



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

ORDER M-653

Appeal M_9500484

The 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 Board of Education for the City of Hamilton (the Board) received a request for copies of all records, including reports, notes, interviews and e-mails concerning the requester, which she indicates were prepared by a named individual in the Board's Employee Relations Department. The requested records pertain to a specific arbitration meeting which was attended by the named individual.

The Board responded to this request and advised the requester that the individual identified by her in her request was not employed by the Board at the time of the arbitration meeting. Further, the Board indicated that the named individual did not provide the Board with any documents as a result of his attendance at this meeting. Accordingly, the Board indicated that it did not have records responsive to the request.

The requester appealed this decision. In her letter of appeal, the requester (now the appellant) indicated that the named individual was a labour studies student during the spring of 1994. He interviewed her sometime in January or February, 1994 and attended her grievance arbitration meeting in March, 1994. She believes that the Board should have records of these meetings which would have been prepared by him.

A Notice of Inquiry was provided to the Board and the appellant. Representations were received from the Board only. The Board's representations consist of an affidavit sworn by the Manager of Employee Relations, who is also the Freedom of Information Co-ordinator for the Board (the Manager). The sole issue to be determined is whether the Board's search for responsive records was reasonable in the circumstances of this appeal.

DISCUSSION:

REASONABLENESS OF SEARCH

In her affidavit, the Manager indicates that the named individual commenced employment with the Board July, 1994. Prior to that, he was enrolled as a student in a labour studies program at a named university. As part of his studies, he attended an arbitration involving the Board. In preparing for an essay he was required to write for his course, the named individual requested, and was granted permission to interview, among others, the appellant. The Manager indicates that the named individual made tapes of these interviews. She states, however, that the interviews were not carried out on behalf of the Board, nor were any records provided to it from the named individual.

The Manager indicated that, in responding to the request, a records analyst with the Board contacted the named individual. He indicated that the tapes were made for his own personal use, and, in any event, they had been destroyed. The Manager also contacted this individual who confirmed that no record exists concerning the appellant's interview, nor was any record provided to the Board.

Where a requester provides sufficient details about the records which she is seeking and the Board indicates that further 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 further 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.

Both the appellant and the Board indicate that the named individual was a student during the time the events in question took place. In my view, at the time the named individual interviewed the appellant, and attended at the arbitration meeting, he was neither an employee nor a representative of the Board. I find that any notes or tapes made, and any formal report or paper he might have written regarding these events, were made in his own personal capacity as a student and for his own purposes. Moreover, I am satisfied that he did not forward to the Board any documents pertaining to his attendance at either the interviews or the arbitration meeting.

I am satisfied that the efforts made by the Board to determine whether it might have records responsive to this request were reasonable in the circumstances.

ORDER:

I uphold the Board's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ November 20, 1995