



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

ORDER M-1051

Appeal M-9700183

Bruce-Grey County Roman Catholic Separate School Board



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NATURE OF THE APPEAL:

The Bruce-Grey County Roman Catholic Separate School Board (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for the following information relating to a named individual:

- job description
- a list of duties as defined in any employment contract or agreement
- any document in the individual's personnel file which defines his duties
- any oath of office sworn by him
- any other Board record indicating the individual had been reprimanded

The Board denied access to the responsive records claiming that the requester had no right of access because the request was frivolous and vexatious. The Board also denied access to the records pursuant to section 14 of the Act (invasion of privacy). The requester (now the appellant) appealed the decision of the Board.

This office sent a Notice of Inquiry to the Board, the appellant and the named individual (the affected person). The Appeals Officer identified the possibility that the records might fall within the scope of section 52(3) of the Act. Therefore, this issue was included in the Notice. If section 52(3) applies, and none of the exceptions listed in section 52(4) are present, then the records are excluded from the scope of the Act and are not subject to the Commissioner's jurisdiction. Representations were received from the Board and the appellant.

PRELIMINARY ISSUE:

SCOPE OF THE APPEAL

In his representations, the appellant indicated that he was narrowing his request and provided a copy of the original request with parts of it struck out. The remaining parts of the original request are:

- (1) the named individual's job description
- (2) a list of his duties as defined in any employment contract or agreement
- (3) any oath of office sworn by him

The appellant also stated that he wished to substitute another request for specific information from the affected person's personnel file for parts of his request which he struck out.

In his original request, the appellant asked for the affected person's personnel file "to determine whether [the affected person's] duties are defined in any documentation therein." In his substitute request, the appellant has asked for information in the affected person's personnel file with respect to indemnification

of the affected person, breach of Board policies by the affected person and possible admissions against interest made by the affected person.

In my view, by attempting to substitute this request for his original request, the appellant seeks to broaden, not narrow his request with respect to the personnel file. Accordingly, I find that the request for this information contained in the personnel file is not the subject of this appeal.

Therefore, the information responsive to Items 1-3 above is the only information at issue.

Items 1 and 2

During the course of the appeal, the Board disclosed a policy to the appellant which describes the duties and responsibilities of the position held by the affected person. In my view, this information constitutes the affected person's job description. Therefore, the information which responds to Item 1 of the appellant's narrowed request is no longer at issue.

The Board also disclosed one paragraph of the affected person's employment contract which defines the affected person's duties. The paragraph refers to the policy discussed above, as well as the Education Act and Regulations as setting out the affected person's duties. Therefore, the information which responds to Item 2 of the appellant's narrowed request is no longer at issue.

Item 3

In its representations, the Board states that there is no oath of office sworn by individuals holding the position of the affected party. I will discuss this further under the heading of Reasonable Search.

Frivolous and Vexatious

Because the Board has forwarded the information responding to Items 1 and 2 of the request to the appellant and has indicated that no record exists with respect to the oath of office, I need not consider the issue of whether the appellant's request is frivolous and vexatious.

DISCUSSION:

REASONABLE SEARCH

Where an appellant provides sufficient detail about the records which he 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.

A reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request (Order M-909).

In its representations, the Board states that there has never been an oath of office for the named individual and that there has never been an oath of office for the position held by the affected person.

In these circumstances, I find that the Board has conducted a reasonable search to locate any oath of office sworn by the affected person.

Because there are no longer any undisclosed records at issue in this appeal, I need not consider section 52(3).

ORDER:

I dismiss the appeal.

Original signed by: _____
Marianne Miller
Inquiry Officer

_____ December 22, 1997