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

ORDER M-661

Appeal M_9500530

Frontenac_Lennox and Addington County Roman Catholic Separate School Board

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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 Frontenac-Lennox and Addington County Roman Catholic Separate School Board (the Board) received a two-part request from the parents of a student (the student) attending one of the Board's schools. The requesters asked for documents used by the Board in reaching a decision to no longer assign an Educational Assistant to their child, and to recommend the transfer of their child to another school.

The Board contacted the requesters following receipt of this request and asked that they clarify their request to describe more precisely the records they were seeking. The requesters submitted a second request which essentially reiterated the first. The Board then issued a decision in which it provided access to four records. The requesters were not satisfied with this response and appealed the Board's decision on the basis that more records should exist.

During mediation, the Board provided additional information to the Commissioner's office regarding the issues in this appeal. This information was communicated to the requesters (now the appellants). The appellants continue to believe that more records should exist.

This office sent a Notice of Inquiry to the Board and the appellants. Representations were submitted by the Board only. The Board's representations consist of the sworn affidavits of the Director of Education (the Director), the Superintendent of Schools (the Superintendent), the Co_ordinator of Special Services (the Co-ordinator) and the Principal of the student's school (the Principal).

DISCUSSION:

REASONABLENESS OF SEARCH

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

With respect to the issue of transfer of the student, both the Director and the Principal state that the comment made by the Principal to the appellants, to transfer the student to another school, was not a recommendation. Rather, it was a suggestion made by the Principal in response to the appellants' dissatisfaction with the degree of assistance provided to the student at his current school.

I am satisfied that no records exist regarding this part of the request. The other part of the request, however, is more complicated. This part pertains to the decision to no longer assign an Educational Assistant to the student.

The affidavits provided by the Board clearly outline the steps taken to search for responsive records in locations in which they might reasonably be found. They also provide insightful discussion regarding the approaches taken in addressing this request, in particular, in light of the on-going and extensive contact between the appellants and Board and school staff. The Director indicates that the appellants have had full access to school records concerning their son and have been kept informed about his needs and progress through numerous meetings with Board and school staff. I acknowledge that the parents have without doubt received considerable and ongoing information regarding their son's education.

The appellants note that at an Identification, Placement and Review Committee (IPRC) meeting in May, 1995, an Educational Assistant was recommended for their son for the upcoming school year. They do not understand why a decision was then made not to continue to provide this assistance. They indicate that information provided by the Board regarding this issue has not answered their questions. Moreover, they believe that the Board has misunderstood their request.

In his affidavit, the Co-ordinator indicates that, although the School Level IPRC recommended an Educational Assistant for the student, the assignment of an Educational Assistant is a program decision. He explains that the Board employs a ratings schedule in order to assist it in determining how educational assistants will be assigned to special need students. The schedule contains three ratings categories (Category one being the highest need students). The student was placed in Category three. The Co-ordinator indicates that he was responsible for rating the student in this category.

In his affidavit, the Director indicates that, as a result of downsizing in the Board's special education resources, the decision to place the student in Category three resulted in the decision to discontinue the direct assistance provided.

The Co-ordinator indicates that, following a search through the Special Education Services files, five additional records were located which are responsive to the request. The Board does not indicate whether or not these records are to be disclosed to the appellants. I will, therefore, order the Board to make a decision on access.

The appellants' concern is clearly focussed on trying to understand **why** a particular decision was made in the face of recommendations to the contrary. Their concern, I believe, is clearly stated in their letter dated August 10, 1995 to the Director. They write:

> [The Superintendent] stated that "no educational assistant is assigned to any child rated in the 3 category", yet failed to inform us as to **who carried out this assessment for [the student]?, when it was done?, what information was used to make the assessment?, and what category the Board perceived our son be in?**

The appellants, in my view, are clearly concerned with the decision to categorize their son in the lowest category of special needs, which ultimately led to the withdrawal of the Educational Assistant.

Given the history between the Board and the appellants, and the amount of information they have received concerning their son, it is difficult to determine whether they have received information which is responsive to their questions concerning the decision to place their son in Category three. The additional records located by the Board do not, in my view, fully respond to this question. The affidavits provided by the Board simply refer to the decision to place the student in this category, but do not indicate the basis on which this decision was made.

However, in correspondence to the Commissioner's office, which was communicated to the appellants by the Appeals Officer assigned to this file, the Director does indicate the basis for the decision. He writes that:

- [the student] was rated, for purposes of the assignment of an Educational Assistant, by [the Co-ordinator];
- to arrive at a rating, the attached rating/descriptor information is used;
- [the student] is rated in Category 3;
- **to arrive at a final determination of [the student's] needs, staff took into account:**

  - his educational history
  - anecdotal observations from teachers
  - professional discussions
  - the educational/life goal of helping [the student] acquire independence [emphasis added]

The question remains, however, whether this information is sufficient to respond to the appellants' request.

In my view, there are clearly documents which were used by the Board in arriving at its decision to place the student in Category three. Further, these documents may already be in the possession of the appellants as part of their on-going communications with the Board and school.

After careful consideration of the particular circumstances in this case, I am of the view that even though the appellants may be in possession of this information, the Board is obligated, at least, to identify the particular information that was considered in arriving at its decision regarding the student. If a particular record is in the possession of the appellants, it should be identified. If it is not in their possession, the Board must make a decision on access and notify the appellants of this decision.

I will, therefore, order the Board to conduct a further search for records responsive to the appellants' request as I have interpreted it. It would appear that, since the Co-ordinator was responsible for making the decision to place the student in Category three, he would be in the best position to determine those records which would be responsive to the appellants' question regarding the basis for the decision.

ORDER:

1. I order the Board to conduct a further search for records responsive to the first part of the appellants' request which I have interpreted as follows: All records used by the Board in arriving at its decision to place the student in Category three of the Ratings Schedule.

2. In the process of conducting this search, I order the Board to contact the Co-ordinator to determine which records he relied on in arriving at his decision to place the student in Category three.

3. I order the Board to advise the appellants of the results of this further search, within thirty (30) days after the date of this order.

4. In the event that further records are located as a result of the search mentioned in Provisions 1 and 2 of this order, and these records are not in the possession of the appellants, I order the Board to provide an access decision to the appellants, in the form contemplated by sections 19, 22 and 23 of the Act, within thirty (30) days after the date of this order, without recourse to a time extension.

5. In the event that further records are located as a result of the search mentioned in Provisions 1 and 2 of this order, and the appellants indicate that these records are in their possession, it is sufficient that the Board identify the particular records.

6. I order the Board to provide an access decision to the appellant regarding the records referred to in the Co-ordinator's affidavit, in the form contemplated by sections 19, 22 and 23 of the Act, within thirty (30) days after the date of this order, without recourse to a time extension.

7. I find the Board's efforts to locate records responsive to the second part of the appellants' request to be reasonable and I deny the appeal of this part.

8. In order to verify compliance with Provisions 3, 4, 5 and 6 of this order, I order the Board to provide me with copies of the correspondence referred to in these provisions, within thirty-five (35) days after the date of this order. These should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: December 7, 1995
Laurel Cropley
Inquiry Officer