



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-930

Appeal M_9600368

Simcoe County Roman Catholic Separate School Board



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NATURE OF THE APPEAL:

The Simcoe County Roman Catholic Separate School Board (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). Part of the request was for access to the minutes of a closed Board meeting held on January 10, 1996. The requester was present for part of the closed meeting, at which the Board, sitting as a Committee of the Whole, discussed a grievance which the appellant had filed against the Board.

The Board responded to this portion of the request by advising the requester that no such records exist. Access to records responsive to the remaining portions of the request was granted.

The requester (now the appellant) appealed the Board's decision because he believes that minutes of the closed Board meeting exist.

A Notice of Inquiry was sent to the Board and the appellant soliciting their submissions on whether the search undertaken by the Board for records which are responsive to the request was reasonable. Representations, including an affidavit from the individual who conducted the searches, were received from the Board. The appellant did not submit representations, instead, he chose to rely on the submissions which he made in his request and letter of appeal.

PRELIMINARY MATTER:

In its representations, the Board relies on the exemptions contained in sections 6(1)(b), 11(c), 11(d) and 14 of the Act to deny access to any responsive record, if they exist. It further claims that, under section 52(3), any responsive record would fall outside the scope of the Act. Because of the manner in which I have disposed of the appeal below, it is not necessary for me to consider the application of these sections of the Act, which would only be necessary if responsive records could be located.

DISCUSSION:

REASONABLENESS OF SEARCH

In its decision letter, the Board advised the requester that "... there are no Board minutes kept of closed sessions, save and except the reports which are brought into public session. A copy of the Official Board Minutes of the meeting of January 10th, 1996 is attached."

The Board has submitted an affidavit from one of its employees who also serves as its Recording Secretary. She states that:

.... when the Trustees of the Board meet as the Committee of the Whole Board in Private Session, the conclusions of the Committee deliberations are reflected in a Report to the Board. Except for the motion represented at the conclusion of such meetings to "Rise and Report", **minutes of such meetings are not maintained.**
[emphasis added]

The motion relating to the appellant's grievance is recorded in the Official Board Minutes for January 10, 1996 (a copy of which has been provided to me) as item #4 on page 11 under the section entitled Reports from the Committee of the Whole. A copy of these minutes has been provided to the appellant. He has requested, however, copies of minutes of the January 10, 1996 meeting of the Committee of the Whole [the name the Board assumes when it is meeting in private], which then reported to the Board at its public meeting on that date.

In his letter of appeal, the appellant claims that "On two occasions, [the Recording Secretary] confirmed to me that there are indeed minutes kept of these sessions [i.e. the private sessions], though they are not available to the public." However, in her affidavit, the Recording Secretary states that:

In a casual conversation in the month of September, 1996, I responded to the general question [of the appellant] that, as Recording Secretary, I kept minutes of the meetings of the Committee of the Whole Board in Private Session. He did not ask, nor did I understand that he might have been seeking, a detailed explanation of precisely what records are maintained by the Board at such meetings.

I believe that [the appellant] must have misunderstood my responses, and that, despite facts and assurances to the contrary, he has concluded that the minutes of Private Sessions of Board Meetings are more extensive than they are in reality."

In view of the information contained in the affidavit provided by the Board, I am satisfied that there was a misunderstanding between the Recording Secretary and the appellant regarding the nature and extent of the minutes of closed Board meetings taken by the recording Secretary.

I note that the appellant has indicated in his letter of appeal that he wishes to receive any record kept of the Board's closed session, meaning "... any written material pertaining to the closed session of January 10, whether it consists of formal minutes, personal notes or any other form of record." This differs from the appellant's original request to the Board in which he sought access only to the minutes of the closed session. Consequently, if the appellant wishes to obtain records, other than minutes, relating to the January 10th closed meeting, he must submit a new request for this information to the Board.

With respect to the search for responsive records, the Recording Secretary attests that she:

... undertook searches of files, both paper and electronic, with respect to: general files, the Leadership Identification Program files, Memoranda to Principals and Staff, Official Board minutes and backup documentation, and in particular, the minutes of the Board and its Committees with reference to proceedings of the Board held on 10 January 1996 in all places in which such records might be stored in order to determine what records were in the possession of the Board in response to the request.

Where a requester provides sufficient detail about the records that he or 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.

I am satisfied that the Board has taken all reasonable steps to identify and locate the records responsive to the appellant's request.

ORDER:

I find that the Board's search was reasonable and dismiss the appeal.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ April 24, 1997