or under the control of the local public body (the board of trustees), which is the Public Body in this case. Therefore, the Records are subject to the Act.

e. Amendment of section 4(1)(i)

[para 71.] Effective May 19, 1999, section 4(1)(i) was amended, and now reads:

> *4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*

…
(i) a personal record or constituency record of an elected member of a local public body.

[para 72.] I mention this amended provision for two reasons.

[para 73.] First, the parties were notified that I would not consider the amended provision in this inquiry because I had determined that this case came into existence before the amendment: see Practice Note 6, issued by my Office and provided to the parties, in regard to transitional provisions for the May 19, 1999 amendments to the Act.

[para 74.] Second, it is nevertheless important that public bodies be aware of the amended provision, and that any future interpretation of the amended section 4(1)(i) could be different from the interpretation of the previous section 4(1)(i) contained in this Order.

3. Application of section 38(1)(z)

a. General

[para 75.] Section 38(1)(z) reads:

38(1) A public body may disclose personal information only

…
(z) when the information is available to the public.

[para 76.] For section 38(1)(z) to apply such that the Public Body may decide whether or not to disclose the personal information, there must be personal information of the Applicant, and the Applicant's personal information must be available to the public.

[para 77.] I have found that the Records contain the Applicant's personal information, consisting of one or more of the following: the Applicant's name, home address, and home and business telephone numbers (section 1(1)(n)(i) of the Act); family status (section 1(1)(n)(iii)); and the Applicant's personal views or opinions (section 1(1)(n)(ix)).

[para 78.] The Applicant says that the record contained at Tab 1 also contains the Applicant's political beliefs, which are personal information, as provided by section 1(1)(n)(ii) of the Act. However, I did not find anything that I could say were the Applicant's political beliefs in that record. Furthermore, I did not find the Applicant's E-mail address in the Records, contrary to what the Applicant believes.

[para 79.] Finally, during the first part of the inquiry, the Applicant explained that the fax number in the record contained at Tab 1 became part of the record as a result of the Applicant's having faxed that letter to my Office after the Public Body's disclosure. The Applicant also informed me that the date appearing on the fax was incorrect, due to problems with the Applicant's fax machine. Consequently, I have not considered that fax number in this inquiry.

[para 80.] The Public Body argues that all the Applicant's personal information was in the public domain before the Public Body disclosed it. The Public Body points to the following documents as evidence:

> (i) Tab 19 of the Exhibit Binder. Tab 19 contains the list of candidates who picked up nomination papers for the 1998 General Election. That document contains the Applicant's name, home address and home telephone number. The heading at the top of the list states that the list is a public document.
>
> (ii) Tab 11 of the Exhibit Binder. Tab 11 contains a September 21, 1998 newspaper article that discloses the Applicant's name and family status.

[para 81.] Furthermore, the Public Body says that the Applicant was not concerned about disclosure of his views or opinions, which he considered to be "fair game". The Public Body says that other witnesses believed that the Applicant's views and opinions about the Public Body's homosexual and youth safety policy were also in the public domain before the Public Body disclosed those views and opinions.

[para 82.] The Applicant argues that he did not put any of his personal information in the public domain and that his personal information was not generally available to the public. The Applicant says that just because some of the public may have had access to his personal information does not mean that the Public Body can disclose it.

[para 83.] In Order 98-004, I said that "public" in section 28(1)(a) (information available for purchase by the public) should be interpreted to mean the "general" public, and not a restricted public. I intend to apply that interpretation to section 38(1)(z). Therefore, I find that personal information "available to the public" in section 38(1)(z) must mean personal information that is available to the general public, and not a restricted public.

[para 84.] Was the Applicant's personal information available to the public, meaning the general public?

[para 85.] The Applicant's name, home address and home telephone number are contained on a nomination list, which states that the list is a public document. Therefore, I find that that personal information was available to the public. The Applicant's name and family status was also available to the public by way of a newspaper article about the Applicant, published on September 21, 1998, before the Public Body disclosed the Applicant's personal information.

[para 86.] However, I find that the Applicant's business telephone number and personal views or opinions were not available to the public.

[para 87.] As to the Applicant's personal views or opinions, I do not give any weight to the belief of witnesses that those views or opinions were available to the public before the Public Body disclosed that personal information. Even if those personal views or opinions were known by some of the public, that does not make that personal information available to the public. Furthermore, the documentary evidence contained in the September 21, 1998 newspaper article about the Applicant said merely that the Applicant did not take any side in the issue.

[para 88.] Finally, Trustee Tilston's evidence was that the Applicant's views or opinions were disclosed because the trustees believed the Applicant was misrepresenting himself. To me, that tends to reinforce the idea that the Applicant's personal views or opinions were not available to the public.

[para 89.] In conclusion, I find that the criteria of section 38(1)(z) have not been met for the Applicant's business telephone number and personal views or opinions, as that personal information was not available to the public. Therefore, the Public Body disclosed that personal information in violation of Part 2 of the Act.

[para 90.] I find that the criteria of section 38(1)(z) have been met for the Applicant's name, home address, home telephone number, and family status, as that personal information was available to the public. I will now consider the Public Body's exercise of discretion in disclosing that personal information.

b. Exercise of discretion under section 38(1)(z)

[para 91.] Section 38(1)(z) is discretionary ("may"). In other words, even if the criteria of the section have been met, a public body may nevertheless decide not to disclose the personal information.

[para 92.] As with any discretionary provision, a public body must exercise its discretion properly. In numerous Orders, I have said that a public body exercises its discretion properly when it considers the objects and purposes of the Act and does not exercise its discretion for an improper or irrelevant purpose.

[para 93.] The Applicant complains primarily about the surreptitious manner in which the Public Body disclosed his personal information. The Applicant says that I should take into consideration the manner and context in which his personal information was disclosed.

[para 94.] In effect, the Applicant is arguing that just because the personal information was provided in one context (questioning the board's policy) does not mean that the Public Body can disclose that personal information in another context (prior to trustee elections in which the Applicant was a candidate for trustee), as here. The Applicant provided the Public Body with an example of the superintendent's home telephone number being in the telephone directory, and maintained that it would not be proper for the Public Body to disclose that personal information in a different context.

[para 95.] The Applicant also says that the disclosure was not done in good faith. Furthermore, there is nothing in any other legislation or the Public Body's policies permitting the disclosure.

[para 96.] The Public Body argues that only individuals can be said to have motives and, therefore, I can make a finding only that individuals had an improper purpose. Since the Public Body is not an individual, the Public Body argues that I cannot find that the Public Body disclosed personal information for an improper or irrelevant purpose.

[para 97.] Earlier in this Order, I discussed the fact that, even though someone within the Public Body makes the decision, the Public Body is accountable under the Act. I do not intend to repeat that discussion here. Under the Act, I review the decision of the Public Body. Consequently, I do not accept the Public Body's argument that I cannot make a finding as to whether the Public Body exercised its discretion properly.

[para 98.] As to whether the Public Body exercised its discretion properly, there is no evidence before me that the Public Body considered the objects and purposes of the Act, one of which is to control the disclosure of personal information: see section 2(b), which I have previously set out in this Order.

[para 99.] As to the purpose for which the Applicant's personal information was disclosed, the evidence before me is that the trustees believed the Applicant was misrepresenting his views or opinions to the public. The Public Body has argued that the Applicant's views or opinions were "fair game", in the Applicant's own words. However, I do not believe that either reason is sufficient for me to find that the Public Body exercised its discretion for a proper or relevant purpose.

[para 100.] It seems to me that a proper and relevant purpose for disclosure, even under section 38(1)(z), would relate to the Public Body's mandate and functions. The surreptitious manner of disclosure (leaking the Records to a Calgary Herald reporter) and the timing of the disclosure (prior to trustee elections in which the Applicant was a candidate for trustee) leads me to infer that the disclosure did not relate to the Public Body's mandate and functions and was therefore done for an improper or irrelevant purpose.

[para 101.] Therefore, I find that the Public Body did not exercise its discretion properly when it disclosed the Applicant's personal information.

c. Other matters under section 38(1)(z)

[para 102.] The Public Body argued that if I found that only the Applicant's work telephone number was disclosed in violation of Part 2 of the Act, I should apply the "de minimus" doctrine to find that the Public Body did not violate Part 2 of the Act. The "de minimus non curat lex" doctrine means that the law does not concern itself, or take notice of, very small or trifling matters. It appears that the Public Body believes that disclosure of only the Applicant's work telephone number in violation of Part 2 of the Act is a small or trifling matter.

[para 103.] I have already said that one of the purposes of the Act is to control the manner in which a public body may disclose personal information: see section 2(b) of the Act. Section 2(b) does not speak of any quantity or type of personal information. Therefore, even if I were to have found that the Public Body disclosed only the Applicant's business telephone number in violation of Part 2 of the Act, I see nothing in the purpose or in the scheme of the Act to suggest that the "de minimus" doctrine may be applied.

d. Conclusion under section 38(1)(z)

[para 104.] I find that the criteria of section 38(1)(z) have not been met for the Applicant's business telephone number and personal views or opinions, as that personal information was not available to the public.

The Public Body disclosed that personal information in violation of Part 2 of the Act.

[para 105.] Although I find that the criteria of section 38(1)(z) have been met for the Applicant's name, home address, home telephone number, and family status, as that personal information was available to the public, the Public Body did not exercise its discretion properly when it disclosed that personal information. Consequently, I find that the Public Body also disclosed that personal information in violation of Part 2 of the Act.

[para 106.] In conclusion, I find that the Public Body disclosed the Applicant's personal information in violation of Part 2 of the Act.

V. ORDER

[para 107.] I make the following Order under section 68 of the Act.

[para 108.] The Public Body disclosed the Applicant's personal information in violation of Part 2 of the Act.

[para 109.] Under section 68(3)(a), I order the Public Body to comply with its duty not to disclose the Applicant's personal information in violation of Part 2 of the Act in the future.

[para 110.] Under section 68(4) of the Act, to ensure that the Public Body complies with its duty not to disclose the Applicant's or anyone else's personal information in violation of Part 2 of the Act, I order the Public Body:

> (i) to develop a policy concerning the disclosure and non-disclosure of personal information received by the Public Body and by the individual trustees.
>
> (ii) to review its records management system concerning the logging and tracking of correspondence received and sent by the Public Body and by the individual trustees.
>
> (iii) to review its retention and disposal procedures for records located in the Office of the Trustees, to ensure compliance with the provisions of the Act requiring that personal information be protected against risks such as unauthorized access, collection, use, disclosure or destruction.

[para 111.] The foregoing three requirements were suggested by the Public Body in its written submission.

[para 112.] I further order the Public Body to notify me in writing, within 45 days of being given a copy of this Order, as to the Public Body's plan for implementing the above three requirements.

[para 113.] Finally, although I cannot order the Public Body to apologize to the Applicant, I believe that an apology is the least the Public Body can do for the Applicant.

Robert C. Clark
Information and Privacy Commissioner