



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

ORDER M-890

Appeal M_9600308

York Region Roman Catholic Separate School Board



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:

The York Region Roman Catholic Separate School Board (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to a copy of any personal notes, handwritten or otherwise, created by any administrator at a named high school relating to the requester's performance appraisal, as well as any notes and documentation in the requester's file at the school or Board level.

The Board conducted a search for the requested records and provided the requester with copies of 80 pages of documents, including what it described as a "condensed" version of notes relating to the requester which had been prepared by several administrators at the school. The requester (now the appellant) appealed the Board's decision. The appellant is of the view that the original notes upon which the "condensed" version were based should have been disclosed to him as well.

A Notice of Inquiry was sent to the parties by this office soliciting their submissions on the issue of whether the search undertaken by the Board for responsive records was reasonable. Representations in the form of affidavits from five Board employees were received from the Board. The appellant did not make any submissions.

DISCUSSION:

REASONABLENESS OF SEARCH

In its affidavit evidence, the Board acknowledges that the original notes were not included in the records disclosed to the appellant. It submits that the original notes which were relied upon in the appellant's performance appraisal process were destroyed in November 1996, some four months after the request was originally received by the Board.

Where a requester provides sufficient details about the records which she is seeking, 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 the requested records do not exist. However, 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 appellant's request.

I am concerned that records responsive to the request, the original notes, were destroyed by a school administrator following receipt of the request by the Board's Freedom of Information and Privacy Protection office. The administrator was aware that a request had been received for this information and destroyed the original notes nevertheless. In so doing, I find that the administrator has breached section 5 of Regulation 823 made under the Act, which reads:

Personal information that has been used by an institution shall be retained by the institution for the shorter of one year after use or the period set out in a by-law or resolution made by the institution or made by another institution affecting the institution, unless the individual to whom the information relates consents to its earlier disposal.

I find that by reviewing the notes in the course of the appellant's performance appraisal in the spring of 1996, the Board, through its administrator, "used" the personal information contained in them within the meaning of section 5 of Regulation 823. It was obliged, therefore, to maintain the records for a period of one year following this use.

Generally, in my view, records containing information which is the subject of a request under the Act should be retained by an institution, regardless of the operation of any records retention schedule which may provide for their destruction. Clearly, in order to give effect to the access provisions in the Act, when a request is received by an institution, it is obliged not to destroy records which may be responsive to that request.

In the present case, having found that the original notes no longer exist, I am satisfied that the Board has taken all reasonable steps to locate the remaining records which are responsive to the appellant's request.

ORDER:

I dismiss the appeal.

Original signed by: _____ January 20, 1997
Donald Hale
Inquiry Officer