

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-2702-F

Appeal MA10-237

Toronto District School Board

March 20, 2012

Summary: The appellant submitted a 14-part request to the Toronto District School Board for access to information relating to matters involving the board and a trade union. The appellant appealed the board's decision to exclude two records from the scope of the *Act* under section 52(3)(labour relations and employment records) and maintained that additional records should exist. In Interim Order MO-2673-I, the exclusion at section 52(3)3 was found to apply to one of the records and the board was ordered to conduct a further search for responsive records. The board was also ordered to provide evidence of the additional searches conducted. The board provided an affidavit indicating that its original search had located seven additional records which were not included in the board's initial response to the request. The appellant declined her opportunity to provide representations in response to the board's evidence. This order finds that the board's search for additional records was reasonable.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, s. 17.

OVERVIEW:

[1] This final order disposes of the remaining issues in MA10-237. It follows from Interim Order MO-2673-I.

[2] The appeal arises from a 14-part request to Toronto District School Board (the board or TDSB) for access to information relating to matters involving the board and a trade union.

[3] Parts 9 and 13 of the request sought access to copies of any decision informing a contractor that it has been banned from the board in addition to copies of any document which discussed the intention or decision to bar any contractor "including, but not limited" to nine companies or individuals identified by the appellant.

[4] During the inquiry stage of the appeal, I sought and received the representations of the board and appellant. The appellant argued that parts 9 and 13 of the request was "global in nature" and not limited to those specified in the list of nine companies and individuals identified in the request. The board's representations conceded that it "confined itself to the list in question".

[5] After reviewing the representations of the parties, I issued Interim Order MO-2673-I. In that order, I found that the board did not conduct a reasonable search and ordered the board to conduct a further search for records responsive to parts 9 and 13 of the request. The relevant order provisions in Interim Order MO-2673-I read as follows:

1. ...
3. I order the board to conduct a further search for records responsive to the appellant's request for copies of any decision of the board informing any contractor that it has been banned from the board's site (part 9 of the request). I also order the board to conduct a further search for any document or correspondence, including emails, which indicate the intention or decision of the board to bar any contractor (part 13 of the request).
4. I order the board to provide me with an affidavit from the individual(s) who conducted the search, confirming the nature and extent of the search conducted for responsive records within 30 days of this interim order. At a minimum the affidavit should include information relating to the following:
 - (a) information about the employee(s) swearing the affidavit describing his or her qualifications and responsibilities;
 - (b) the date(s) the person conducted the search and the names and positions of any individuals who were consulted;
 - (c) information about the type of files searched, the search terms used, the nature and location of the search and the steps taken in conducting the search; and,

(d) the results of the search.

5. The affidavit referred to above should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8. The affidavit provided to me may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in IPC Practice Direction
6. If, as a result of the further search, the board identifies any additional records responsive to the request, I order the board to provide a decision letter to the appellant regarding access to these records in accordance with the provisions of the Act, considering the date of this order as the date of the request.
- ...
8. I remain seized of this appeal in order to deal with any outstanding issues arising

[6] The board provided this office with a copy of its revised access decision letter to the appellant advising that it conducted a further search for records and located additional records and an affidavit relating to the earlier search for records.

[7] The appellant did not appeal the board's revised access decision to this office. The appellant was provided with a copy of the board's affidavit but advised this office that she did not wish to provide representations in response to the board's affidavit evidence.

DISCUSSION

[8] The sole issue to be determined is whether the board's further search was reasonable.

[9] 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 and 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.

[10] 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 [Orders P-624 and PO-2559]. To be responsive, a record must be "reasonably related" to the request [Order PO-2554].

[11] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469, PO-2592].

[12] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order MO-2185].

[13] 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 [Order MO-2246].

[14] As noted above, the board provided this office with a copy of its revised decision letter to the appellant advising that it conducted a further search for records and located seven additional records. The appellant was granted access to six of these records. The board also provided this office with an affidavit from the individual who conducted the original search. This individual was employed as a Employee Relations Officer at the time the initial search was conducted. He states:

For the sake of clarity, the search I conducted was conducted prior to the interim order of the IPC and did extend beyond the enumerated list of contractors to information about all contractors falling within the scope of appeal.

I personally conducted a search of the Board's grievance filed located at our offices on the 4th floor of the Board's facility at 5050 Yonge Street for any records which fell within the scope of the request. To the best of my recollection, my search was conducted in July 2011.

My search revealed seven records not included in the original response. I am not aware of any additional records responsive to the request...

[15] Having regard to the evidence presented by the board, I am satisfied that it conducted a reasonable search. In making my decision, I took into consideration the board's advice set out in its revised access decision letter. Namely, that it conducted a further search for records after the issuance of MO-2673-I. I also accept the board's affidavit evidence that no further responsive records exist.

ORDER:

I uphold the board's search for additional responsive records, and dismiss the appeal.

Original signed by: _____

Jennifer James
Adjudicator

_____ March 20, 2012