



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-259**

**Appeal M-9300416**

**Metropolitan Separate School Board  
[Toronto]**



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# ORDER

On January 4, 1994, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

The Metropolitan Separate School Board [Toronto] (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the "Ministry confirmation, which is described in the framed section of the following letter dated December 3, 1992." The December 3, 1992 letter to which the requester referred had been sent to the requester by the Board in response to previous queries made by the requester. The "framed" section reads:

Paragraph 5: There is no definition of 'Inspect the Current accounts of a Board' anywhere in the Education Act or regulations, and the Ministry has confirmed that the meaning of 'inspect' and 'current accounts' is determined by the Board ...

The Board located one record which it considered to be responsive to the request. This record is an internal Board memorandum, dated November 18, 1992, to the Deputy Director of Education from the Co-ordinator, Legislation and Corporate Affairs. The memorandum summarizes a conversation between the Co-ordinator and counsel with the Legal Services section of the Ministry of Education and Training (the Ministry), in which the Ministry's counsel indicates that there is no definition of "current accounts" specified in the Education Act or elsewhere and that it is basically up to the Board to define.

Prior to responding to the requester, the Board contacted the Ministry's counsel to verify the contents of the memorandum and to determine whether or not she objected to its disclosure. In a letter dated August 25, 1993, counsel confirmed the accuracy of the information contained in the memorandum. She indicated her consent to disclosure of the memorandum and added that a copy of this confirming letter could also be provided to the requester.

The Board then granted access to the memorandum and counsel's August 25, 1993 letter.

The requester appealed the Board's decision on the ground that the records do not respond to his request and, therefore, the Board's response does not constitute a proper decision under the Act. In the requester's view, since the records do not respond to the request, the Board should have indicated that no records exist.

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. Representations were received from both parties.

Throughout this appeal, and in their representations, the parties have focused on whether the Board's decision letter was prepared in accordance with the provisions in sections 19 and 22(1)(a) of the Act, which set out the requirements of a decision letter. In my view, however, the main issue in this appeal is whether the records provided by the Board were responsive to the request.

The appellant submits that the records provided by the Board were not responsive to his request because they do not specifically support the wording in the December 3, 1992 letter. In his representations, the appellant maintains that the Board's decision should have been "no records exist". He submits:

I am at a loss to understand how the [Board] still believes a confirming record exists when the Ministry has acknowledged it does not (October 28, 1993 letter) ...

The October 28, 1993 letter to which the appellant refers was written by the Co-ordinator at the Ministry in response to a request by the appellant under the provincial Freedom of Information and Protection of Privacy Act. The Co-ordinator's letter refers to "some form of written communication from the ministry to the Metropolitan Separate School Board...", whereas the request in this appeal refers to the Ministry confirmation as described in a letter written by the Board.

The Board submits that:

... our letter of December 3, 1992 to [the appellant] does not say the Ministry provided us with legal advice as to the interpretation of current accounts ...

Our Board has accepted the advice from the Ministry Legal Branch as sufficient 'confirmation' for our purposes ...

In summary, the Board's representations indicate that from the Board's viewpoint, the records provided to the appellant confirm that the interpretation of "inspect the current account of the Board" rests with the Board.

The appellant's position appears to be that the records do not use the word "confirmed", nor are the records in the nature of legal advice. To support his position, the appellant attached to his representations the October 28, 1993 letter from the Ministry which confirms that there was no formal written communication between the Ministry and the Board with respect to this issue.

In Order P-456, former Inquiry Officer Asfaw Seife held that the search for responsive records is determined by the parameters set out in the wording of the request. I agree.

In my view, the request is clear and provides sufficient description of the records sought to enable an experienced employee of the Board to correctly identify the responsive records. In the circumstances of this appeal, the records which the Board has identified contain information that is, in my view, fully responsive to the request.

The appellant requested the confirmation to which the Board was referring in its December 3, 1992 letter to him. From the Board's perspective, the records which recorded the confirmation to which it had previously referred were located and provided to the appellant.

Therefore, I am satisfied that the records provided by the Board were responsive to the request and, accordingly, the decision letter provided by the Board was appropriate.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ February 4, 1994