

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2827

Appeal MA11-474

Ottawa-Carleton District School Board

January 11, 2013

Summary: The appellant submitted an access request to the Ottawa-Carleton District School Board for records relating to special education equipment assigned to her son. The board located responsive records and decided to disclose them to her. The appellant appealed the board's decision. She claimed that further records should exist, and the board had therefore not conducted a reasonable search for responsive records. The adjudicator finds that the board conducted a reasonable search, as required by section 17 of the *Municipal Freedom of Information and Protection of Privacy Act*, and dismisses the appeal.

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

Orders and Investigation Reports Considered: Orders M-909, PO-2469 and PO-2592.

OVERVIEW:

[1] The appellant's son is a student at a school that falls under the Ottawa-Carleton District School Board (the board). She submitted a request to the board under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following records relating to special education equipment assigned to her son:

[His] records on special education equipment (including SEA,¹ ISA,² school, other funding) for 2010 – 2011 school year, September 2010 to present.

[His] records on a desktop computer assigned to him as a special education equipment (incl. SEA, ISA, school, other funding)

[2] The board located records that are responsive to the appellant's request. It then issued a decision letter to her that summarized the special equipment used by her son. In addition, it enclosed copies of the responsive records that were located, including special equipment claims, invoices and purchase orders for various types of equipment, and her son's 2010-2011 Individual Education Plan (IEP).

[3] The decision letter, which was issued by the board's freedom of information coordinator (FOIC), explained why claims records do not exist for some special education equipment:

I have also been told that there was no S.I.P.³ application or SEA application for [your son] made to the Ministry of Education [the ministry] for the 2010-2011 school year. Due to the changes in the application process for special equipment, the purchases made were under \$800.00, and as a result, a claim did not have to be submitted.

[4] The appellant appealed the board's decision to the Information and Privacy Commissioner of Ontario (IPC). The basis of her appeal is that further records should exist, and the board has therefore not conducted a reasonable search for responsive records.

[5] During mediation, the appellant stated that records should exist for the following equipment:

- Cause and effect software
- Keyboard software
- Mouse skills software
- Text to speech software
- Audio or CD player
- Voice recorder
- Desktop computer

[6] The board advised the mediator that it had provided all responsive records to the appellant. It stated that in certain circumstances, special equipment is reassigned from

¹ Special Equipment Amount.

² Intensive Support Amount.

³ Special Incidence Portion.

another student who no longer needs it or has left the board. In such cases, records confirming the purchase of that equipment would not exist in her son's file.

[7] This appeal was not resolved during mediation and was moved to adjudication for an inquiry. An adjudicator sought and received representations from the parties on whether the board conducted a reasonable search for records that are responsive to the appellant's request. These representations were shared between the parties in accordance with section 7.07 of the IPC's *Code of Procedure and Practice Direction Number 7*.

[8] This appeal was then transferred to me to complete the inquiry. For the reasons that follow, I find that the board has conducted a reasonable search for responsive records, and I have, therefore, decided to dismiss the appeal.

DISCUSSION:

Did the board conduct a reasonable search for responsive records?

[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 of the *Act*.⁴ 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.⁵ To be responsive, a record must be "reasonably related" to the request.⁶

[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.⁷

[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.⁸

⁴ Orders P-85, P-221 and PO-1954-I.

⁵ Orders P-624 and PO-2559.

⁶ Order PO-2554.

⁷ Orders M-909, PO-2469 and PO-2592.

⁸ 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.⁹

[14] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.¹⁰

[15] The board's representations, which include a sworn affidavit from its FOIC, set out the steps that its staff took to locate records that are responsive to the appellant's request. After receiving the request, the FOIC contacted the board's Superintendent of Learning Services and its System Principal of Learning Support Services. The latter individual is responsible for overseeing and monitoring the purchase of equipment for special education students such as the appellant's son. Her duties include maintaining records relating to funding applications and ministry grants for special education equipment.

[16] The System Principal worked with her staff to locate records that were responsive to the appellant's request. As noted above, they located a number of responsive records that relate to the equipment used by the appellant's son, including special equipment claims, invoices and purchase orders for various types of equipment. These records were disclosed to the appellant.

[17] The board states that both the System Principal and the Superintendent have confirmed that there are no additional records held by the board that are responsive to the appellant's request.

[18] In her representations, which include 11 attachments, the appellant disputes that the board has conducted a reasonable search for responsive records and cites specific ministry guidelines that require school boards to maintain records that document equipment purchases for special needs students. She submits that the board has refused to provide her with records relating to the following pieces of equipment assigned to her son: Computer desktop, monitor, laptop, scanner, keyboarding software, Read, Write and Type software, mouse skills software, text to speech software, language acquisition software, audio player, and voice recorder.

[19] She further submits that the board has not conducted a reasonable search for responsive records and states, in part:

. . . I believe more records do exist as the special educational equipment/software are assets, purchased on the public money, is subject to annual inventory verification, and the corresponding documentation of

⁹ Order MO-2246.

¹⁰ Order MO-2213.

all the organization's assets must exist. If an asset is transferred from one student to another, the inventory tracking sheets must exist to show to whom the asset was delivered. In any case, even if an equipment item was provided for a student's educational needs from other board inventories (not direct SEA funding) before the 2010-2011 school year and/or after, the documentation on the asset must exist. I am inclined to think that the [board] has deliberately withheld [the] records requested. .

. .

[20] In its reply representations, the board responds to the appellant's allegation that it has refused to provide her with records relating to specific types of equipment assigned to her son. It lists the equipment identified by the appellant in her representations and then describes the specific records relating to each piece of equipment. The board attached a copy of these records to its representations and submits that it has previously disclosed most of these records to the appellant.

[21] In her sur-reply representations, the appellant disputes that the board previously provided her with these records. She reiterates that the ministry's guidelines require school boards to document SEA equipment purchased for her son or equipment purchased for a group of students that include her son. In addition, she continues to assert that records that document the transfer of equipment from another student to her son must exist. She submits, therefore, that the board must have additional records in its possession that document the purchase, sharing or transfer of such equipment.

[22] I have considered the parties' representations and have reviewed the records that the board located and disclosed to the appellant. For the following reasons, I find that the board conducted a reasonable search for responsive records, as required by section 17 of the *Act*.

[23] First, the board's System Principal of Learning Support Services and her staff conducted the search for responsive records and were overseen by the Superintendent of Learning Services. The System Principal's job duties include maintaining records relating to funding applications and ministry grants for special education equipment. Consequently, I find that experienced employees knowledgeable in the subject matter of the appellant's request conducted a search for responsive records.

[24] Second, the System Principal and her staff located a number of responsive records relating to the equipment used by the appellant's son which were then disclosed to her. These records include special equipment claims, invoices, purchase orders, and other records for various types of equipment. I have reviewed these records and am satisfied that they are, on the whole, responsive to the appellant's request. I find, therefore, that the board conducted a targeted and thorough search for responsive records.

[25] I am not persuaded by the appellant's argument that additional records for specific equipment must exist because specific ministry guidelines require school boards to maintain records that document the purchase or sharing of equipment for special needs students. The *Act* does not require the board to prove with absolute certainty that further records do not exist, and it has provided the appellant with written explanations as to why it has been unable to locate responsive records for some pieces of equipment. For example, with respect to text to speech software assigned to the appellant's son, the board states in its reply representations that "[t]his is [ministry] licensed software and appears on the [board's] image. There are no invoices as the ministry pays the fee."

[26] In addition, even if there are gaps in the board's record keeping with respect to some equipment, it is not my role to decide whether the board is complying with the ministry's guidelines. There are other accountability mechanisms and audit procedures in place to address such matters. My only role is to determine whether the board has conducted a reasonable search for responsive records that have actually been created and are found in the board's record holdings.

[27] Finally, I do not accept the appellant's suggestion that the board has "deliberately" withheld records from her. The evidence before me indicates that the board treated her request diligently and made substantial efforts to locate responsive records and provide her with reasons as to why records could not be located for some pieces of equipment used by her son. I find that that the board has been as transparent as possible with the appellant with respect to her request, and there is no evidence before me to substantiate her claim that it has intentionally withheld any requested records.

[28] In conclusion, I find that the board conducted a reasonable search for responsive records as required by section 17 of the *Act*.

ORDER:

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

Original Signed by: _____
Colin Bhattacharjee
Adjudicator

January 11, 2013