

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2941

Appeal MA12-214-2

London District Catholic School Board

September 9, 2013

Summary: The appellant sought access to information dealing with concussion testing at a named school. The school board issued a decision granting access to the records that it viewed as responsive to the request. The appellant took issue with the school board's definition of the scope of the request. The adjudicator finds that the school board unduly limited the scope of the request and orders the school board to issue a new access decision.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 14(1), 17, 45(1) and sections 6, 7 and 9 of Regulation 823.

OVERVIEW:

[1] The London District Catholic School Board (the school board) received the following access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

I am requesting information and/or documentation dealing with concussion testing at [named school]. The search should include but not be limited to invoices, tenders, cheques, financial entries and reports.

[2] The school board issued a decision granting access to the records that it viewed as responsive to the request. The requester (now the appellant) appealed the decision

on the basis that additional responsive records ought to exist. That appeal (opened as file number MA12-214) was closed at the intake stage. The current appeal (opened as file number MA12-214-2) was opened to address not whether the school board conducted a reasonable search, but rather whether the school board's interpretation of the scope of the request should be upheld.

[3] During mediation, the appellant took the position that the scope of his request included the following information:

- The results of the concussion testing on his son
- The incident report for when his son suffered a concussion
- Concussion testing information for other teams, such as hockey and soccer
- A copy of the request for proposal (RFP) sent out prior to hiring the concussion testing company
- A copy of the evaluation report summarizing the concussion testing process

[4] Although the school board was of the view that these items did not fall within the scope of the request, it contacted the school and provided the following information to the mediator, which the mediator then shared with the appellant:

- no other school teams underwent concussion testing, only football
- no evaluation reports were provided by the company that did the testing
- no RFP/tender was required

[5] The appellant maintained his position that all of the items he listed fell within the scope of his request and requested that the matter be moved to the adjudication stage of the appeals process.

[6] I invited representations from the school board and the appellant. I received their representations and shared them in accordance with section 7 of the *IPC's Code of Procedure and Practice Direction 7*.

[7] The sole issue in the appeal is whether the school board's definition of the scope of the request was correct.

DISCUSSION:

[8] 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).

[9] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.¹ Furthermore, previous orders of this office have established that to be considered responsive to the request, records must "reasonably relate" to the request.²

[10] That said, parties may agree to alter the scope of the request and the appeal at the request stage, during mediation or in the course of adjudication.

The school board's representations

[11] The school board's initial representations in response to the Notice of Inquiry summarized the contents of a letter that it provided to the mediator in the course of mediation. When the school board's representations were shared with the appellant, a copy of the school board's letter to the mediator was included.

[12] In the letter to the mediator, the school board states that it responded appropriately to the appellant's request and the writer explains:

I understand the appeal is based on the appellant wanting additional information relating to testing on his son, evaluation reports resulting from the testing and whether or not testing was done for other school teams. It is the board's position that these additional questions were not part of the original request ...

¹ Orders P-134 and P-880.

² Order P-880.

[13] The letter continues to explain that:

The original request clearly stated "concussion testing at [named school]" and "invoices, tenders, cheques, financial entries and reports." Since financial records are fairly straightforward and precise, it was not necessary to contact the requester to seek clarification of the request, which specifically stated the type of records requested.

The original request did not specifically mention the requester's son (i.e. his name, grade or date of birth) nor any other information relating to his son. Therefore, it would be very difficult to make any inference that the requester was seeking additional records about his son, other than those relating to the concussion testing in general as stated on the request.

It is important to note that even if records relating to his son had been requested, these records would not be released without consent since at the time of the request [specified date] the requester's son was already [a specified age].

[14] The school board further states in the letter to the mediator that in an email sent to the appellant, he was invited to contact the named school directly with respect to "the appellant's additional questions" since "the questions related more with school operational matters and were best answered by the school principal."

[15] The school board further states in the letter to the mediator:

A reasonable search was conducted by contacting the School Principal, School Secretary, Manager of Finance and Supervisor of Finance. It would be unfair to expect that we locate records that do not exist or that we make any conclusions that other information (i.e. relating to his son) was to be provided since this was not specifically stated in the original request.

[16] Notwithstanding its position, the school board states in the letter to the mediator that "in response to the appellant's additional questions, the school confirms that":

- no other school team underwent concussion testing;
- no evaluation reports were provided by the company that did the testing;
- no evidence has been provided that the requester's son was charged twice;
- no RFP/Tender was required;

- no other records exist in response to the request.

[17] The school board concludes its letter to the mediator by stating that:

It is the position of the board that the scope of the request was quite clear and the board responded accordingly by providing the specific records requested (i.e. cheques, invoices and financial entries). The appellant did receive a response from the board directing him to contact the school with his additional questions. The board feels strongly that the appellant's claim that we did not respond to his questions or that we should have known more, beyond his original request, is unreasonable.

[18] In its submissions in response to the Notice of Inquiry, the school board also set out the following:

Only following receipt of the [school board's] responsive records did the requester then ask additional questions about his son at which time he was directed to contact the school directly since these questions dealt more with school operational matters and were best answered by the school principal

...

It is our position that the scope of the request was quite clear and the [school board] responded accordingly by providing the specific records requested (ie. cheques, invoices and financial entries). Following receipt of our responsive records, the requester was informed to contact the school with his more detailed questions relating to his son; however he did not.

It is rather unreasonable to expect the Board to make any inference that the requester was seeking additional and unspecified records about an unidentified individual (his son); which is outside the scope of the original request.

The appellant's representations

[19] The appellant takes the position that "a proper search has not been done in terms of scope and in terms of asking the correct individuals" and expresses surprise and puzzlement regarding how the school board viewed the scope of his request.

[20] He explains that "since this was a fairly broad request I also indicated I should be contacted for any clarification". He explains that the named school held a media event with respect to a concussion testing program and when his son subsequently suffered a concussion he began asking questions. He submits:

This started a series of extensive emails over a period of several months Since my results were being ignored by all levels, from the school to the board, I filled out [an access to information] request ...

My request was handled by [a named individual]. [The named individual] had been involved prior to my request and was very familiar with what I was requesting. After responding to my [access to information] request [the named individual] was immediately contacted by myself asking why the request was only partially answered. I then gave [the named individual] specific information that was not included in his response. After this contact at some point [the named individual] passed on my [access to information] request to [a named Freedom of Information Coordinator (the FOIC)]. I am not sure when because I was never contacted or informed. [The named individual] is still at the board and is a supervisor of [the FOIC].

It seems to me that [the named individual] never passed on the lengthy previous history of my request. [The FOIC] seemed unaware of what was asked in the past and how she should conduct a proper search.

[21] The appellant enclosed with his representations what he described as "a sampling of emails that clearly identify my questions regarding my son ..., clearly show that the school was directly contacted and asked and clearly show that directly involved parties were never included in her search."

[22] The appellant concludes by stating:

I realize records do not have to be created and records could be lost. This is a student safety issue. This area is always well documented at the board. They claim student safety is their number one goal. These records do exist. A proper search should be conducted. Does it not seem odd that no documentation was found? Does it not seem odd not one email was produced? ...

The school board's reply representations

[23] In its reply representations the school board submitted that when the appellant's access to information request was received, the FOIC opened a file. The school board states that only the FOIC receives and opens access to information requests to ensure file confidentiality and to protect the privacy and identity of the requester.³ The school board provided an affidavit of its FOIC detailing the steps she took to search for responsive records and how the appellant's request was addressed.

³ The school board relies on IPC Practices Number 16 and the determinations in privacy complaint number MC-040012-1 in support of its position.

[24] The school board submits that:

Commissioner Ann Cavoukian in her 2000 Annual Report states "requiring individuals to demonstrate a need for information or explain why they are submitting a request would erect an unwarranted barrier to access" (IPC Order PO-1998). It is an unreasonable expectation for the requester to presume that the [FOIC] would be aware or have knowledge of any, or all, communication, dialogue or personal conversations the requester may have had with any other individual, staff member or another school board prior to receiving an [access to information request]. Disclosure of such superfluous background information is not required for the processing of [access to information] requests and the [FOIC] does not seek out such information in this regard.

[25] The school board submits that the request was received directly by the FOIC and was not handled by the named individual nor would he be obliged, due to reasons of privacy, to share any "previous history" about the requester. Since the named individual is not responsible for the custody and control of the requested records; he was not required to search for records.

[26] The school board submits that prior to submitting his access to information request the appellant had already received via email a "report" from the named individual in response to the appellant's questions. The school board further submits:

Following receipt of the [school board's] decision letter, the appellant "then gave [the named individual] specific information that was not included in the response" sent by email on [a specified date] [The named individual] responded by directing the appellant to contact the school since these additional questions were more related to school operational in nature. It is not known whether or not the appellant did contact the school; however, these questions were subsequently answered and provided by the institution during the mediation stage of this appeal It is our understanding that these answers were shared with the appellant.

[27] The school board further explains that during the search for records:

... for reasons of privacy, the [FOIC] does not disclose the identity of the requester⁴ and does not seek out any extraneous personal information about the requester from those employees directly responsible for the care and control of the requested records. Therefore, employees

⁴ The school board relies on IPC Practices Number 16 and the determinations in privacy complaint number MC-040012-1 in support of its position.

searching for records would not be aware of who the requester was, what the reason for the request was, or what other additional information they could share about the requester.

[28] The school board emphasizes that during the search for responsive records in this appeal:

... the identity of the requester was not disclosed and therefore [the employees searching for records] would neither be aware nor obligated to share extensive personal information relating to either the requester or any student/incident since the requester provided no such detail in the [access to information] request about this.

[29] The school board further states that the request was for general financial records and "did not identify any specific incident/situation or [personal information] concerning 'student safety' in the [access to information] request." It submits that the appellant did not identify another individual in the request, or any personal information or incident relating to another individual. Therefore, the school board submits, there was no obligation on the FOIC to search for additional records or personal information relating to a student.

Analysis and Finding

[30] I have reviewed the entire file in detail, including the emails provided by the appellant in support of his position and all the circumstances of this appeal. The appellant's request is for information relating to "concussion testing" at the named school. The school board interpreted his request to be limited to financial records pertaining to concussion testing at the named school, rather than a request for any record touching in any way on the topic of concussion testing at the named school, which would potentially have also included all records that addressed the appellant's specific questions relating to the appellant's son and even other students who may have suffered a concussion at the school. In my view, considering all the circumstances, adopting a liberal interpretation of the request, in order to best serve the purpose and spirit of the *Act* and resolving any ambiguity in the request in the requester's favour,⁵ I find that the school board unduly limited the scope of the request. Accordingly, I will order the school board to issue an access decision in response to the request which, in light of the way that the school board dealt with the appellant's request thus far, shall be interpreted to be for all non-financial information and/or documentation dealing with concussion testing at the named school. Whether or not these records may be subject to exemption under the *Act* because, for example, they contain personal information (section 14(1)) is another issue entirely. This, along with any fees for processing the request⁶ can be addressed in the school board's access decision.

⁵ Orders P-134 and P-880.

⁶ See section 45(1) of the *Act* and sections 6, 7 and 9 of Regulation 823.

ORDER:

1. I do not uphold the decision of the school board.
2. I order the school board to issue an access decision based on the scope of the appellant's request as I have interpreted it above, treating this order as the date of the request, all in accordance with sections 19, 21 and 22 of the *Act*.
3. I further order the school board to provide me with a copy of the access decision issued to the appellant pursuant to Provision 2 of this order when the decision is issued.

Original signed by: _____
Steven Faughnan
Adjudicator

_____ September 9, 2013