



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-471

Appeal M-9400518

Board of Education for the City of Hamilton



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested from the Board of Education for the City of Hamilton (the Board) copies of records relating to an investigation into allegations by the appellant that certain Board employees had violated the Ontario Human Rights Code and the Education Act. The appellant specified, in the request letter, that she did not require access to records or correspondence sent by the appellant to the Board, nor to records or correspondence previously sent by the Board to the appellant.

The Board's response indicated that no responsive records could be located.

The appellant wrote to the Commissioner's office, indicating that she wished to appeal this decision.

The sole issue in this appeal is whether the Board conducted a reasonable search for records.

A Notice of Inquiry was sent to the Board and the appellant. Representations were received from the Board only.

DISCUSSION:

REASONABLENESS OF SEARCH

Where the requester provides sufficient details about the records which she is seeking and the Board indicates that such 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. The Act does not require the Board to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Board must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

The Board's Freedom of Information and Privacy Co-ordinator (the Co-ordinator) signed an affidavit which forms part of the Board's representations in this matter. The affidavit indicates that the Board's searches in response to similar requests submitted by (or on behalf of) the appellant have been the subject of six previous orders of the Commissioner's office.

I was the decision-maker in three of these appeals, which were dealt with in Orders M-434, M-435 and M-436, all issued on December 16, 1994. The requests considered in those three orders, which were submitted about two months before the request under consideration in this appeal, all related to the appellant's allegations of human rights abuses by Board employees.

The Board contends that the subject matter of the current request was included in the searches and disclosures which occurred in connection with the appellant's previous requests, including those at issue in the appeals I have just referred to. It is clear that the subject matter of the current request and the previous ones referred to by the Board are related. As noted above, however, the request under consideration in this appeal indicates that the appellant does not require access to materials previously provided to her. It

appears, therefore, that this request is aimed at records which came into being, or into the Board's custody, **after** these previous requests were dealt with.

The Co-ordinator's affidavit indicates that, in connection with the current request, internal consultations were conducted to determine whether any new records had been created or obtained with respect to the subject matter referred to in the request, subsequent to the searches which were conducted in relation to the appellant's previous requests for this type of information. As a result of these consultations, it was determined that no new records had been created or obtained and on this basis, the Board's decision letter stated that no responsive records exist.

In view of the short time interval between some of the previous requests and the one under consideration here, and in view of the Board's previous searches for records relating to the appellant's allegations of human rights violations, it would not be reasonable to require the Board to conduct a new, full-scale search of its records. The evidence indicates that the Board took the appropriate steps to determine whether any new records had been created or obtained since the previous searches were carried out. Accordingly, I find that the actions taken by the Board to locate responsive records were reasonable in the circumstances of this appeal.

ORDER:

I uphold the Board's decision.

Original signed by: _____
John Higgins
Inquiry Officer

_____ February 23, 1995