



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1778

Appeal MA-030061-1

Durham District School Board



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NATURE OF THE APPEAL:

The Durham District School Board (the Board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for all documentation relating to the requester's son. The request specified that it was for the entire Ontario Student Record (OSR) file as well as the entire Intensive Support Amount (ISA) file and Special Incidence Portion (SIP) file including forms, assessments, reports, Individual Education Plans (IEPs), letters, opinions and report cards for the identified years. In addition, the requester asked for a copy of the cassettes of an identified Appeal Board meeting, and also confirmed that he was not interested in copies of any letters signed by him.

The Board responded to the request by providing copies of the OSR and ISA files relating to the requester's son. The Board denied access to a copy of the cassettes of the Appeal Board meeting on the basis that they could not be duplicated.

The requester (now the appellant) appealed the Board's decision on the basis that the OSR and ISA records were incomplete. He also appealed the Board's decision not to provide a copy of the cassettes.

During the mediation stage of this appeal, the Board arranged for the cassettes to be copied, and provided the appellant with copies. The issue of access to the cassettes of the Appeal Board meeting was therefore resolved.

Mediation did not resolve the issue of whether or not additional responsive records exist, and this file was transferred to the adjudication stage of the process. I sent a Notice of Inquiry, identifying the facts and issues in this appeal, to the appellant, initially. The appellant provided representations, and I then sent the Notice of Inquiry, along with a copy of the appellant's representations, to the Board. The Board provided representations in response, which were in turn shared with the appellant, who provided reply representations.

DISCUSSION:

REASONABLE SEARCH

Introduction

In appeals involving a claim that additional responsive records exist, as is the case in this appeal, the issue to be decided is whether the Board has conducted a reasonable search for the records as required by section 17 of the *Act*. 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.

A number of previous orders have identified the requirements in reasonable search appeals (see, for example, Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920). In Order PO-1744, acting-Adjudicator Mumtaz Jiwan made the following statements with respect to the requirements of reasonable search appeals:

... the *Act* does not require the Ministry to prove with absolute certainty that records do not exist. The Ministry must, however, provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request (Order M-909).

I agree with acting-Adjudicator Jiwan's statements.

Where a requester provides sufficient detail about the records that he is seeking and the institution indicates that records or further records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records that are responsive to the request. The *Act* does not require the institution to prove with absolute certainty that records or further records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the institution 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, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

Representations

Throughout this appeal the appellant has maintained that the records provided by the Board in response to his request are incomplete, and that additional records exist.

At the intake stage of the appeal, the appellant identified certain records which he believed should exist, but which were not provided. As a specific example, the appellant referred to an Identification, Placement and Review Committee (IPRC) Report Form, signed on a specific date. The Board had provided the appellant with a one-page document; however, the appellant believed that the form contains a second page, which was not provided. The appellant also referred to other records which he believed should form part of the ISA files, but which were not provided to him.

During mediation, the Board provided the appellant with a further decision letter, which identified that it was providing the appellant with the ISA and OSR files in response to the specific items mentioned in his request. Furthermore, in response to the appellant's request for the specific "funding level requested and accepted for each year" for the requester's son, the Board stated:

[P]lease be advised that your son ... was approved as an ISA ... student on (a specified date). The Board is allocated [a specified amount] each year for this profile. However, this money is not allocated directly to the specific student. The Board uses this money to support programming for all special needs students.

The Board's letter also attached information from the Ministry of Education ISA Guidelines to support its position. In addition, the Board provided the appellant with the responsive records, including indices that it had prepared for reference purposes. These records included 52 pages of ISA records including information, forms, reports, checklists and other documentation, as well as OSR files for 1999 (76 pages), 2000 (37 pages), 2001 (81 pages), 2002 (140 pages) and 2003 (4 pages).

The appellant was not satisfied with the material provided by the Board, and this appeal moved to the inquiry stage. In response to the Notice of Inquiry sent to him, the appellant identifies the reasons why he believes additional records exist. He states:

I specifically asked for [the] *funding level requested* and accepted for each year.

[The Board has] failed to provide the ISA documents for funding level requested by the school board. They have indicated what he was approved for not the funding level requested and supporting documentation for the claim. They must do this for all special needs children; this is a legal requirement. As well they have not submitted all the ISA forms as requested but merely gave me some of them, an example being supporting documentation as previously mentioned.

In support of his position, the appellant provided a copy of the relevant portion of the 2001-2002 Special Education Grant ISA guidelines for school boards. The appellant also referred to the one-page IPRC Report Form that he received from the Board. The appellant takes the position that the IRP Committee is "required to make a report which, among other things, details the support and services they recommend this is done for all special needs students." The appellant also provided material in support of his position that additional information responsive to his request exists.

The appellant's representations were shared with the Board.

The Board's representations in response were prepared by the Superintendent of Education/Employee Relations. After identifying that the Board had provided all responsive materials to the appellant, the representations summarize the requests and responses which occurred through the history of this request and appeal, and the specific responses the Board provided to the issues raised by the appellant.

The Board then identifies the actual searches conducted for responsive records. The Board states:

The original search for the OSR material was done by the [named] school principal, as the OSR is retained at the school. The ISA file is retained in the Special Education department of the Board. The ISA material was compiled for copying by the [named] Education Officer for Special Education. The actual copying was done by her assistant.

In the mediation stage, I arranged for the OSR file to be brought to the Education Centre so that I could review it along with [the Education Officer for Special Education] to ensure that all materials had been copied and provided to the appellant. At the same time, we reviewed the ISA file. Both files were copied ... indexed, and sent to the appellant.

Upon receipt of the Notice of Inquiry, I again went through the OSR and ISA files with [the Education Officer for Special Education] to ensure that no materials were excluded.

The Board also provides affidavits sworn by the principal who conducted the search for the OSR material, and the Education Officer for Special Education who conducted the search for the ISA files, respectively.

The Board also responds to the specific issues raised by the appellant in his representations. In response to the appellant's view that additional ISA records exist, the Board states:

The entire ISA file has been provided to the appellant.

The student's ISA claim was processed in the year 1999/2000. The student's profile was approved at [an identified level] and grandfathered by the Ministry. This means that the funding remains at [the identified level] for as long as this model of Special Education funding is in place. The Board does not resubmit grandfathered ISA claims each year.

The appellant references a Staff Support Worksheet (SSW) which is included in the ISA file materials. This form was completed when the ISA form was filed. There are no SSW's as for subsequent years as the ISA claim is submitted only one time.

In response to the appellant's position that the Board has not provided the second page of the IPRC document and supporting documentation, the Board states:

The material provided to the appellant included the 1999 IPRC form which was for the first IPRC held for the student. This IPRC form had a second page titled: "IPRC Report Form". After the first IPRC, a Review of Placement form is used and there is a Review of Placement form for 2000, 2001 and 2002 in the package of material provided to the appellant. The Review of Placement is a one-page document.

The documentation supporting the IPRC form and Review of Placement form is the student's IEP (Individual Education Plan). The IEP details the supports and services provided for the student along with the detailed program expectations. This form is filled out every year for an identified student.

The Board then identifies that the forms have been provided to the appellant, and references the pages of the files that contain the supporting information for each year.

Finally, after identifying that it is the Ministry of Education that determines the ISA process, and that the Ministry has audited the Board's claims and determined that the claims are in order, the Board states:

The appellant's appeal is not a request for documents that do exist but an assertion that certain documents should exist, that the Board should be using certain forms and processes which he considers essential according to the Special Education legislation.

The Board takes the view that this type of examination is not one that falls within the scope of an appeal under the *Act*.

In his reply representations the appellant continues to assert his position that certain additional documents should exist (including recommendations and funding levels requested by the Board). He maintains this position although he acknowledges that the Board's position is that these materials do not exist. The appellant also provides further documentation in support of his position that this additional material should exist. As well, the appellant argues that, because the one-page IPRC Review of Placement form has no place for "recommendations", there should logically be a second page, and that the Board is unwilling to share this with parents.

Finally, the appellant points out that the principal who deposed the affidavit regarding the searches conducted was not the principal during the relevant time period when the events occurred.

Analysis

As set out above, in appeals involving a claim that additional responsive records exist, the issue to be decided is whether the Board has conducted a reasonable search for the records as required by section 17 of the *Act*. In this appeal, if I am satisfied that the Board's search for responsive records was reasonable in the circumstances, the Board's decision will be upheld. If I am not satisfied, I may order that further searches be conducted.

The appellant is a parent who is clearly interested in obtaining the information he believes should exist concerning the funding levels requested and various recommendations made regarding his child. Furthermore, he is knowledgeable regarding the types of records which may exist, and has provided various documents supporting his view that additional responsive records exist. However, in the circumstances, I am satisfied that the Board's search for records responsive to the request was reasonable.

The Board conducted various searches for the records, as set out in its representations and the attached affidavits, and did not locate the records specifically referred to by the appellant.

The Board has also addressed the appellant's specific questions concerning why certain records do not exist. In response to the appellant's position that a "second page" should exist for the IPRC forms, the Board has specifically addressed this issue by identifying that the 1999 IPRC form (the first IPRC held for the student) had a second page titled "IPRC Report Form", but that subsequent forms did not have a second page. The Board's representations also provide specific information about the supporting documents to this form, the obligations on the Board regarding the nature of the forms and records maintained in the files, and information concerning the reasons why certain requested documents do not exist. The Board identifies that it has provided all of the records to the appellant.

I accept the evidence provided by the Board concerning its search for responsive records. I also accept the explanations provided by the Board concerning why certain records requested do not exist. In my view this evidence, particularly the specific responses provided by the Superintendent of Education/Employee Relations regarding the nature of the records maintained by the Board, is persuasive. Although the appellant questions some of the information, and also identifies the reasons why, in his view, additional records may exist, I am not convinced that this information is sufficient to support a finding that the Board's search for the records was not reasonable in the circumstances of this appeal. Accordingly, I find that the Board's search for records was reasonable.

Finally, I find that the appellant's concern regarding who the principal was at the relevant time, and whether that individual should have conducted the searches for the records, has no impact on my finding that the search conducted by the Board was reasonable, and I will not order the Board to conduct further searches in consultation with other individuals.

Conclusions

I find that the Board has adequately discharged its responsibilities under section 17 of the *Act* to conduct a reasonable search for all responsive records.

ORDER:

I uphold the Board's search for responsive records and dismiss the appeal.

Original signed by: _____
Frank DeVries
Adjudicator

_____ April 14, 2004