



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-604

Appeal M_9500268

Board of Education for the City of Hamilton



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). In September 1994 the appellant submitted a request to the Board of Education for the City of Hamilton (the Board), in several parts. The part of this request under consideration in this appeal was for “any material that relates to my union activity, attendance at workshops, notes, requests for union time off, etc.”.

To place the request in context, it is important to note that the appellant has been an occasional teacher with the Board, and has filed a grievance in response to her dismissal from an occasional teaching position at one of the schools operated by the Board. She has also been a local official for a teachers’ union.

The Board’s initial response to this aspect of the request indicated that “we have previously provided copies of all documents in your personnel file”. The appellant filed an appeal on the basis that she believed additional records, not previously disclosed to her by the Board, should exist within the Board’s files. This appeal was resolved by the issuance of Order M-492.

In Order M-492, I upheld the Board’s search with respect to requests for union time off, but ordered the Board “... to conduct a further search for records relating to the appellant’s union activities, with the exception of requests for time off pertaining to union activities, to communicate the results of this search to the appellant in writing, and to provide an access decision to the appellant with respect to any responsive records located as a result of this search ...”.

The Board conducted an additional search, located further records and disclosed them to the appellant. The appellant has now filed a further appeal relating to the searches conducted by the Board, alleging that additional responsive records exist.

A Notice of Inquiry was sent to the appellant and the Board. Both parties submitted representations.

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.

In this case, the appellant’s letter of appeal (which also pertains to another request which is the subject of a separate appeal) gives several examples of records which she believes should exist

within the Board's files. However, none of these records pertains to "union activities" as defined in Order M-492 (that is, activities relating to the appellant's general union activities, rather than her grievance).

The Board's representations (which consist of an affidavit by the Board's Freedom of Information and Privacy Co-ordinator) describe the efforts it has made to locate responsive records. These include the searches conducted at the request stage and in response to Order M-492, as well as efforts made after the current appeal was filed.

The appellant's representations include suggestions about what additional records may exist, and where they might be located, but I have not been provided with any indication that this information was ever communicated to the Board. Moreover, the Board's representations indicate that during this appeal (more particularly in May and June 1995), it made numerous unsuccessful attempts to reach the appellant for clarification. Despite leaving several answering machine messages, the Co_ordinator indicates that the appellant did not return her calls.

The appellant is seeking access to her own personal information. I would like to remind the appellant of the provisions of section 36(1)(b) of the Act (referred to in the Notice of Inquiry), which apply to requests for personal information, and which oblige requesters to provide specific information about records they are asking for. This section states:

Every individual has a right of access to,

any other personal information about the individual in the custody or under the control of an institution **with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.** (emphasis added).

As noted above, information about additional records and their possible locations was included in the appellant's representations to the Commissioner's office. In my view, in the circumstances of this case, that does not meet the requirements of section 36(1)(b). Providing this information at the representation stage is too late in the process to be of use to the Board, and in any event the information needs to be given to the Board, which has the responsibility of locating responsive records. Ideally, this information should be provided at the request stage.

I would also remind the appellant that, as I stated above (and in Order M-492), in appeals relating to whether a reasonable search was conducted, the Act **does not require that the Board prove to the degree of absolute certainty that such records do not exist.** Rather, the Act requires institutions to demonstrate that the efforts they made to locate responsive records were reasonable in the circumstances.

In my view, the efforts made by the Board in this case were more than reasonable.

ORDER:

I uphold the Board's decision.

Original signed by: _____

John Higgins
Inquiry Officer

September 28, 1995