



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2284**

## **Appeal MA07-61**

### **Halton Catholic District School Board**



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## **NATURE OF THE APPEAL:**

The Halton Catholic District School Board (the Board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

[A]ny and all information written, typed or otherwise recorded from the Halton District School Board including its staff, teachers, principals etc. that was shared with or provided to OEETA [Ontario English Catholic Teachers Association] staff or OEETA's [named individual] and relates to the following quote from [named individual's] letter of [specified date]:

In closing, the issue here is that your client's behaviour with one of my teachers and a principal of one of our schools will never be tolerated regardless of you trying to "cloud" the issue. You may feel different if you were the victim.

The Board issued a decision stating that "[a]ccess cannot be provided to records ... as the records do not exist."

The requester, now the appellant, appealed the decision.

As mediation did not resolve this appeal, the file was transferred to the adjudication stage of the appeal process.

A Notice of Inquiry setting out the fact and issues on appeal was sent to the Board, initially. The Board provided representations in response.

A Notice of Inquiry was then sent to the appellant, along with the complete representations of the Board. The appellant provided representations in response.

## **DISCUSSION:**

### **SEARCH FOR RESPONSIVE RECORDS**

Section 17 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).

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

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].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

As the basis for the current appeal, the appellant points to policies and procedures that, in his view, indicate that records responsive to his request should exist. In particular, he points to the *Ontario English Catholic Teachers Association Handbook, 2003/2004*, which at page 40 in the chapter entitled "Counseling and Member Services" in section 2(1) under the heading "Assault on Teachers", states:

That where a member has suffered an assault the following steps should be followed:

- (i) the principal makes a written account of the events, times and witnesses and furnishes the member with a copy of this account and any other reports pertaining to the assault.

The appellant also references *Policy No. II-30, Halton Catholic District School Board, Operating Policy/Safe Schools Policy*, which states at the 7<sup>th</sup> bullet point under the heading "Requirements":

Principals/Supervisors shall document and report all infractions of this Policy to the appropriate Superintendent and, where required, to the Police in accordance with the Administrative Procedures and the Safe Schools Policy/School Board Procedural Protocol.

The appellant takes the position that any claims of victimization, assault and harassment should be well documented by the Board and therefore that it is “unlikely that the Board [can] claim no records exist”.

## **Representations in Response to the Notice of Inquiry**

### ***The Board’s representations***

The Board submits that the record sought by the requester does not exist, and explains:

The Requester points to the OECTA Handbook, 2003/2004 in support of his assertion that the record should exist. This “handbook” and section 2(1) as referenced by the requester, is not a handbook created, maintained or produced by the Board. On the contrary, it is a handbook created and administered exclusively by OECTA. OECTA is the exclusive bargaining agent of its members. OECTA is a separate and distinct entity and does not operate within the control of the Board.

However, where possible and in instances where an assault on a member of the OECTA has occurred, the Board makes every attempt to encourage compliance with OECTA’s handbook and assault procedure. In the present case, to the best of the Board’s knowledge no complaint of assault was made by any member of OECTA that is relevant to the records. Accordingly, in the absence of an assault, the steps as set out in the handbook would not have been followed. To this end, a diligent search was conducted of the records in the Board’s custody and control and none were found which relate to the Requester’s request.

The Board also refers to Policy No. II-30 and explains that:

The Board does not dispute that the Policy applies in instances where there has been an assault on a member of the Board, including a teacher or the principal. However, the Board states that to its knowledge no formal or informal complaint was raised with it to suggest that an assault of any kind had occurred. Accordingly, the Policy outlined above was not triggered and, consequently, there exists no record in the Board’s custody or control that falls within the scope of the request.

The Board further submits that neither the Handbook nor the Policy referred to above, establish a reasonable basis for concluding that records exist and the appellant has not provided any other evidence in support of his position.

Specifically addressing the search conducted by the Board for records responsive to the appellant's request, the Board advised that it was conducted by its Freedom of Information Officer who was unable to locate any responsive records. The Board provided an affidavit sworn by the Freedom of Information Officer, detailing the search. The significant points outlined in the affidavit include:

- The Freedom of Information Officer conducted a detailed search of the Archives and Freedom of Information Records.
- The Freedom of Information Officer routinely works with Freedom of Information files and is the most appropriate person to locate and retrieve requested documents quickly and efficiently.
- The Archives and Freedom of Information Records include all archived records in the possession of the Board. These records may include student records, financial reports, pay registers, requests for access to information under freedom of information legislation, and outdated correspondence, among others. The documents are filed in accordance with a filing system which is divided numerically and then the files are broken down into alphabetical order sorted by subject matter. Some examples of the files that exist include Human Resources, Finance, Faculty, Special Education, Terminated Employees and Student records.
- All correspondence relating to access to information is filed using the system outlined in the bullet point above. Any documents pertaining to these files are contained in specific files referencing the matter to which they relate.

The Freedom of Information Officer submits that her search "did not reveal the record, or any documents, notes, memos, incident reports or any other records upon which the letter of [specified date] by [named individual] was based." She also submits that to the best of her knowledge the Board does not have any documents that are the property of the OECTA in its possession.

### ***The appellant's representations***

Enclosed with his representations, the appellant provided a copy of correspondence from the President of the Halton OECTA in which he refers to a letter from the former principal of the relevant school. He submits:

These two documents illustrate the existence of a document from a school within the Board's control. Further, I am providing two facsimile cover pages written by former principal [named individual], and originating from [named school's] fax machine.

This also contradicts the statement made by [named individual] and statements made by [named individual].

The appellant also enclosed a letter of apology to him, from the Chairman of the Halton Catholic District School Board and submits that it was placed in his daughter's Ontario Student Report. He submits:

I find it impossible to believe that in spite of the documents I have provided, the Board can claim in good faith that no documents exist. This apology letter came as a direct result of documentation created by the principal, [named individual], and shared with others, such as [named individual].

The appellant further submits that he has "made a reasonable basis to conclude that documents do exist that were created by school board staff which [the President of the Halton OECTA] commented on in his letter."

### **Analysis and finding**

As set out above, the issue before me is whether the search carried out by the Board was reasonable in the circumstances. The *Act* does not require the Board to prove with absolute certainty that further records do not exist, but only to provide sufficient evidence to establish that it made a reasonable effort to identify and locate responsive records [Order P-624].

In my view, through its representations and affidavit, the Board has provided a thorough explanation of the efforts made by an experienced employee, to identify and locate any records responsive to the request and why no responsive records exist.

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the appellant still must provide a reasonable basis for concluding that such records exist.

I have reviewed all of the relevant material in this appeal, including all of the documents submitted by the appellant, and I recognize that he has a strong belief that records responsive to his request might exist. However, I do not find that he has provided me with any evidence to demonstrate that a complaint of assault, whether formal or informal, was actually filed and reported to either the OECTA in accordance with the OECTA Handbook, 2003/2004 or the Board in accordance with Policy No. II-30. As a result, in my view, the appellant has not provided a reasonable basis for concluding that, despite the detailed search conducted by the Board, records responsive to his request exist.

Accordingly, I find that the Board has conducted a reasonable search for records that are responsive to the appellant's request as required by section 17 of the *Act*.

**ORDER:**

I uphold the Board's search as reasonable.

Original Signed by: \_\_\_\_\_  
Catherine Corban  
Adjudicator

February 28, 2008 \_\_\_\_\_