



Information and Privacy
Commissioner/Ontario

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

ORDER M-134

Appeal M-9300040

Hamilton Board of Education



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Hamilton Board of Education (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all information in the Board's possession related to a meeting held between the requester and the Principal of Sir John A. MacDonald Secondary School (the School) and a meeting held between a named student and the same Principal. The Board responded to the request by providing the requester with a copy of the constitution of the student council. The requester appealed the Board's decision.

During mediation, the request was clarified and the Board issued a supplementary decision letter stating that no records exist. The appellant continued the appeal claiming that, given the sensitive nature of the two meetings, it is reasonable to assume that records would have been created by the Principal.

Mediation was not successful and notice that an inquiry was being conducted to review the Board's decision was sent to the Board and the appellant. The Notice of Inquiry indicated that both the Board and the appellant would be given an opportunity to present oral representations. The appellant advised that he would forward his representations in writing but none were received. Ms. K. Baxmeier, the Freedom of Information Co-ordinator and Mr. L. Aurini, Principal of the School, attended at the office of the Information and Privacy Commissioner/Ontario and made oral representations on behalf of the Board.

ISSUES:

The issues arising in this appeal are:

- A. Whether the Board has custody and control of records which are in the custody of the school.
- B. Whether the search conducted by the Board for the requested records was reasonable in the circumstances.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the Board has custody and control of records which are in the custody of the school.

In its representations, the Board submitted that its search for records responsive to the request included a

search of files in the custody of the School. The Board indicated that it has access to records at the School and would include any responsive records located at the School in its response to the request. In the circumstances of this appeal, the Board has considered records within the custody of the School to be within the Board's custody or control. Accordingly, in my view, it is not necessary for me to determine whether the Board has custody or control of records which are in the custody of the School in the circumstances of this appeal.

ISSUE B: Whether the search conducted by the Board for the requested records was reasonable in the circumstances.

In addition to its representations, the Board submitted a sworn affidavit from the Freedom of Information Co-ordinator, who conducted the search for responsive records. The affidavit outlines the scope of the search, which included a manual search of files and consultations with Board and School employees and officials who would be familiar with the subject matter of the request.

The Board also provided a sworn affidavit from the Principal of the School. In his affidavit, the Principal indicates that he did not make notes, memoranda or other record of the meetings. The Principal also indicates that he manually searched files related to the subject matter of the request and no responsive records were located.

Having carefully reviewed the representations of all parties, in my view, the Board has taken all reasonable steps to locate records that would respond to the appellant's request, and I find that the search conducted by the Board was reasonable in the circumstances of this appeal.

Original signed by: _____
 Holly Big Canoe
 Inquiry Officer

_____ May 28, 1993