



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-140

Appeal M-9300062

Halton Board of Education



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ORDER

The Halton Board of Education (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for details of certain discussions held between the former Chair of the Board and persons employed by a particular newspaper (the newspaper). The details were to include the names of the individuals at the newspaper and the dates and times that the discussions took place.

The Board's decision letter denied access on the grounds that responsive records did not exist. The requester appealed the Board's decision based on her belief that responsive records do exist. To support this contention, the appellant made reference to several letters in her possession which referred, in general terms, to discussions between the former Chair and staff of the newspaper.

Mediation of the appeal 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. Written representations were received from the Board only. The appellant indicated that she would like certain correspondence which she provided to the Commissioner's Office to serve as her representations.

Before proceeding with the disposition of this appeal, I would like to make some general comments about the obligations of an institution when it first receives an access request. The institution's initial obligation is to satisfy itself, by virtue of section 17(1) of the Act, that the request is sufficiently clear that "an experienced employee of the institution, upon a reasonable effort, can identify the record." If the request is not sufficiently clear, the institution is required under section 17(2) of the Act to inform the requester of the defect and to offer assistance in reformulating the request so that the search contemplated under section 17(1) can take place.

Where, as in the case of this appeal, the requester provides sufficient details about the record and the Board indicates that the record does not exist, it is my responsibility to ensure that the Board has made a reasonable effort to identify any records which are responsive to the request. In my view, the Act does not require an institution to prove to the degree of absolute certainty that the requested records do not exist.

The sole issue in this appeal, therefore, is whether the Board's search for the requested records was reasonable in the circumstances.

In response to the Notice of Inquiry, the Board provided an affidavit signed by the Board's Manager of Freedom of Information and Protection of Privacy respecting the ambit of the search for responsive records. In this affidavit, the Manager states that, based on his familiarity with the Board's record-keeping system, records of this nature would either have been located in the files of a former Chairperson or the Communications Officer if, in fact, they had ever been created. The Manager further indicates that both these areas were searched and that no responsive records were found.

In addition, the former Chair of the Board has provided a separate affidavit respecting his discussions with staff of the newspaper. In this affidavit, he indicates that he was involved in two telephone conversations with an editor of the newspaper on November 9, 1991. These discussions related to a column which had

appeared in the newspaper a day earlier. The Chair further states that these conversations were conducted over the telephone, in his own home and that he neither received any documents in preparation for these discussions nor made any written records of his conversations. The Chair also indicates that, to his knowledge, no other person created any written records pertaining to the discussions. Finally, the Chair attests that he had no further interaction with the newspaper after the calls were made.

I have carefully reviewed the representations of both parties and the affidavit evidence submitted. I am satisfied that the Board has taken all reasonable steps to locate records responsive to the request and I find that the search was reasonable in the circumstances of this appeal.

Original signed by: _____ June 9, 1993
Irwin Glasberg
Assistant Commissioner