



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

ORDER MO-1764

Appeal MA-040046-1

Toronto District School Board

NATURE OF THE APPEAL:

On January 23, 2004, the Toronto District School Board (the Board) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from two requesters acting jointly:

...Below are detailed the personal records we request on behalf of our son [named], who attended [a named school] from 1997-2003. We are seeking access to all records (as defined Section 2.1 of the *Act*) including all written records and any email correspondence on these subjects between any of these persons as detailed below by date, subject and person(s), who were in the employ of the TDSB on these dates. In the "Detailed List of Records Requested" below, we have included a reference field, which indicates our existing source of information for these meetings, reports or correspondence, and which leads us now to request any and all additional records.

The requesters then listed five categories of records under the heading, Summary of Information Sources and fifty-seven items under the heading, Detailed List of Records Requested. In one category under Summary of Information Sources, they provided the names of fourteen teachers and included "...and any other Special Education teachers or assistants" and in another, the names of thirty-one teachers and other staff "...and any other [named school] school social workers, Special Education teachers, or assistants 1997-2003." Some names were common to both categories. Under the Detailed List of Records Requested, the requesters provided dates, subjects, references and the names of persons involved for each item.

In its written response dated February 20, 2004, the Board advised the requesters that pursuant to section 20 of the *Act*, it is extending the time for responding to the request beyond the 30 days prescribed in the *Act*, to April 2, 2004. The Board informed them of the reason for the time extension:

...This extension is required due to the large number of records requested as a result of the terms of the request, which necessitates an extensive search dating back to 1997 and involving numerous categories of records and at least 30 staff persons.

The requesters (now the appellants) appealed the Board's time extension.

On February 24, 2004, I sent a Notice of Inquiry to the appellants and to the Board setting out the issue in the appeal. The appellants are relying on correspondence that they had sent to this office at the outset of the appeal as their representations. The Board submitted written representations.

DISCUSSION:

The sole issue for me to determine in this appeal is whether the extension of time, claimed by the Board as necessary to respond to the appellants' request, was made in accordance with section 20(1) of the *Act*.

Section 20(1) of the *Act* states:

A head may extend the time limit set out in section 19 for a period of time that is reasonable in the circumstances, if,

- (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or
- (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

In its decision advising the appellants of the time extension, the Board used wording found in section 20(1)(a) of the *Act*. During the mediation stage of this appeal, the Board confirmed that it is relying on section 20(1)(a). Accordingly, I will only consider whether the Board has extended the time in accordance with section 20(1)(a) of the *Act*.

In its representations, the Board points out that the time extension to April 2, 2004 includes weekends and a one-week March break.

The Board refers to the scope of the request, as well as the seven-year time period covered by the request. According to the Board, this necessitates an extensive search involving the review of records kept by at least thirty individuals, some of whom may no longer be employed by the Board, have retired or have transferred to new positions or locations within the Board. Furthermore, the request includes records kept by individuals identified only by their title, such as social workers. Using this example, the Board points out that there are numerous social workers employed by the Board and records will have to be reviewed to determine who was assigned to the school and/or the student in question.

The Board submits that many of the requested records may not be located in the place identified by the appellants. This would require a search in other locations and through other records.

The Board points out that many of the individuals referred to in the appellants' request are teachers or supervisory officers. According to the Board, teachers cannot leave their classrooms to conduct the search for records and must do so on their own time. Because of the geographical area covered by the Board since the amalgamation of seven school boards in 1998, supervisory

officers spend a great deal of time on the road and not in their offices during normal business hours.

The Board advises that its Freedom of Information Co-ordinator has other job responsibilities and cannot focus exclusively on this request.

In discussions with this office, the Co-ordinator pointed out that the time extension is required not only to search for and locate responsive records, but once located, the records will have to be reviewed in order to assess whether access will be granted.

In the correspondence upon which they are relying, the appellants express concern about what they perceive to be repeated delays in the Board's past supply of records and a lack of explanations with respect to their sons' schooling situation. The sons are currently home schooled. The appellants state that the possibility of their sons' return to a school within the Board depends on their receiving the requested information without delay. They suggest that any delay raises the likelihood that the records may be destroyed.

In their letter, the appellants request that this office vary the appeal process to eliminate any further delay and to secure a just and expeditious determination of the issue at hand. They then provide a description of events beginning in December of 2002 to support their view that any further delay would be prejudicial to them, but not to the Board. The appellants subsequently asked that this office issue an order immediately, based on the information provided to this office in their letter of appeal.

This office has an expedited process to deal with time extension appeals and this appeal was dealt with in accordance with that process. In the circumstances of this case, varying the process as requested would result in an unfair inquiry and I am not convinced that there is sufficient reason to justify denying the Board its right to submit representations.

I will now consider whether section 20(1)(a) of the *Act* has been properly applied in the circumstances of this appeal.

The appellants submit that they have been in contact with the Board since December 2002 with respect to the schooling of the son named in the request. In October 2003, they brought their concerns to the attention of their MPP, who wrote to the Board in December of that year. The appellants are of the view that the Board has been collecting the requested records since their initial contact in December 2002 and more recently in order to respond to their MPP's December 2003 letter. They feel that a time extension to respond to their present request cannot be justified.

Although I accept the possibility that some of the records may have been compiled for this reason, I find it improbable that the Board would have collected all records responsive to the extensive request in order to respond to the earlier concerns raised by the appellants and their

MPP. The Board's description of the efforts necessary to respond to the present request supports this view.

The Board's description of the search necessary to respond to the request includes reviewing records kept by over thirty individuals, some of whom are no longer in their previous positions within the Board and some of whom are described in the request by position title only. According to the Board, some of the requested records may not be located in the place identified by the appellants. This would require a broad search to ensure that all responsive records are identified. Furthermore, teachers and supervisory staff named in the request are not available to assist in the search during a good portion of the working day.

Based on the Board's description of the steps necessary to respond to the request as well as the scope of the request, going back to 1997, I conclude that the request necessitates a search through a large number of records. I am also satisfied that meeting the thirty day time limit set out in section 19 of the *Act* would have unreasonably interfered with the operations of the Board.

Considering all of the factors mentioned above, I conclude that the time extension to April 2, 2004 applied by the Board under section 20(1)(a) of the *Act* is reasonable in the circumstances.

The Board is required to complete its search for responsive records and issue a final access decision by April 2, 2004, subject to any notification requirements pursuant to section 21 of the *Act*.

ORDER:

1. I uphold the Board's decision to extend the time limit set out in section 19 of the *Act* to April 2, 2004.

Original signed by: _____
Alex Kulynych
Acting Adjudicator

_____ March 12, 2004