



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

INTERIM ORDER M-867

Appeal M_9500615

Le Conseil des écoles françaises de la communauté urbaine de Toronto



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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

Le Conseil des écoles françaises de la communauté urbaine de Toronto (CEFCUT) received a multi-part request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). Because the nature and extent of the original request are fundamental to an understanding of this portion of the request, I have set it out in full in the appendix to this order, as translated by this office from the original French. CEFCUT located and identified a large number of records as responsive to the request, and granted access to some records, in whole or in part. Access to a number of other records responsive to Parts A1, A2, A3 and A4 of the request were denied, in whole or in part, under the following exemptions contained in the Act:

- closed meeting - section 6(1)(b)
- advice or recommendations - section 7
- solicitor-client privilege - section 12
- invasion of privacy - section 14
- information published or available - section 15(a)

In addition, CEFCUT determined that records responsive to Parts A5, A6 and B2(f) of the request do not exist and issued interim fee estimates with respect to Parts A7, B1 and B2 (a)-(e) and (g)-(h) of the request.

This office forwarded to the parties a Notice of Inquiry soliciting the submissions of the parties on the issues set forth above. Both CEFCUT and the appellant provided this office with their representations. In its submissions, CEFCUT argued that some of the records which it originally identified as responsive to the request are not, in fact, responsive. In order to make a determination as to whether these records are properly at issue in this appeal, a Supplementary Notice of Inquiry was provided to the appellant and CEFCUT by this office. Additional representations were received from both parties on the issue of the responsiveness of a number of identified records.

DISCUSSION:

RESPONSIVENESS OF RECORDS

In Order P-880, Inquiry Officer Anita Fineberg made the following comments concerning the definition of "relevance" and "responsiveness" in the context of a request under the Act. She found that:

In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to the request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise

definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.

In my view, an approach of this nature will in no way limit the scope of requests as counsel fears. In fact, I agree with his position that the purpose and spirit of freedom of information legislation is best served when government institutions adopt a liberal interpretation of a request. If an institution has any doubts about the interpretation to be given to a request, it has an obligation pursuant to section 24(2) of the Act to assist the requester in reformulating it. As stated in Order 38, an institution may in no way unilaterally limit the scope of its search for records. It must outline the limits of the search to the appellant.

I adopt the approach suggested by Inquiry Officer Fineberg for the purposes of determining the responsiveness of the identified records in this appeal. I have received very detailed representations from the parties on this issue and will, accordingly, address each record individually.

Record A-27

I find that, contrary to the arguments of the appellant, this record is not responsive to Part A-3 of his request. The appellant's on-going legal proceeding against CEFCUT referred to in Part A-3 of his request alleges discrimination in a job competition for the position of Assistant Superintendent held in December 1988. This record does not relate either to the 1988 job competition or to any other component part of the request and is, accordingly, not responsive.

Record A-38

This document is a chronology of events which occurred prior to the creation of CEFCUT on December 1, 1988. The events described in the document involved efforts undertaken by the Metropolitan Toronto School Board (the Board) to organize the administrative services of CEFCUT, including the hiring of interim staff by the Board. I find that this document is not relevant to the issues raised by the appellant in his request. For this reason, it is not responsive to the request.

Record A-39

This document is a schedule of interviews conducted by the Board in June 1988 with candidates for three interim positions. For the reasons described above in my discussion of Record A-38, I find that this record is not responsive to the request.

Record B-1

Record B-1 is a list of questions prepared for candidates in a CEFCUT competition held in May 1989 for the position of Superintendent of Education. In Part B-1 of his request, the appellant specifically asks only for records relating to the Superintendent of Education selection and hiring which occurred in 1994. This document is, accordingly, beyond the scope of the request.

Records B-2, B-3 and B-4

These documents comprise notes taken by the interviewers of three candidates for the position of Superintendent of Education in May 1989. Again, as the appellant is only seeking records relating to the 1994 competition for the Superintendent of Education position, these documents do not fall within the ambit of the request and are not responsive.

Records B-68, B-69, B-70 and B-73

Record B-68 is a letter from counsel for the Metropolitan Toronto School Board to the Ontario Human Rights Commission (the OHRC). The letter relates to a complaint by the appellant against the Board which is separate and distinct from the complaint which the appellant has commenced against CEFCUT and was provided to CEFCUT's counsel by the Board's counsel as a courtesy. I find that because the letter relates to a complaint by the appellant under the Ontario Human Rights Code against the Board and not the CEFCUT complaint, it does not fall within the ambit of Part A-3 (or any other part) of the request and is not responsive.

Record B-69 is the letter from the OHRC which prompted the Board's counsel to create Record B-68. Records B-70 and B-73 are further letters from the Board's counsel to the OHRC respecting the appellant's complaint against the Board. Again, in my view, these documents are not responsive to the appellant's request.

Records B-74 and B-75

This is a letter from the OHRC to the President of CEFCUT regarding a complaint of discrimination which the appellant made against the North York Board of Education in 1987. Because the letter concerns a complaint brought by the appellant to the OHRC involving the North York Board of Education, I find that it is not responsive to the appellant's request.

Record B-75 is a case summary prepared by the OHRC regarding the appellant's complaint against the North York Board of Education. I find that it is not responsive to the present request.

Record B-79

This is a notice of a meeting of the members of the selection committee in respect to the CEFCUT competition for the position of Superintendent of Education in May 1989. This document falls outside the scope of the appellant's request and is, accordingly, not responsive.

Record B-80

Record B-80 is a report which pertains to certain events in the context of the May 1989 CEFCUT competition for the Superintendent of Education's position. The record describes certain actions agreed upon by the members of the Conseil, including their agreement to invite the appellant to apply for the position. I find that the record does not relate to any aspects of the appellant's request and is, therefore, not responsive to his request. In particular, I find that the record does not relate to the appellant's OHRC complaint with CEFCUT arising from the December 1988 competition for the position of Assistant Superintendent, or to any other aspect of the appellant's request.

Record B-81

This document consists of a letter from the appellant to an official with the North York Board of Education. I find that it does not relate to any aspect of the appellant's request.

Record B-82

Record B-82 is an excerpt from the minutes of a meeting of CEFCUT or one of its committees which addresses the hiring procedure for the positions of Superintendent of Education and Superintendent of Business in May 1989. I find that this record falls within the ambit of Part A-4(b) of the appellant's request. It is, accordingly, responsive to his request.

Records B-83, B-84, B-85, B-86 and B-87

Each of these documents consist of the applications received by CEFCUT from various individuals for the position of Superintendent of Education in May 1989. I find that they do not relate to any aspect of the appellant's request and are not responsive.

Records B-88 and B-89

These documents contain information relating to the hiring arrangements entered into between CEFCUT, the successful candidate for the position of Superintendent of Education and the candidate's former employer. They do not relate to the appellant's request and are not responsive.

Record B-90

This is an announcement sent by the Director of Education of CEFCUT in January 1989 to school principals that a new Assistant Superintendent of Education has been appointed. As this competition was the one which gave rise to the appellant's OHRC complaint in December 1988, I find that it is relevant to Part A-3 of the request.

Record B-93

Record B-93 consists of a set of proposed questions to be asked in the course of the interviews for the position of Assistant Superintendent which took place in December 1988. The appellant's OHRC complaint arose from his allegations of discrimination in the conduct of this competition. While these questions were not ultimately used by the interviewers, I find that they are reasonably related to Part A-3 of the request. They are, accordingly, responsive to that part of the request.

Record B-94

This is a job description questionnaire prepared by a consultant to the Metropolitan Toronto School Board for the position of Assistant Superintendent, French Language Services. The

record was prepared in June 1988, prior to the creation of CEFCUT. I find that it does not relate to any aspect of the appellant's request.

Record B-97

This record is a memorandum from the Superintendent of French Language Programs at the Metropolitan Toronto School Board to its Director/Secretary-Treasurer. The record describes the procedures to be followed in the placement of an advertisement for the position of Assistant Superintendent with CEFCUT, which was to come into existence shortly after the placement of the advertisement. I find that the record is related to the subject of the appellant's OHRC complaint and that it is responsive to Part A-3 of his request.

Records B-98 and B-99

These are identical copies of a letter sent by the Board to two candidates for the position of Assistant Superintendent with the Board in July 1988. I find that these records do not relate to any aspect of the appellant's request.

Record B-100

Record B-100 consists of the minutes of a meeting of the French Language Task Force held on June 27, 1988. The Task Force was created by the Ministry of Education and ceased its work on December 1, 1988 when CEFCUT came into being. The meeting dealt only peripherally with matters relating to staff and not at all with issues pertaining to specific positions. I find that the record is not responsive to the appellant's request.

Record B-101

This document is a memorandum dated June 21, 1988 from the Board's Superintendent of French Language Programs to the Director of Education/Secretary-Treasurer of the Board setting out the recommendations of a Board selection committee for various interim positions. These positions were filled by Board employees and others and included several senior administrative positions. There was no recommendation as to the appropriate choice for the position of Assistant Superintendent. It was the later CEFCUT job competition in December 1988 for the Assistant Superintendent position which gave rise to the appellant's OHRC complaint.

I find that this document does not relate to the appellant's OHRC complaint or to the facts which resulted in the complaint being filed. For this reason, I find that the record is non-responsive.

Record B-102

This record consists of six separate documents which relate to the recruitment of interim administrative staff by the Board's French Language School Council in June 1988. This staff would be employed by the Board in this capacity only until CEFCUT came into existence in December 1988. I find that none of these documents relate to the matters which resulted in the appellant's OHRC complaint. The record is not, accordingly, responsive to this or any other aspect of the appellant's request.

Records B-103 and B-104

Record B-103 is a letter from CEFCUT to the successful candidate following the competition for the position of Assistant Superintendent in December 1988. CEFCUT submits that the information conveyed in the letter to the successful candidate does not relate to the actions of CEFCUT which is impugned in the appellant's OHRC complaint. I agree, and find that the record is not responsive to Part A-3 of the appellant's request.

Record B-104 is a letter from CEFCUT to the Deputy Minister of Education regarding some arrangements which were required between the Ministry and CEFCUT for the engagement of the successful candidate in the Assistant Superintendent position. Again, I find that this does not relate in any tangible way to the matters addressed in the appellant's OHRC complaint and are, therefore, not responsive to Part A-3, or any other aspect, of his request.

Record B-105

This document is a typewritten note taken by a Board employee on November 28, 1988 which describes a telephone call which she took from an individual who expressed an interest in applying for the Assistant Superintendent position. An application from this individual was never received. I find that this record is not responsive to the appellant's request.

Record B-115

This document is a list of candidates for various interim positions with the Board which were being filled in June 1988. The appellant's name appears with other individuals as a candidate for the position of Assistant Superintendent. It should be noted, however, that this position was a temporary interim Board position and was ultimately not filled until the creation of CEFCUT in December 1988. I cannot agree with the appellant's contention that this record is relevant to Part A-3 of his request.

Records B-116, B-117 and B-118

These records represent the applications submitted by each of the candidates in the Board's June 1988 competition for interim Assistant Superintendent. Again, I find that these records do not relate to any aspect of the appellant's request.

Record B-119

Record B-119 is a three-page report dated April 21, 1988 from the Superintendent of the Board's French Language Programs to the Director of Education/Secretary-Treasurer containing a proposal for the interim administration of the Board's French Language Conseil, until the creation of CEFCUT. I find that none of the information contained in this document pertains to the matters addressed in the appellant's request. For this reason, it is non-responsive.

Records B-120, B-121 and B-122

Record B-120 is the original posting inviting applications to the Board for the position of interim Assistant Superintendent. Record B-121 is a document provided by the Board's personnel department to newly hired staff in which various benefits and other employment-related questions are addressed. Record B-122 is the salary schedule from 1988 for the Board's Schedule II employees.

In my view, none of these records, which relate solely to the interim position of Assistant Superintendent with the Board, are responsive to Part A-3, or any other part, of the appellant's request.

ORDER:

By way of summary, I find that of those records addressed in this decision, only Records B-82, B-90, B-93 and B-97 are responsive to the appellant's request. The remaining documents do not fall within the ambit of the request and will not be considered in the final order which disposes of this appeal. I remain seized of the outstanding issues in this appeal regarding the reasonableness of CEFCUT's search, the application of the exemptions to the responsive records and the fee estimate provided to the appellant by CEFCUT.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ November 29, 1996

APPENDIX

The appellant indicated that the request was intended to cover the period December 1, 1988 to the date of the request (August 22, 1995) with the exception of Part A1. The request states:

Part A

1. The access requests including the identity of the requesters, which have been sent to you as mentioned in point 1 of my letter of November 1994.
2. The minutes and reports of the board as well as its committees, which mention all the access requests mentioned in my letter of Nov. 17/94, concerning the board's legal fees defending itself against my OHRC case, and in addition, any mention authorizing the disclosure of my identity.
3. All records and personal information banks containing/mentioning my personal privacy/information and my ongoing legal proceeding/action against the board.
4. All of the approved policies and guidelines of the board concerning:
 - (a) the disclosure of information and protection of personal privacy;
 - (b) the hiring of staff;
 - (c) employment equity;
 - (d) racial and ethnic/cultural equity.
5. The complete list of all grievances, complaints or lawsuits filed (or where you have been notified of an intention to file) both against the board and against any of its administrators.
6. The legal fees concerning each of the cases cited in #5, accompanied by the name of the lawyer and of the legal firm involved. Please note whether the case is completed or ongoing and any settlement made as a result of conciliation/mediation.
7. All details concerning each and every of (all) the legal fees incurred by the board, and each of its representatives, to obtain legal advice including the name of the law firm, the lawyer, the dates, the subject matter and the amount (of legal fees).

Part B

1. All information concerning the selection and hiring of the Director of Education and the Superintendent of Education in 1994. This would include the information concerning hiring (a named firm), any person involved in the process, any minority report made or not made at the time in question, any declaration of conflict of interest, the employment policies followed, the selection criteria in place and the details of all administrative and legal costs incurred for this purpose. Please provide the budget in total and in detail allocated to hiring these 2 people as well as all correspondence both formal and informal concerning this with agents and representatives of the Ministry of Education and Training, as well as all the candidates who applied and were short-listed for pre-selection/screening for these positions.
2. All detailed expenses incurred by the administrators of the board in the following areas:
 - (a) Trips outside the province and country by each of the administrators.
 - (b) Discretionary budget of the Director of Education, of each superintendent and of each middle and upper management staff as well as the details of all the money actually spent in these budgets.
 - (c) All social benefits and other contractual agreements offered to the Director of Education, to each Superintendent and to each middle and upper management staff.
 - (d) All consulting fees and external contracts as well as the detail concerning the project and the company or the individual under contract.
 - (e) All expenses concerning loans of staff and other transfers.
 - (f) All costs concerning substitute/supply staff by category of ethnic group.
 - (g) All kinds of contractual arrangements with board staff members.
- (h) All financial revenue of the board.