



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-156

Appeal M-9200395

Simcoe County Board of Education



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ORDER

BACKGROUND:

The Simcoe County 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 records in the custody or under the control of the Board pertaining to the son of the requester.

Twenty-nine days later, the Board responded by granting the requesters access, by means of photocopies, to all records forming part of their son's Ontario Student Record (the OSR), but denying access to records not forming part of the OSR. At the same time, the Board provided the requesters with an inventory of records contained in the OSR. The requesters did not appeal this decision.

Twelve days after the date of the Board's decision, the requesters submitted a second request for nine items listed on the inventory but not included with the records provided. Twenty-seven days later, the Board provided the requesters with three records, only two of which were among the nine requested, and informed the requesters that its endeavour to satisfy the request was now complete. Thirty days after the date of this decision, the requesters appealed the decision of the Board.

During mediation, the Board attempted to determine if the remaining records requested in the second request could be located. As the appellants continued to seek access to six of the seven remaining records, and the Board advised that it was unable to locate any records other than those provided to the appellants, mediation was not successful.

The following are the records to which the appellants continue to seek access:

1. Release of Confidential Information (1984 12 05)
2. Notes from Assessment Report Conference (1987 09 30)
3. Special Needs Committee Meeting: Innisdale S. S. (1990 09 19)
4. Special Needs Committee Meeting (1991 01 21)
5. Letter: Appellant to Cowieson (1991 08 23)
6. Programme Plan: Assikinack P. S. - Feb. - June (1992 01 22)

ISSUES:

The issues arising in this appeal are:

- A. Whether the Information and Privacy Commissioner or his delegate has jurisdiction to review the Board's decision.
- B. If the answer to Issue A is yes, whether a reasonable search was conducted for the records.

SUBMISSION/CONCLUSIONS:

ISSUE A: Whether the Information and Privacy Commissioner or his delegate has jurisdiction to review the Board's decision.

During mediation, the Board expressed the view that this appeal was not properly before the Commissioner in that the appellants had failed to appeal within the 30-day period stipulated in section 39(2) of the Act. The basis for this opinion was that the Board's decision letter had been issued 29 days after the first request, but the appellants did not appeal the Board's decision until 69 days after the Board's first decision.

The Board did not address this issue in its representations. Nevertheless, I wish to express my opinion that the appeal is properly founded, and the Commissioner does have jurisdiction to review the decision of the head.

In this instance, the appellants sought to narrow the scope of their request by requesting nine specific records whose existence was first made known to them in the inventory of records provided by the Board along with the decision letter, but copies of which were not included in the records provided to them. The request was made shortly after the appellants had received the records and the inventory. Moreover, upon receipt of this request, the Board attempted to locate the nine missing records. It was only after the Board had located two of the records, and informed the appellants that its endeavour to satisfy the request was now complete, that the appellants appealed.

In my view, the appellant's second request constitutes a new request and the Board's second response is the decision at issue in this appeal, notwithstanding that the decision reiterates a position taken in response to the first request. Since the appeal was filed within the time for filing appeals specified in section 50(2) of the Act, I find that I have the authority to review the decision of the Board.

ISSUE B: If the answer to Issue A is yes, whether a reasonable search was conducted for the records.

The appellants state that Records 1 to 4 must exist because they were referred to and summarised in material filed by the Board and given to them during the course of a Special Education Appeal Board

hearing and again during the course of an Ontario Special Education Tribunal hearing. The appellants presented no evidence with respect to the existence of Records 5 and 6.

The Board states through the affidavit of its Records Management Officer that it has reviewed the entire OSR of the appellants' son on several occasions, both before and after the filing of the appeal. Initially, the Superintendent of Special Education, the Curriculum Officer - Special Education, the Superintendent's secretary and a clerical assistant reviewed the OSR to ensure that all records forming part of it were disclosed to the appellants. The inventory of records was prepared at this time. Following the request for the nine items listed in the inventory but not provided to the appellants, the Superintendent of Special Education undertook a second search of the OSR. Following clarification that the appeal related only to the six items listed above, the Superintendent of Special Education conducted two more searches of all records comprising the OSR file. At the time of the fourth search, the Superintendent requested seven other officials of the Board to search their files pertaining to the appellants' son for the six items. These persons were unable to find any of the six items in their files.

While I am satisfied that the Board's search for the six items was reasonable in the circumstances of this appeal, I consider it important also to address the fact that Records 1 to 4 were referred to in material provided by the Board to the appellants on earlier occasions.

The Board dealt with these items in its representations. In particular, referring to Records 1 and 2, the Board submits it is reasonable that these items, dated 1984 and 1987, respectively, have been destroyed as being administratively obsolete in that they fail to meet the requirement under the Education Act that information retained in the OSR be conducive to improving the instruction of the student, or the requirement under the Act that personal information in use be current as well as accurate.

The implementation of these requirements, as stated by the Board, is inherently subjective in nature, and I am concerned that the Board provided no evidence of a records retention policy governing the destruction of such records. Nevertheless, I am satisfied that the Board has conducted a reasonable search for these records.

With respect to Records 3 and 4, the Board states that some discrepancies between the records provided to the appellants and the inventory arise from minor typographical errors:

3. The inventory lists a Special Needs Committee Meeting dated **1990 09 19**. The OSR contains a record of the same description, dated **1991 09 19**, which was provided to the appellants.
4. The inventory lists a Special Needs Committee meeting sheet dated 1991 01 **21**. The OSR contains a record of the same description, dated 1991 01 **23**, which was provided to the appellants.

My review of the material provided by the appellants supports the Board's position regarding typographical errors as being a source of some confusion in this appeal. Record 3, while dated 1990, is contained within a chronological listing of which all other dates are 1991. The dating of Record 4 contains a discrepancy of only two days, which can easily be accounted for as a typing error.

The Board stated in its representations that the dating discrepancies with respect to Records 5 and 6 also arise from typographical errors:

5. The letter in the inventory dated 1991 **08** 23 is identical in description to a letter, dated 1991 **05** 23, that the Superintendent of Special Education removed from the OSR and destroyed at the request of the appellants in 1992.
6. The inventory lists a Program Plan Assikinack P.S. Feb. - June dated **1992** 01 22. The OSR contains a record of the same description, dated **1991** 01 22, that was provided to the appellants.

I consider the Board's explanation to be reasonable in the circumstances.

In conclusion, I have carefully considered the representations submitted by the appellants and the Board, and I am satisfied that the Board's search for Records 1 to 6 was reasonable in the circumstances.

Original signed by: _____ June 30, 1993
 Holly Big Canoe
 Inquiry Officer