



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1484

Appeal MA-990344-2

Dufferin-Peel Catholic District 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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Dufferin-Peel Catholic District School Board (the Board) for access to:

All records pertaining to my son... This information would include principal, vice principal, teachers, special education teachers, child and youth workers, guidance counsellors, superintendent's, administration, etc. All notes, records, assaults including when he has been victimized, suspensions, etc.

The Board disclosed 7 groups of records consisting of 223 records (totalling 513 pages) to the appellant. After notifying third parties under section 21 of the *Act*, the Board issued a second decision letter in which it denied access to 11 records (totalling 74 pages) and granted access in whole or in part to the remaining 40 records (for a total of 128 pages disclosed in whole or in part).

The appellant appealed the Board's decision to deny access to the 11 records that were withheld in full and nine other records that were withheld in part. The appellant also indicated that she believed additional records should exist. This office opened Appeal File MA-990344-1.

The matter proceeded to inquiry. Adjudicator Laurel Cropley issued Order MO-1379 in which she addressed, along with the other outstanding issues, the question of whether the Board conducted a reasonable search for all responsive records.

With respect to the issue of reasonableness of search, Adjudicator Cropley ordered the Board to conduct a new search for responsive records. Included in the order was the following provision:

I order the Board to conduct a new search for responsive records in accordance with the directions outlined above under the heading "Requirements of a new search." The Board is to communicate the results of this search to the appellant by sending her a letter summarizing the search results within 30 days of this order. If additional responsive records are located, I order the Board to issue an access decision concerning those records in accordance with sections 19 and 21 of the *Act*, treating the date of this order as the date of the request.

Under the heading, *Requirements of a new search*, the Adjudicator wrote:

[I] will require the Board to contact the appellant to determine which Board staff she has had contact or attempted contact with and to then query these individuals as to whether they have any records relating to these contacts.

Further, I will require the Board to contact all staff members who have dealt with the appellant's son to determine whether they:

1. have a file on or relating to the son;
2. have search[ed] that file or files;

3. have any responsive records in that file or files (other than what has already been located) including records provided by the appellant;
4. maintain records in any other location relating to their own rough notes, memos of telephone or other conversations, records of telephone calls made to them, etc.

In addition, I have attached a copy of the appellant's representations to the copy of this order which I am sending to the Board, on which I have highlighted the types of records the appellant believes should exist. I will require the Board to include in its decision letter to the appellant an explanation of why any of these records, or any other record referred to above, does not exist, including whether it is possible that any such record may have been destroyed.

The Board subsequently issued a letter to the appellant pursuant to the *Requirements of a new search* outlined above. In its letter, the Board addressed the portions of the appellant's representations which were highlighted by the Adjudicator. The Board also provided explanations for, and clarification of, other matters of concern raised by the appellant.

With respect to Board staff with whom the appellant has had contact or attempted to contact, the Board provided an affidavit signed by the Freedom of Information Co-ordinator. In the affidavit, the Co-ordinator lists the Board staff whom she had contacted and had asked to conduct a further search for records. The list includes the Executive Assistant to the Director of Education; the Associate Director of Education, Instructional Services; the Superintendent of the Mississauga North Family of Schools; the Superintendent of Program; the Principal of Special Education; the Superintendent of the Mississauga South Family of Schools; the Chief, Psychology Department; and five executive secretaries.

In the affidavit, the Co-ordinator states that the above individuals were asked to search for records, "[i]n files in their filing cabinets, in their desks, on their computers, off-site, which files would be pertinent to [the appellant's son], or in their general correspondence files in the subject areas of Program, Mississauga North, Special Services, IPRC Appeals, Suspensions, and as well, in their telephone logs".

As a result of this search, the Board located five additional records, which it disclosed to the appellant. The Co-ordinator further states that no documents were located indicating destruction of records.

In response to the Adjudicator's requirement that the Board contact all staff members who have dealt with the appellant's son, the Board provided another affidavit signed by the Freedom of Information Co-ordinator. In this affidavit, the Co-ordinator states that she contacted the principal of a named elementary school; a named former teacher in the elementary school; the principal of a named secondary school; the vice-principal of the same secondary school; two named child and youth workers; the Head of Academic Resources; a named social worker; a named guidance counsellor; a named teacher; and two named psychologists.

The Co-ordinator further states in the affidavit that the above-mentioned individuals were asked to determine whether they:

- a) have a file(s) on [the appellant's son];
- b) have searched the file(s);
- c) have any further responsive records in the file(s), (other than what has previously been located and provided in response to the access request) including records provided by [the appellant];
- d) maintain records in any other location, including outside the school premises, relating to their own rough notes, memos of telephone or other conversations, records of telephone calls made to them, etc.

One record was located as a result of this new search. The record was disclosed to the appellant. Again, the Board found no documentation to indicate that records were destroyed.

The appellant appealed this more recent decision on the basis that more records should exist. This office opened Appeal File MA-990344-2, the present appeal.

An Intake Analyst reviewed the issues with the appellant during the intake stage of the appeals process. As a result, items 10 to 17, 20, 21, 24, 34, 37, 38, 41 and 44, items in the appellant's representations, highlighted and numbered by Adjudicator Cropley and referred to under the heading, *Requirements of a new search* in Order MO-1379, were removed from the scope of the appeal. This narrowing of the issues was confirmed in correspondence with the appellant.

No further issues were resolved during mediation.

I sent a Notice of Inquiry to the appellant and the Board informing them that an oral inquiry will be held to determine whether the Board conducted a reasonable search for records that respond to the request. A mutually convenient date for the oral inquiry was set. The inquiry was conducted via teleconference. The Board was represented by the Freedom of Information Co-ordinator. The Board's Special Education Contact Person for the Mississauga North Family of Schools also participated on behalf of the Board. The appellant provided oral representations. Because of time constraints, the Board agreed to submit written representations. The Board's representations were shared, in their entirety, with the appellant. The appellant submitted written representations in reply.

DISCUSSION:

REASONABLENESS OF SEARCH

The appellant maintains that records exist in addition to those already identified. In appeals involving a claim that additional responsive records exist, the issue to be decided is whether the institution, in this case the Board, conducted a reasonable search for records as required by section 17 of the *Act*.

Where the appellant provides sufficient detail about the records which she is seeking and the Board indicates that further records do not exist, it is my responsibility to ensure that the Board has conducted a reasonable search to identify responsive records.

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 all responsive records. A reasonable search is 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).

If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the Board will be upheld. If I am not satisfied, further searches may be ordered.

During the oral inquiry, the appellant provided examples in support of her view that additional records should exist. The appellant referred to team meetings held on various dates; telephone calls that she and others had made to the Board; action plans and courses of action that she felt Board staff should have developed and acted upon in dealing with her son's difficulties; notes regarding parent/teacher interviews; the involvement of Child and Youth Workers; and incident reports involving her son. Some of the examples were questions asking why certain things did not happen, which are not matters that I can deal with within the scope of this appeal; others related to the Board's policies and procedures and were not directly responsive to her request.

During the hearing, the Board, in response to some of the examples provided, directed the appellant to records that had previously been disclosed to her.

In its written representations, which were provided to the appellant, the Board responded to items raised by the appellant during the oral inquiry. In some cases, the Board confirmed that no records exist. In the majority of cases, the Board referred to correspondence and records that had previously been provided to the appellant. For some items, the Board referred to more than one record.

The appellant's reply to the Board's representations included a request through this office for the Board's policy and procedures relating to a number of areas. The appellant expressed a lack of satisfaction with the Board's representations and again provided a list of examples in support of her view that additional records should exist. This list repeats the items that the appellant provided at the oral inquiry.

As mentioned above, the Board must provide sufficient evidence to show that it has made a **reasonable** effort to identify and locate all responsive records.

The Board has conducted three searches for records that respond to the appellant's request: the initial search after receiving the request, a second search during the course of the first appeal and a third search after the issuance of Order MO-1379.

In its initial search, the Board identified 274 records for a total of 715 pages, the bulk of which was disclosed to the appellant in its entirety. The second search produced four records, records that were not identified by the appellant as being at issue in that appeal. The third search, conducted pursuant to provision 3 of Order MO-1379, was extensive and is described in the Co-ordinator's affidavits mentioned above.

I note that Adjudicator Cropley's finding in Order MO-1379 that the Board's search was not reasonable was based primarily on the lack of detail in the Board's representations. In that order she states:

I recognize that the Board has located and provided the appellant with a considerable amount of information (approximately 513 pages), not including the records which are at issue in this appeal. It may well be that the Board has fully searched all locations at which responsive records might be found. Unfortunately, the Board has simply not provided me with sufficiently detailed representations to enable me to reach such a conclusion.

Based on the information now available, including the Co-ordinator's affidavits, I am satisfied that the Board canvassed appropriate staff and that the searches conducted by the Board were carried out by experienced and knowledgeable individuals. I also accept that the Board has expended a reasonable effort to locate and identify all records that respond to the appellant's request.

I find that the Board has conducted a reasonable search to locate records responsive to the appellant's request.

ORDER:

This appeal is dismissed.

Original signed by: _____
Alex Kulynych
Acting Adjudicator

November 14, 2001