



Information and Privacy  
Commissioner/Ontario

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

## **ORDER M-537**

**Appeals M-9500062 and M-9500246**

**Wentworth County Board of Education**



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## **NATURE OF THE APPEALS:**

These are appeals under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Wentworth County Board of Education (the Board) received a detailed request for access to records of any meetings, memoranda, directives, notices and any other information concerning the requester, an employee of the Board.

The Board located records which were responsive to some parts of the request, and advised the requester that he may examine them in person in their entirety. The Board also advised the requester that no records exist with respect to the remaining parts of the request and charged the requester a fee of \$150 for search time. The requester appealed the decision to charge a fee and claimed that further records exist in response to the following parts of his original request:

- Meeting with the Director, Superintendents and [a named individual] on Thursday, November 9, 1989 (1989-90 School Year).
- Meeting between the Director and O.P.S.T.F. President (1989-90 School Year).
- Memoranda and general information between the Director and Superintendent Kirkpatrick (1989-90 School Year).
- Information between the Director and Toronto O.P.S.T.F. representative (1989-90 School Year).
- Information regarding June suspension by the Director (1989-90 School Year).
- Information between the Director and Superintendent of Secondary Schools (1990-91 School Year).
- Information between the Director and Superintendent of Secondary Schools (1991-92 Adult Education).
- Directives and information between the Director and Superintendent for Grange School (1992-93 Grange School).
- Information to the Director from the trustees of Ancaster (1992-93 Grange School).
- Directives/information to the Superintendent for Adult Education from the Director (Adult Education - Waterdown 1993-94).
- Information to the Superintendent of Adult Education from the Manager of the Waterdown Adult Education (Adult Education - Waterdown 1993-94).

- Directives/information to the Superintendent for Adult Education from the Director (1994-95 Adult Education).
- Directives/information to the Principal of Adult Education from the Superintendent for Adult Education (1994-95 Adult Education).
- Directives/information from any member of C.U.P.E. to the Director (School Years 1989-90 to Present).
- Information to the Director from the Collegiate Avenue School Secretary of the 1988-89 school year.
- Information from any employee of the Board of Education office to the Director (School Years 1989-90 to Present).
- Information to the Director from any retired Board of Education employee (School Years 1989-90 to Present).

During the mediation of the appeal, the Board withdrew its claim for a fee. A Notice of Inquiry was provided to the appellant and the Board. Subsequently, the appellant and his union representative attended at the Board's offices to examine those records to which access had been granted by the Board's original decision letter. After examining the records which were made available to him, the appellant filed with this office a further appeal, arguing that additional records responsive to items A3, A4, B3, C3, D5, D6, E4 and G1 of his original request should exist.

Appeal Number M-9500246 was then opened by our office to process the appeal of this aspect of the Board's decision. With the consent of the parties, this order will address all of the issues raised by both appeals. Representations were subsequently received from both the appellant and the Board.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

The sole remaining issue in each of these appeals is whether the Board conducted a reasonable search for records which are responsive to all portions of the appellant's request.

Where a requester provides sufficient details about the records to which he is seeking access and the Board indicates that no responsive records can be located, it is my responsibility to ensure that the Board has made a reasonable search to identify any records which are responsive to the request. In my view, the Act does not require that the Board prove to the degree of absolute certainty that such 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 appellant believes that additional records exist because meetings involving Board staff, his union and other individuals were held in which his employment status with the Board was discussed. In support of his position, the appellant has provided me with a number of documents which clearly indicate that such meetings and discussions occurred. The appellant submits that these records demonstrate that it would be reasonable to expect that additional documentation beyond that which has already been disclosed has been generated by the Board.

In its representations, the Board outlines, very generally, the steps taken to locate responsive records. The Board's representations include the sworn affidavits of the individuals who conducted the searches, specifically, the Board's Director, Executive Secretary to the Director, Supervisor of Payroll and Personnel Assistant.

The Notice of Inquiry which was provided to both parties described in detail the nature of the requested records which are sought by the appellant. However, neither the Board's representations nor its affidavits describe in any detail the nature or results of the searches conducted for the specific records which might be responsive to each portion of the request. Rather, the Board states generally that files in the offices of the Director and Superintendent, as well as the Payroll and Personnel Departments were searched and made available to the appellant for viewing in person.

Having carefully reviewed the representations of the appellant, and based on the information which he has provided and the submissions of the Board, I conclude that the Board's search for files responsive to those parts of the request which are listed above, including items A3, A4, B3, C3, D5, D6, E4 and G1, was not reasonable. I find that the appellant has provided sufficient evidence to suggest that additional records responsive to his request may exist. I also find that the Board has not provided me with sufficient evidence to conclude that its search was reasonable in the circumstances. Evidence of the extent and results of the search undertaken for records responsive to each enumerated document type is necessary in order to satisfy the requirement that the search was reasonable. Accordingly, I will order the Board to conduct a further search for records responsive to each of those portions of the request for which records have not been located.

## **ORDER:**

1. I order the Board to conduct a search for any records responsive to all of the items listed under the "Nature of the Appeals" section of this order, as well as items A3, A4, B3, C3, D5, D6, E4 and G1 from the appellant's original request. I further order the Board to advise the appellant in writing of the results of this search, within thirty (30) days after the date of this order. As the majority of these requested records would, if they exist, involve the Board's Director and Superintendents, the search for records should include, but not be limited to, files maintained by these individuals.

2. In the event that the Board locates additional responsive records as a result of the searches referred to in Provision 1, I order the Board to render a final decision on access to such records in accordance with the provisions of sections 19 and 22 of the Act, treating the date of this order as the date of the request, and without recourse to a time extension under section 20.
3. I order the Board to provide me with a copy of the correspondence referred to in Provisions 1 and 2 (if applicable), within thirty-five (35) days after the date of this order. This should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ May 31, 1995