



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

ORDER PO-2311

Appeal PA-020210-2

Ministry of Education



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NATURE OF THE APPEAL:

The Ministry of Education (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to financial information disclosing the amounts expended by the Ministry to assist in the building of a named school. Specifically, the requester sought access to records relating to:

the amount of funding or guarantees for funding provided, at various times, for the capital expenditures for [a named school's] construction, land acquisition and set-up excluding any operating costs:

- prior to tendering the construction contract;
- after tendering;
- after awarding the contract but prior to construction;
- during construction; and,
- following construction.

The requester further indicated that the records “would likely include but not be limited to”:

- budgets and cost summaries at various times,
- reviews of budgets versus actual costs at various times,
- calculations used by the school board for obtaining funding,
- calculations used to account and reconcile expenditures versus funds obtained, and
- printouts showing the financial transactions at various times.

The Ministry located 12 responsive records. The Ministry informed the school board (the affected party) that constructed the school of the request and provided it with an opportunity to make representations concerning the disclosure of the responsive records pursuant to section 28(1) of the *Act*. Following its consideration of those representations, the Ministry decided to disclose all of the responsive records, except Records 7 and 8. The Ministry denied access to Records 7 and 8 on the basis that they contained information that was exempt under the third party information exemption in section 17(1) of the *Act*.

The requester, now the appellant, appealed the Ministry's decision. In his letter of appeal dated September 6, 2002 and addressed to both the Ministry's Freedom of Information and Privacy Protection Coordinator (the Coordinator) and the Commissioner's office, the appellant stated that additional records responsive to his request should exist. He also provided a detailed outline of the information contained in the records already provided to him by the Ministry and summarized his request as follows:

I am interested in obtaining a complete accounting of the funding received by this School Board for this project. Especially, the exact amounts paid and when each was paid from February 1997 forward.

The Ministry's Coordinator indicated that she received the September 6, 2002 letter some time in the month of October 2002 and that the mediation process was underway at that point.

During the mediation stage of the appeal, the Ministry indicated to the Mediator that additional records responsive to the appellant's expanded request exist in a different branch of the Ministry from the location where the original records were located. The Ministry asserted that these records fell beyond the scope of the original request and treated the summarized statement in the appellant's September 6, 2002 letter as a new request. The appellant objected to this characterization of his request. This issue, along with the application of the section 17(1) exemption to Records 7 and 8, were not resolved during mediation. The appeal was then moved into the adjudication stage of the process.

Initially, the Adjudicator provided a Notice of Inquiry to the Ministry and the affected party. The affected party revisited its position with respect to Records 7 and 8 and consented to their disclosure to the appellant. The application of the section 17(1) exemption to Records 7 and 8 was, therefore, no longer at issue in the appeal.

The only remaining matter to be adjudicated relates to the definition of the scope of the appellant's request. This office received representations from the Ministry on this issue and shared them, in their entirety, with the appellant, who also made submissions in this regard.

DISCUSSION:

SCOPE OF THE REQUEST

Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose of and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134, P-880].

The Ministry takes the position that there was no ambiguity in the manner in which the appellant's request was originally phrased. It submits that there was no need to seek clarification from the appellant as it was abundantly clear what he was seeking. The Ministry refers specifically to the wording used in the request to support its position that the appellant sought access only to records relating to capital expenditures. It argues that the appellant sought access only to records relating to capital expenditures on the part of the Ministry for the "construction, land acquisition and set up excluding any operating costs" of the school. Because the request was specifically aimed only at records relating to capital expenditures, it was processed by the appropriate program area that dealt with such matters, according to the Ministry.

As noted above, the appellant communicated with the Ministry and this office on September 6, 2002 setting out the fact that he wished to appeal the Ministry's denial of access to Records 7 and 8 and its claim that no additional records beyond those initially identified as responsive exist. The appellant described in some detail the nature of the records that he was seeking, along with his analysis of the information contained in the records provided to him. This analysis provided the basis for his contention that additional records ought to exist.

The Ministry emphasizes that the initial request addressed only records relating to "capital expenditures" by the Ministry involving the construction of the school but that the appeal letter of September 6, 2002 expanded the scope of the request to include "a complete accounting of the funding received by this school board for this project". It argues that the scope of the appeal was broadened by the September 6th letter to include additional records beyond the scope of the original request for records relating to "capital expenditures". I agree that the appellant's letter of September 6th had the effect of significantly broadening the nature of the request and that it could result in an increased number of responsive records to be identified by the Ministry.

In my view, following its receipt of the September 6th letter, the Ministry's obligation under section 24(2) to contact the appellant to offer assistance in reformulating the scope of the request was triggered. The use of the word "shall" in the subsection makes mandatory the obligation on the part of institutions to do so. Clearly, there existed a discrepancy between the original request and the September 6, 2002 restatement of the request prepared by the appellant. In my view, this discrepancy constituted a "defect" within the meaning of section 24(2) which required the Ministry to try and resolve by offering assistance in reformulating the request so as to comply with section 24(1). By not doing so, the Ministry breached its obligations under section 24(2).

In my view, the appropriate remedy in the circumstances is to order the Ministry to issue a decision letter to the appellant in accordance with the requirements of section 26(1) and without recourse to a time extension under section 27. The decision must address the question of access to those records that are responsive to the restated request contained in the appellant's letter of September 6, 2002.

ORDER:

I order the Ministry to provide the appellant with a decision on access to the records responsive to his letter of September 6, 2002 in accordance with the requirements of section 26(1) of the *Act*, treating the date of this order as the date of the request and without recourse to a time extension under section 27(1) of the *Act*.

Original Signed by: _____
Donald Hale
Adjudicator

_____ August 24, 2004