

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2959

Appeal MA12-534

London District Catholic School Board

October 4, 2013

Summary: The appellant sought access to records about communications involving a Superintendent of Education. The board denied access to portions of the records on the basis of the personal privacy exemptions in sections 14(1) or 38(b). This order upholds the board's decision, in part, and also orders it to conduct another search for responsive records.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of personal information), 14(1), 14(4)(a), 38(b), 17(1).

OVERVIEW:

[1] The London District Catholic School Board (the board or the LDCSB) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to the following information:

All emails, documents or records to or from [named Superintendent of Education (the Superintendent)] reasonably dealing with high school sports, TVRAA [Thames Valley Regional Athletic Association] or myself existing from December 9, 2010 and going back 450 days from that date.

[2] In response, the board located a number of responsive records and provided access to them in part. Access to portions of the records was denied in accordance with the mandatory personal privacy exemption in section 14(1) of the *Act*.

[3] The requester, now the appellant, appealed that decision.

[4] During mediation, the appellant advised that he is not seeking access to information that is clearly other individuals' personal information, such as personal email addresses or personal phone numbers. However, he questions whether all the information withheld by the board as personal information should have been withheld. As a result, access to the personal information withheld remains an issue in this appeal.

[5] In addition, the appellant advised that he believes additional records ought to exist in addition to the emails located by the board, as his request sought access to not only emails, but documents and other records. Specifically, he states that there ought to be communications between the school board's superintendent and school board's director, chair, lawyers and the freedom of information office.

[6] In response, the board took the position that a thorough search was completed and the search included a search for emails, documents as well as other records and that no additional responsive records exist.

[7] The appellant advised that he disagrees with the adequacy of the board's search and asked that the appeal proceed to the next stage in the appeals process. Further, he requested that reasonable search be added to the issues on appeal.

[8] Accordingly, the file was referred to the adjudication stage of the appeals process where an adjudicator conducts an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the board seeking its representations, initially. I received representations from the board, which I sent to the appellant, along with a Notice of Inquiry. Portions of the representations of the board were withheld due to confidentiality concerns as they quote directly from the records at issue.

[9] With its representations, the board provided me with a revised version of Record 18, as it had decided to disclose more information in that record to the appellant.

[10] The appellant provided representations in response to the Notice of Inquiry; however, he did not provide representations on any of the issues in this appeal, other than the reasonable search issue. Concerning the remaining issues, he states that anything on an institution's computers is the property of the institution and that there is no expectation of privacy.

[11] I then sought representations from an affected person whose personal information may be contained in Record 18. This individual provided representations objecting to disclosure of any of their information in this record.

[12] In this order, I uphold the board's decision in part that the information at issue is exempt by reason of the personal privacy exemptions in sections 14(1) and 38(b). I also order the board to conduct another search for responsive records.

RECORDS:

[13] The records at issue consist of various emails and attachments. As the appellant is not interested in receiving personal email addresses or personal phone numbers, the only other possible responsive information is found in Records 9, 18 and 21.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?
- C. Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?
- D. Did the institution conduct a reasonable search for records?

DISCUSSION:

A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[14] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[15] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.¹

[16] Sections 2(2.1) and 2(2.2) also relate to the definition of personal information. These sections state:

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their

¹ Order 11.

dwelling and the contact information for the individual relates to that dwelling.

[17] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.²

[18] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.³

[19] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

[20] The board states that the personal information contained in the records is as follows:

Paragraph (a) of section 2(1) (definition of personal information)

- information relating to the sex of the individual (Record 21). The personal information relates to the gender of a student at an identified school. Given the appellant's association with the identified school and the noted situation, it is reasonable to presume that the identity of a student may be revealed if the gender is disclosed. The student's gender was severed to protect the possible identification of a student at the school.

Paragraph (b) of section 2(1) (definition of personal information)

- information relating to the education or employment of the individual (Record 18 and 21). The personal information relates to the employment responsibility level ...for an identified individual (Record 18) and relates to the education of a student by identifying their school of attendance... (Record 21).

Paragraph (c) of section 2(1) (definition of personal information)

- any identifying number, symbol or other particular assigned to the individual (Record 18). The personal information relates to the identified individual's employment salary classification...

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

Paragraph (g) of section 2(1) (definition of personal information)

- the views or opinions of another individual about the individual (Record 9). The personal information relates to a personal view of another individual ...and is not related to the request and its disclosure would serve no relevant purpose.

Paragraph (h) of section 2(1) (definition of personal information)

- the individual's name (Record 18). The personal information identifies the name of the individuals ...who are not employees of the London District Catholic School Board.

Analysis/Findings

[21] I have considered whether the information at issue in each record is personal information and find as follows:

Record 9

[22] This record is an email sent by one board employee to another and is copied to a third board employee named in the request. The board has decided to disclose all of this record except one sentence. This sentence contains the personal views of the sender of the email about another board employee and the appellant. I find that this record contains the personal information of the appellant and another identifiable individual under paragraph (g) of the definition of personal information in section 2(1) of the *Act*.

Record 18

[23] This record is an email from the employee named in the request to two other board employees. As was the case for Record 9, this record contains the personal views of the sender of the email about another board employee (the affected person), another individual and the appellant. I find that this record contains the personal information of the appellant, the affected person, and another identifiable individual under paragraph (g) of the definition of personal information in section 2(1) of the *Act*.

[24] This record also contains the salary classification code of the affected person. I find that this code is an identifying number, symbol or other particular assigned to this individual and is personal information of this individual under paragraph (c) of the definition of personal information in section 2(1) of the *Act*.

[25] The record also contains the affected person's name and title. This employee's name and title appear with other personal information relating to the individual and, therefore, is personal information of this individual under paragraph (h) of the definition of personal information in section 2(1) of the *Act*.

Record 21

[26] This record consists of an email from the employee named in the request attaching a letter to the TVRAA, principals, athletic directors, and coaches about ineligibility of students to compete in tournaments. The covering email identifies the gender and school and discusses the eligibility of a particular student. The board has decided to disclose this entire record except for an acronym for a particular school and the gender of the student at that school.

[27] The board states that even though the student is not named in the record, given the appellant's association with the school and the noted situation, it is reasonable to presume that the identity of this student may be revealed if the gender and school is disclosed. The appellant did not dispute this claim in his representations. Based on my review of this record, I find that the severed information is the personal information of an identifiable individual. This qualifies as information about the sex and educational history of this student under paragraphs (a) and (b) of the definition of personal information in section 2(1) of the *Act*.

Conclusion

[28] In conclusion, I find that all of the information at issue in Records 9, 18 and 21 is personal information of other identifiable individuals in their personal capacity. In addition, Records 9 and 18 contain the personal information of the appellant. I will now consider whether the information at issue in Records 9 and 18 is subject to the discretionary personal privacy exemption in section 38(b) and whether the information at issue in Record 21 is subject to the mandatory personal privacy exemption in section 14(1).

B. Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?

[29] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[30] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

[31] If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

[32] Under section 14(1), where a record contains personal information only of an individual other than the requester, the institution must refuse to disclose that information unless disclosure would not constitute an “unjustified invasion of personal privacy”.

[33] The board states that the mandatory exemption under section 14(1) applies to the personal information of the identifiable individuals other than the appellant in the records. The board also stated that the information in Record 18 is subject to the presumption in section 14(3)(d) as it contains an identifiable individual’s employment history.

[34] The appellant did not provide representations on the application of sections 14(1) or 38(b) to the records.

[35] The affected person, although objecting to disclosure of his personal information in Record 18, did not provide representations on the application of sections 14(1) or 38(b) to this record.

Analysis/Findings

[36] Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met under section 14(1) or 38(b).

[37] If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under sections 14 or 38(b). In this appeal none of the information fits within paragraphs (a) to (e) of section 14(1).

[38] The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f). This section reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

[39] If any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under sections 14 or 38(b). In this appeal, section 14(4)(a) may apply. This section reads:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution;

[40] This section applies to the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution.

[41] As stated above, Record 18 contains the personal information of the appellant and other identifiable individuals. Upon review of Record 18, I find that this email contains the affected person's name and his professional title, along with his employment classification. The affected person is an employee of an institution. I find that the information about the affected person in Record 18 comes within the exception in section 14(4)(a) and its disclosure does not constitute an unjustified invasion of personal privacy under section 14(1)(f). The presumption in section 14(3)(d) raised by the board cannot overcome the application of the exception in section 14(4)(a).

[42] I find that the affected person's name and his professional title, along with his employment classification are, therefore, not exempt under section 38(b) by reason of the application of section 14(4)(a). As no other exemptions apply to this personal information in Record 18, I will order it disclosed.

[43] Remaining at issue is one sentence in Record 9, one name in Record 18 and two severances in Record 21. Records 9 and 18 contain the personal information of the appellant and other identifiable individuals. Record 21 only contains the personal information of an individual other than the appellant.

[44] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under sections 14 or 38(b). Once a presumed unjustified invasion of personal privacy under section 14(3) is established for records which are claimed to be exempt under section 14(1), it can only be overcome if section 14(4) or the "public interest override" at section 16 applies.⁵

[45] With respect to records claimed to be exempt under section 38(b), in *Grant v. Cropley*,⁶ the Divisional Court said the Commissioner could:

. . . consider the criteria mentioned in s.21(3)(b) [the equivalent to section 14(3)(b) from the provincial *Act*] in determining, under s.49(b) [the equivalent to section 38(b)], whether disclosure . . . would constitute an unjustified invasion of [a third party's] personal privacy.

⁵ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

⁶ *Grant v. Cropley* [2001] O.J. 749.

[46] None of the presumptions in section 14(3) apply to the remaining information at issue in the records. If no section 14(3) presumption applies or the records are claimed to be exempt under section 38(b), section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.⁷

[47] The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).⁸

[48] In the case of section 14(1), in order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors or circumstances favouring *disclosure* in section 14(2) must be present. In the absence of such a finding, the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies.⁹ No factors favouring disclosure have been raised by the appellant, nor do I find that any apply in this appeal.

[49] Accordingly, I find that the information at issue in Record 21, which is the personal information of an identifiable individual other than the appellant, is exempt by reason of section 14(1). I also find that the information at issue in Record 9 and the information remaining at issue in Record 18 are exempt by reason of section 38(b), subject to my review of the board's exercise of discretion.

C. Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

[50] The section 38(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[51] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example:

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

⁷ Order P-239.

⁸ Order P-99.

⁹ Orders PO-2267 and PO-2733.

[52] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.¹⁰ This office may not, however, substitute its own discretion for that of the institution.¹¹

[53] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:¹²

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

¹⁰ Order MO-1573.

¹¹ Section 43(2).

¹² Orders P-344 and MO-1573.

[54] The board states that its discretion to withhold personal information to protect the privacy and identity of the affected individuals should be upheld. It states that it noted that the appellant agreed that he was not seeking access to information that is clearly other individual's personal information. And so, it states that it was the institution's discretion that the privacy of these individuals should be protected.

[55] The board states that in an effort to provide as much information as is reasonably practicable in response to the request, it provided full disclosure to many of the records. It states that even with the severing of personal information in the records, the partial disclosure of these records still contain much of the information intact to satisfy the scope of the request.

[56] The board further states that after receipt of the Notice of Inquiry it reviewed Record 18 again and decided that more information contained in that record could be disclosed.

[57] The appellant did not provide representations on this issue.

Analysis/Findings

[58] Based on my review of the board's representations and the information at issue in Records 9 and 18, I find that the board exercised its discretion in a proper manner and did not take into account irrelevant considerations. The information at issue includes the personal information of individuals other than the appellant. The appellant does not have a sympathetic or compelling need to receive disclosure of this information. Disclosure will not increase public confidence in the operation of the board and the privacy of the individuals other than the appellant in the records at issue should be protected. Accordingly, I am upholding the board's exercise of discretion and find that the information at issue in Record 9 and the information remaining at issue in Record 18 are exempt under section 38(b).

D. Did the institution conduct a reasonable search for records?

[59] 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 17.¹³ 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.

[60] 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

¹³ Orders P-85, P-221 and PO-1954-I.

to show that it has made a reasonable effort to identify and locate responsive records.¹⁴ To be responsive, a record must be "reasonably related" to the request.¹⁵

[61] 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.¹⁶

[62] 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.¹⁷

[63] 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.¹⁸

[64] 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.¹⁹

[65] The institution was required to provide a written summary of all steps taken in response to the request. In particular, it was asked the following questions:

1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the institution did not contact the requester to clarify the request, did it:
 - (a) choose to respond literally to the request?
 - (b) choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain

¹⁴ Orders P-624 and PO-2559.

¹⁵ Order PO-2554.

¹⁶ Orders M-909, PO-2469 and PO-2592.

¹⁷ Order MO-2185.

¹⁸ Order MO-2246.

¹⁹ Order MO-2213.

to the requester why it was narrowing the scope of the request?

3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

[66] The board states that the appellant made an earlier request for similar records to those at issue in the current request. The board states that in January 2011 the appellant agreed to narrow the scope of the original request after the institution contacted him and advised that the request covered a large volume of communications over an extended period of time. The requester then agreed to a modified search request for "All emails from or to [named Superintendent] regarding the TVRAA, as residing on the email service of the LDCSB within the existing 450 day window calculated at the date of search."

[67] The board states that given the records requested were located on a backup server of an archival email system, the institution conducted a preliminary search for records with the search criteria of "TVRAA", "TVRA", "the Superintendent's name" and "Athletics" from the date of the request (December 2010) going back to a period of 450 days, which calculated to the date of September 15, 2009, in order to save and preserve possible records in response to the request.

[68] On September 18, 2012, the appellant submitted the request that is the subject of this appeal and paid the fee deposit from the previous request. Based on this request, the board opened a new file and began its search of the preserved archival email records which had been saved from the previous request.

[69] The board further states that:

...the search was conducted by the FOIC [Freedom of Information Co-ordinator] who reviewed the records and organized them into possible responsive records based on the search criteria of the request "to or from [the Superintendent]", "high school sports, TVRAA or "[the appellant's name]." Records that were unrelated and not responsive to the request as well as duplicate records were removed. Responsive records were

compiled to include 'threads' of email conversations as one record rather than separating and producing each individual email as its own record; this helped to minimize record production costs for the appellant. As well as, the files of [the Superintendent], who was retired, were searched however; no records relating to the request were found.

On September 25th, 2012, the institution issued the appellant an interim decision to grant full access to 26 records and partial access to 12 records. An Index of Records and a Fee Invoice for the remaining balance associated with the search and preparation of the responsive records was issued. To date, the appellant has not paid the balance of fee and as a result the institution has not released the records to the appellant.

[70] The appellant states that a reasonable search was not conducted as the only records that were located are emails and because there should have been responsive records from the Superintendent, who only retired this year.

Analysis/Findings

[71] The board refers to an earlier request by the appellant for similar records. It states that the appellant filed an appeal of the board's interim decision, which included a fee estimate. Appeal file MA11-6 was opened. After receiving representations from the board and the appellant, the adjudicator in appeal file MA11-6 issued Order MO-2696, upholding the fee estimate.

[72] The appellant's earlier request was for:

All emails between [the board] and the TVRAA/TVDSB²⁰ concerning secondary school athletics. To include but not limited to [four named employees]. This is for the period June 2007 until December 9, 2010.

[73] Before processing the request, the board advised the appellant that the request "...covers a large volume of communications over a lengthy period of time and relates to a multitude of issues..." and the board suggested that the appellant narrow the scope of his request. The appellant narrowed his request to the following information:

All emails to or from [one named employee] regarding TVRAA, as residing on the email service of the [the board] within the existing 450 day window calculated at the date of search.

[74] In February 22, 2012, the adjudicator in Order MO-2696 upheld the board's fee estimate only in the amount of \$120.00 for record preparation time.

²⁰ TVRAA/TVDSB – Thames Valley Region Athletic Association/Thames Valley District School Board.

[75] On September 18, 2012, the appellant submitted a new request that is the subject of this appeal. I find that in this appeal, the appellant is seeking access to additional records beyond those sought in appeal file MA11-6. As stated above, the request in this appeal is not solely for emails regarding the TVRAA but, as stated above, the appellant is seeking access to:

All emails, documents or records to or from [named Superintendent of Education (the Superintendent)] reasonably dealing with high school sports, TVRAA [Thames Valley Regional Athletic Association] or myself existing from December 9, 2010 and going back 450 days from that date [emphases added by me].

[76] On September 25, 2012, the board issued a decision letter to the appellant that stated:

In response to your request, received by the Board on September 18th 2012, under the *Municipal Freedom of Information and Protection of Privacy Act* for access to "All emails, documents or records to or from [name of the appellant] reasonably dealing with high school sports, TVRAA, or myself existing from December 9th, 2010 and going back 450 days from that date." Please be advised that the decision has been made to grant full to partial access to the responsive records, with the severance of information pursuant to Section 14 - personal information.

As determined in your previous request (File [#]), the requested records exist on the Board's archival email system and restored from a backup system. The Fee Estimate of \$120.00, upheld by the IPC Order MO-2696, did not include applicable record preparation costs (i.e. photocopies and printouts) since it was not known at the time how many records would result from the search of records.

Please be advised that the search of records between December 2010 and 450 days back to September 15th, 2009 was completed and resulted in 38 records in response to your request, An Index of Records is enclosed along with the Fee Invoice detailing the costs associated with the search of records and preparing the records for release. The fee for the records you have requested is \$141.30. Your fee deposit of \$60.00 has been received. Please be advised that the remaining balance owing is \$81.30...

Your written acceptance and payment of the balance of the fee owing is required before we can proceed... [Emphasis added by me]

[77] It is clear from a review of the board's representations in this file and as set out in Order MO-2696, along with its decision letter of September 25, 2012, that it only

conducted a search for the requested records on its archival email system. The request in file MA11-6 was for only "emails", whereas the request in this appeal file is for "emails, documents or records."

[78] The requests in this appeal and in appeal file MA11-6 are for similar, but different, records. In appeal file MA11-6, the appellant only sought email records in his narrowed request. In this appeal, the board's index of records only shows that emails were located in response to this request. The board has not provided any information in its decision letter containing details of any searches being made other than of its archival email system. In particular, there is no indication in its decision letter that it has searched through its paper records or in its active email or electronic system.

[79] The board states in its representations that "...the files of [the Superintendent], who was retired, were searched however; no records relating to the request were found." Despite being asked in the Notice of Inquiry, the board has not provided any details of how this search was conducted or by whom. I note that its fee invoice that accompanied the board's September 25, 2012 decision letter only indicates that it searched for "email records on a former server which was restored from backup tapes."

[80] In the request that is the subject matter of this appeal, the appellant sought access to both electronic and paper records. The board has only provided details about searches being made on its archival email system. I find that I do not have sufficient evidence to find that the board has conducted a reasonable search for responsive paper records or for responsive electronic records on its non-archival email or on its electronic system. Accordingly, I will order the board to conduct another search for responsive records.

ORDER:

1. I order the board to conduct a search for records for responsive paper records or for responsive electronic records on its non-archival email or on its electronic system and to issue a new decision to the appellant in accordance with the following requirements:
 - a. The new decision letter is to be prepared in accordance with the legislative requirements set out in sections 19, 21 and 22 of the *Act*;
 - b. The date of this order is to be treated as the date of the request and without recourse to a time extension under section 20 of the *Act*.
2. I order the board to provide me with a copy of the new decision letter sent to the appellant on the same date it is sent to the appellant.

3. I uphold the board's decision to deny access to the information at issue in Records 9 and 21 and part of the information at issue in Record 18. For ease of reference, I have provided the board with a copy of Record 18 highlighting the one portion of this record that should not be disclosed to the appellant.
4. Following the board's receipt of the \$81.30 fee balance from the appellant, I order the board to disclose the remaining records to the appellant by providing him with a copy of the severed records. This disclosure is to take place no later than **November 12, 2013** after receipt of the fee balance, but not before **November 4, 2013** after receipt of the fee balance.
5. To verify compliance with order provision 4, I reserve the right to require the board to provide me with a copy of the records disclosed to the appellant.

Original signed by: _____
Diane Smith
Adjudicator

_____ October 4, 2013