



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-190

Appeal M-9300191

Hamilton Board of Education



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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 notes taken at a meeting of September 25, 1992 with two named employees of the Board.

The Board indicated that no responsive records were in its custody or under its control. The appellant appealed the Board's decision, claiming that the Board had not conducted a reasonable search for records responsive to the request.

During the course of the appeal, the Board provided the appellant with two pages of handwritten notes from the September 25, 1992 meeting taken by one of the two Board employees identified in the request.

Mediation was not successful, and notice that an inquiry was being conducted to review the Board's decision was sent to the appellant and the Board. Written representations were received from both parties.

The sole issue to be decided in this appeal is whether the Board has conducted a reasonable search for the requested records.

Upon receipt of a request, the Board must first be satisfied, pursuant to section 17(1) of the Act, that the request is sufficiently clear that "an experienced employee of the institution, upon a reasonable effort, [could] identify the record." If the request is not sufficiently clear, the Board is required by section 17(2) to offer the requester assistance in reformulating the request so as to comply with section 17(1).

Where a requester provides sufficient details about the records which he or she is seeking and the Board indicates that additional records do not exist, it is my responsibility to ensure that the Board has made a reasonable search to identify any records which are responsive to the request. While the Act does not require that a Board prove to the degree of absolute certainty that such records do not exist, the search which an institution undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

The appellant submits that the Board has offered no information that confirms the two pages of notes he received are the total extent of the records made by the one employee, and that the Board has made no mention of a search for records from the other employee identified in the access request.

The Board submits that its Freedom of Information Co-ordinator (the Co-ordinator) met with one of the two Board employees named in the request, and the secretary of the other (the employee himself had retired) to ascertain the location of any records responsive to the request. Searches of both employee's files were conducted, as well as a search of the Co-ordinator's files and the student's Ontario Student Record.

Subsequent to being notified of the appeal, a second search of these locations was conducted, and the

retired employee was contacted. During the course of the second search, two pages of notes were discovered in an unrelated file. The Co-ordinator confirmed that these notes were taken by one of the employees during the meeting, and they were disclosed to the appellant. No other records were located.

In addition to its representations, the Board has provided affidavits from the employee and the retired employee, detailing their recollection of the meeting and confirming that no other notes were taken during or generated as a result of the meeting. The Co-ordinator has also provided an affidavit detailing the inquiries and searches conducted to locate records responsive to the request, and indicating that no other records were located.

Having carefully reviewed the representations of both parties, and the affidavit evidence submitted to me, I am satisfied that the search conducted by the Board for the requested records was reasonable in the circumstances.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

September 24, 1993