

Request to Board of Trustees for 15 year old daughter's statements alleging sexual harassment by teacher aide

Legislation	Official Information Act 1982, s 9(2)(ba)(i)
Agency	Board of Trustees
Ombudsman	Anand Satyanand
Case number(s)	W50854
Date	March 2004

Mother's request to Board of Trustees for 15 year old daughter's statements alleging sexual harassment by teacher aide—daughter provided statement to school in confidence—refused consent to release—public interest in ensuring students willing to supply similar information to school in future—good reason to withhold under s 9(2)(ba)(i)

A mother became aware that a high school had conducted an investigation into allegations of sexual harassment by a teacher aide made by her 15 year old daughter. The mother requested a meeting with the school, during which she asked to see the statements made by her daughter.

The Board of Trustees declined her request. It said that, during the course of the investigation, the school had advised the daughter to involve or inform her parents and she had insisted that they not be contacted or informed. The Board advised that they were willing to release the information, but only if the daughter provided them with her consent to release. As no consent was forthcoming, the Board of Trustees relied on section 9(2)(ba)(i) of the OIA, among other reasons, to withhold the information.

The Ombudsman was asked to review this decision.

In deciding whether section 9(2)(ba)(i) applied to the information at issue, the Ombudsman first needed to determine whether the particular information was subject to an obligation of confidence. The Ombudsman considered the nature of the information at issue. It was clearly sensitive. Enquiries were then made as to the circumstances surrounding the school receiving

the daughter's statement. As a result, the Ombudsman was satisfied that the information was provided on the understanding that it would be held in confidence.

Since it had been determined that the information was supplied under an obligation of confidence, the Ombudsman then needed to assess whether disclosing the daughter's statements would be likely to prejudice the supply of similar information in the future, and whether it was in the public interest that such information should continue to be supplied.

The Board expressed concern that, if the information requested were released, other students would be inhibited in the future from approaching the school with complaints of a similar nature. It said that:

the effective working of personal and educational guidance for adolescents in secondary schools is dependent on the trust and knowledge that no information is made available outside of the counselling context without the express permission of the young person.

The Ombudsman then considered whether any countervailing public interest considerations favouring release of the information outweighed the need to withhold. The Ombudsman was of the opinion that there was a strong public interest in parents having access to information concerning their children's education and well-being. The Ombudsman noted that such a view is reinforced by section 77 of the Education Act 1989, which provides that the principal of a state school shall take all reasonable steps to ensure that a student's parents are told of matters that, in the principal's opinion, are preventing or slowing the student's progress through the school, or harming the student's relationships with teachers or other students.

The Board advised the Ombudsman that regard had been given to section 77 of the Education Act 1989 when making the original decision to decline the mother's request. It said there was no evidence that the matter fell within the scope of these sections and it therefore considered the relevant student's request for confidentiality should be maintained.

The Ombudsman was satisfied that the information was provided subject to an obligation of confidence and that, if it were disclosed, other students would be reluctant to provide similar information in confidence to the school. He was also of the view that it was in the public interest that students should not feel constrained from providing similar information to the school in future. Further, the Ombudsman considered that the public interest in the school maintaining the obligation of confidence it owed to the daughter was not outweighed by the public interest in her mother receiving the information.

The Ombudsman's view was that the Board of Trustees was entitled to withhold the information at issue under section 9(2)(ba)(i).

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