



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-493

Appeal M-9400629

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 submitted a multi-part request to the Board of Education for the City of Hamilton (the Board).

The part of the request which is at issue in this appeal was for access to a complete list of probationary secondary school teachers hired over the last seven years, including information about whether any of these teachers are related to certain Board members and staff.

At the request stage, the Board did not grant access to any records. It indicated that the requested information could be extracted from Board minutes, and directed the appellant to possible sources for these minutes. The Board's response did not state that access to these minutes was denied, nor was an exemption claimed. After receiving this response, the appellant filed an appeal with the Commissioner's office on the basis that the Board ought to have responsive records.

During the mediation stage of this appeal, the Board conducted several additional searches for records. As a result of these efforts, lists of probationary teachers for the years 1992, 1993 and 1994 were located and disclosed to the appellant. These records contained not only the teachers' names, but also the locations to which they were assigned, the nature of the assignment, the date of probationary appointment and the permanent appointment date.

The names of the teachers in these three records were withheld from disclosure pursuant to the exemption relating to personal privacy provided by section 14(1) of the Act. The appellant has chosen not to contest the Board's decision to deny access to the teachers' names and accordingly, that is not an issue in this appeal. Information relating to primary and other non-secondary school teachers was also not disclosed because the request referred to secondary school teachers.

During mediation, the appellant agreed that the relevant part of the request should be interpreted as a request for **lists of probationary secondary school teachers**. Accordingly, neither the Board minutes referred to above, nor the parts of the lists of probationary teachers which pertain to non-secondary school teachers, are at issue in this appeal. The only substantive issue to be considered is whether the Board's search for responsive records was reasonable in the circumstances.

A Notice of Inquiry was provided to the Board and the appellant. Representations were received from both parties. The Board's representations sought to characterize the request as not being a proper one under the Act. I will consider this as a preliminary issue.

PRELIMINARY ISSUE:

FORM OF THE REQUEST

The Board's representations state that the request "... was not a proper one under the [Act]. The request sought the answers to questions rather than access to existing records for the most part". The Board did not go on to argue that, on this basis, I have no jurisdiction to consider this appeal. However, since in my view this submission could be seen to have jurisdictional implications, I will consider it as a preliminary issue.

First, I do not agree with the Board's characterization of the request as being, for the most part, in the form of questions. For example, the part of the request which is under consideration in this appeal (which is, arguably, the only part of the request which I need to consider in determining this issue) states, in part, as follows:

[W]e are interested in a complete list of secondary teachers hired for the first time, full time (first contract probationary) over the last seven years ...

In my view, this is clearly a request for particular records, and is not in the form of a question. On this basis alone, I would be justified in rejecting this submission.

However, even if I agreed with the Board that the request is, for the most part, in the form of questions, I would not agree that, on this basis, the request is not a proper one under the Act. The Board has not provided any authority to substantiate this argument. Moreover, it would be contrary to the spirit of the Act to exclude a request on such a technical basis.

In my view, when such a request is received, the Board is obliged to consider what records in its possession might, in whole or in part, contain information which would answer the questions asked. Under section 17 of the Act, if the request is not sufficiently particular "... to enable an experienced employee of the institution, upon a reasonable effort, to identify the record", then the Board may have recourse to the clarification provisions of section 17(2).

Accordingly, I find that the request was a proper one under the Act, and I have jurisdiction to consider this appeal.

In a related submission, the Board argues that it is not obliged to create responsive records. I agree with this view, but, as noted above, this does not relieve the Board of the responsibility to determine whether its existing records contain responsive information.

DISCUSSION:

REASONABLENESS OF SEARCH

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 responsive records. While the Act does not require that the Board prove to the degree of absolute certainty that such records do not exist, the search which the Board undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

As part of its representations, the Board has provided the affidavit of its Records Analyst. This affidavit

describes the efforts made to locate responsive records during mediation. The analyst contacted the Board's Teacher Staffing Co-ordinator as well as the Superintendent of Human Resources to assist her in locating responsive records. As a result, the lists which have been disclosed were located, but no additional responsive records were found.

I have also reviewed the representations submitted by the appellant. Many of them relate to allegations which are outside the mandate of this office to investigate.

In the circumstances of this appeal, and after considering the representations of both parties, I am satisfied that the Board made extensive and appropriate efforts to locate responsive records. Accordingly, I find that the Board's actions in attempting to locate responsive records were reasonable in the circumstances.

ORDER:

I uphold the Board's decision.

Original signed by: _____
John Higgins
Inquiry Officer

_____ March 17, 1995

POSTSCRIPT:

As noted above, the Board's initial decision letter referred to Board minutes as possibly containing relevant information. The decision letter directed the appellant to several libraries to review these minutes. Thus it appears that the Board was, in fact, denying access to this information under section 15(a) of the Act. This is confirmed by a reference to that section in the Board's representations.

These minutes were not at issue in this appeal. However, I would like to advise the Board, for future reference, that if it intends to deny access based upon public availability of records elsewhere, it is in fact claiming the exemption in section 15(a), and its decision letter **must make reference to this section**. On the other hand, if the Board is granting access under the Act by permitting inspection at a Board facility, this must also be expressly stated in the decision letter.