



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

ORDER M-902

Appeal M_9600342

Brant County Roman Catholic Separate School Board



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NATURE OF THE APPEAL:

The Brant County 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 "all meeting minutes, notes/documentation which contain or refer to [the appellant] or [her son] written by or in the possession of [a first named Board employee] ". This portion of the request specifically referred to "notes of meetings held February 9/96 and May 3/96 and any other notes [the first named Board employee] may have made in regards to any investigations conducted by him in relation to these meetings or the March 19, 1996 incident". The appellant also sought access to "all documentation in regards to [the appellant] and [her son] created through meetings or conversations between [the first named Board employee] and [second and third named Board employees]".

The Board responded to the request by advising the appellant that "no notes were made on February 9, 1996" and that the "meeting of May 3, 1996 is recorded in a memorandum" which the Board disclosed to the appellant. The appellant appealed this decision claiming that the Board's decision did not address all aspects of her request and that additional records exist.

During mediation of the appeal, the Board disclosed additional information to the appellant and advised her that no further records exist. The appellant remained dissatisfied with the Board's response and continued to assert that additional records should exist. She specifically referred to notes made by [the second named Board employee] on February 9, 1996 and records relating to any investigations and findings by [the first and third named Board employees], including conversations and documents supporting the decisions that were made.

A Notice of Inquiry was provided to the Board and to the appellant. Representations were received from both parties. The sole issue to be determined in this appeal is whether the Board's search for records responsive to the appellant's request was reasonable in the circumstances.

DISCUSSION:

REASONABLENESS OF SEARCH

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

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist.

In the case before me, the appellant's request is quite detailed. She outlines the nature of the information she is seeking, why certain records should exist, and who at the Board she feels might have the responsive records. In particular, in her representations, she points out that the first named Board employee advised her on more than one occasion that he was going to investigate her concerns. Therefore, she does not believe that such investigations could have been undertaken without notes having been made or documentation compiled. In addition, the appellant states that she observed the second named Board employee making notes at meetings at which they were both present. Finally, the appellant is aware that the third named Board employee had several conversations with other parents regarding concerns and complaints. On this basis, she believes that records of these contacts would also have been compiled.

In its representations, the Board submits that all records responsive to the request have been provided to the appellant and that it has no reason not to provide the appellant with all of the responsive information she has requested. The representations provide an explanation of the steps taken by the Board to locate responsive records. These included searches of the files of the three named Board employees and searches through other Board files and correspondence by the Board's Acting Freedom of Information and Protection of Privacy Co-ordinator (FOI Co-ordinator) (the first named Board employee) and two other Board employees.

In addition, the nature of the request was discussed with the second named Board employee and he was asked to search his personal notes; the third named Board employee is currently not available. The Acting FOI Co-ordinator submits that he did speak with other Board employees about the appellant's concerns but made no notes of these conversations. Further, the second named Board employee informed him that he has no notes of the February 9, 1996 meeting. As a result, the Board submits that it has no further responsive records and, that, to the best of its knowledge no records have been destroyed.

Despite the fact that it appears that the Board has made substantial efforts to locate all responsive records, I am not satisfied, in the circumstances of this case, that the Board's search was reasonable.

In my opinion, based on the information provided to me by both the Board and the appellant, there are other areas in which responsive records may be located. These matters were not addressed in the Board's submissions.

First of all, in a letter to the appellant dated June 17, 1996 the first named Board employee states that:

I have turned the file on this matter over to the Board's Legal firm ...

Next, in her submissions, the appellant refers to a series of Red Binders located in the office of the second named Board employee during the 1995/96 school year. The appellant states that some of the binders were labelled "Correspondence", "Discipline Records/Incident Reports", "Policy & Procedures", "Team Meetings" and "Safe School Policy". It is not clear from their submissions that the Board searched through these files.

Finally, based on the submissions of the appellant, I am concerned that the Board employees recognize that all the notes they prepared on any incidents involving the appellant and/or her

child are the Board records and not their personal records. They are thus subject to requests made under the Act and would therefore, be records responsive to this request, regardless of whether they were located in the Board files or personal files held by the Board employees .

In these circumstances, I am not satisfied that the Board's search for records responsive to the request was reasonable. Accordingly, I will order the Board to conduct a further search for records responsive to the request with particular attention to the areas I have identified.

ORDER:

1. I order the Board to conduct a further search to locate the records requested by the appellant and to advise the appellant of the results of the search no later than March 11, 1997.
2. In particular, I order that the Board, when conducting this further search, contact its counsel and all the Board employees named in the request, including the employee who had the "Red Binders", or who might have custody of the requested records to ascertain if they have any of the requested records in their possession. Should any of these individuals provide any information as to the possible location of the records, I order the Board to conduct a search in these locations.
3. If, as a result of this further search, the Board identifies any records responsive to the request, I order the Board to provide a decision letter to the appellant regarding access to these records in accordance with sections 19 and 22 of the Act, considering the date of this order as the date of the request and without recourse to a time extension.
4. In order to verify compliance with this order, I order the Board to provide me with a copy of the letter referred to in Provision 1 and a copy of the decision referred to in Provision 3 (if applicable) no later than March 26, 1997. These copies should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Anita Fineberg
Inquiry Officer

February 19, 1997