



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

Reconsideration Order R-980002

Appeal M-9700183

Order M-1051

Bruce-Grey County 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>

BACKGROUND:

On December 22, 1997, former Inquiry Officer Marianne Miller issued Order M-1051, which dealt with an appeal from a decision of the Bruce-Grey County Roman Catholic Separate School Board (the Board) under the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Prior to the order being issued and after the Notice of Inquiry was provided to the parties by this office, the appellant amended his request. In Order M-1051, the Inquiry Officer addressed the scope of the request as a preliminary issue. She concluded the appellant could not substitute other information within the affected person's personnel file for the information that he was removing from the request. She determined that by attempting to substitute this request for his original request, the appellant was seeking to broaden and not narrow his request with respect to the personnel file.

With respect to the other issues on appeal, Inquiry Officer Miller found that the affected person's job description and a list of his duties as defined in an employment contract (Items 1 and 2 in the order) had been disclosed to the appellant by the Board. She accepted the Board's position that an oath of office (Item 3 in the order) was never taken by the affected person and that it was never a requirement for the position held by the affected person. Because the Board had responded to all parts of the request, the Inquiry Officer concluded that it was not necessary to consider the issue of whether the appellant's request was frivolous and vexatious.

DISCUSSION:

THE RECONSIDERATION REQUEST

The appellant has requested that the Commissioner or her delegate reconsider the decision in Order M-1051 on the basis that the Inquiry Officer failed to exercise her jurisdiction and failed to decide the following issues before her:

- (1) the scope of the request.
- (2) the actions of the Board with respect to the processing of the appellant's request.
- (3) the issue of whether the request was frivolous and vexatious.

The reconsideration policy of the Commissioner's office provides as follows:

A decision maker may reconsider a decision where it is established that:

- (a) there is a fundamental defect in the adjudication process;
- (b) there is some other jurisdictional defect in the decision; or

- (c) there is a clerical error, accidental error or omission or other similar error in the decision.

A decision maker will not reconsider a decision simply on the basis that new evidence is provided, whether or not evidence was obtainable at the time of the decision.

Following receipt of the appellant's request for reconsideration, the Board advised this office that a decision letter dated October 8, 1997 had in fact been issued by the Board in response to the amended request but that a copy was never sent to the Commissioner's office. In this decision letter, the Board stated that access was denied because the records did not exist. It is my view, therefore, that Inquiry Officer Miller did not have all the relevant information before her at the time that Order M-1051 was issued.

I therefore invited the parties to the appeal (the appellant, the affected person and the Board) to make submissions on the issue of the Commissioner's jurisdiction to reconsider the decision as well as the reasonableness of the Board's search for records responsive to the amended request.

Representations were received from the appellant and the Board.

I have carefully considered the evidence before me in conjunction with the reconsideration policy. With respect to issues (2) and (3) above, I find that the appellant has not provided any evidence which could provide a basis for reconsideration under the grounds set out in the IPC's reconsideration policy.

With respect to issue (1), as I indicated above, it is my view that Inquiry Officer Miller may not have had all the facts pertaining to the scope of the request at the time of issuing Order M-1051. This falls within the reconsideration policy described above. I will therefore reconsider Order M-1051, but only with respect to the issue of the scope of the request and any matter arising from that issue.

SCOPE OF THE REQUEST

As I have indicated previously, the appellant had amended his request by removing part of the records requested from the personnel file and substituting it with other information that he believed should exist in the same file. The Board did respond to this amended request. While this took place during the appeal stage, and though it is commonly accepted that the scope of an appeal cannot be expanded on appeal, the Board did respond with a decision letter. In my view, therefore, the issue of scope of the request is moot. However, a residual issue is that of the reasonableness of the Board's search for records responsive to the amended request which I will address below.

REASONABLENESS OF SEARCH

In his amended request, the appellant sought access to information contained in a named individual's personnel file relating to a specific court action and any admissions by the named individual relating to allegations in the Statement of Claim. The Board denied access on the basis that it "ha[d] no records that respond to the request".

Where a requester provides sufficient details about the records which he 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 discharge its obligation 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.

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.

The Board states it has no records other than those that have previously been disclosed to the appellant. The Board submits that its searches included a complete review of the named individual's personnel file. The Board states that the Manager of Human Resources was contacted to ascertain whether other files containing the records requested may possibly exist. The named individual was also contacted to find out where such records might possibly be located and whether such records previously existed. The Board states that both the Human Resources Manager and the named individual confirmed that no other files exist and that no such records ever existed.

In addition, the named individual has provided written confirmation to this office that his personnel file does not contain records pertaining to indemnification, breach of Board policy and possible admissions of any kind.

I have carefully reviewed the submissions of the parties. I am satisfied that the search conducted by the Board for records responsive to the amended request was reasonable in the circumstances and this part of the appeal is dismissed.

ORDER:

The Board's search for responsive records was reasonable.

Original signed by: _____

May 28, 1998

Mumtaz Jiwan
 Adjudicator

(formerly Inquiry Officer)