

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3230

Appeal MA14-380-2

Toronto District School Board

August 17, 2015

Summary: A journalist made a request to the board for access to a report on trustee expenses. The board decided to disclose the report, in part, withholding some information on the basis of the exemptions at section 7 (advice and recommendations) and 14 (personal privacy) of the *Act*. After the board issued its decision, the journalist obtained internal board emails which, on their face, appeared to show improper interference in the freedom of information process under the *Act*, and possible alteration of records subject to a request. This order determines that there is no evidence of document tampering or any attempt by board trustees or staff to inappropriately influence or interfere with the processing of the access request under the *Act*. In addition, this order contains a number of recommendations with a view to reducing the risk of similar problems arising in the board's processing of freedom of information requests.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 17(1), 20(1) and 20(2)

Orders Considered: Orders 28, PO-2168, PO-3255, MO-3013

OVERVIEW:

[1] The appellant, a journalist representing the Toronto Star newspaper, made a request on June 18, 2014 under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Toronto District School Board (the board) for:

[A] copy of the detailed report on trustee expenses referred to by Director of Education Donna Quan (more than once) at a meeting of the board's audit committee on Monday, June 16...

[2] On July 22, the board's Freedom of Information Coordinator (the Coordinator) advised the appellant that she was extending the time limit for responding to the request to August 15. On August 15, the Coordinator sent another letter to the appellant advising that she was further extending the time limit for responding to the request to September 15. The Coordinator noted that while the search for responsive records was complete, affected parties were being given an opportunity to make representations regarding disclosure of the records.

[3] The appellant appealed the board's second time extension, and this office opened appeal MA14-380. This time extension issue was resolved when the board issued an access decision on September 11, 2014.

[4] The board's September 11 decision, signed by the Coordinator, stated:

...I have decided to release the Trustee Expense Report subject to the following:

1. Affected third parties were given notice of the request and an opportunity to make submissions. Subsequently, I have made the decision to release those records for which I received consent.
2. [T]his report is a draft document and it has not been finalized and is subject to addition and correction. Any additions to the document since the date of the request have been highlighted in yellow. For the sake of clarity there are no deletions or other amendments.
3. Limited severances have been made under s. 7 as they contain advice and recommendations and s. 14 [personal privacy] of the Act. Attach[ed] please find a copy of s. 7 and s. 14.

[5] On September 15, the appellant appealed the board's access decision, and this office opened appeal MA14-380-2.

[6] On October 16, 2014, an article appeared in the Toronto Star titled "Trustees lashed for report 'tampering'; School board's freedom of information officer alarmed by 'interference' releasing expense documents, emails reveal." The article outlined allegations of interference and tampering with audit documents that the appellant had requested under the *Act*.

[7] The article described emails between the Coordinator and the board's Director of Education (the Director) about the processing of this FOI request for access to the board's internal audit of trustee expenses. The article indicated that the Coordinator had sought outside legal help to ensure the board had discharged its duties responsibly. The Coordinator's emails were quoted in the article as follows:

I am seriously concerned about the integrity of the FOI process given the sudden confusion and misinformation being provided...and given evident trustee tampering...the version (of the audit) below is entirely inconsistent with the discussions we have had and deliberately obfuscates what information has been changed in the reports and undermines the credibility on the completeness of the information being provided to requestors.

.

[A]t the Tuesday meeting this week, you indicated that you had made changes to...(the expense audit) based upon discussions with someone whose name is also blacked out.

.

Yesterday at the meeting with the director, you indicated that there was yet another version of the trustee report containing changes, and there were many more changes to be made.

.

We cannot alter files that are the subject of an FOI. I have repeatedly said that. This constant flip-flopping detracts from the credibility of the integrity of the information being provided, and the independence of the FOI process...this process should not be interfered with...

.

Throughout this file, I have seen trustees and staff discuss the information to be provided, and provide opinions for matters for which they are not responsible. There has been clear interference in my ability to carry out the FOI request responsibly.

[8] On the face of it, the emails referred to in the article appeared to show improper interference in the freedom of information process under the *Act*, and possible alteration of records subject to a request. These allegations raised questions about the board's compliance with the *Act*, and were made by the board's own Coordinator.

[9] As a result of the issues raised by both the appellant and the Coordinator, as reported in the newspaper article, I moved this appeal directly to the inquiry stage. During the inquiry process, I and members of our staff conducted interviews with board staff and trustees, and gathered relevant documents pertaining to this matter.

RECORDS:

[10] The records at issue consist of trustee expense audit documents.

ISSUES:

A: Does the mandatory exemption at section 14, or the discretionary exemption at section 7, apply to the parts of the records withheld by the board?

B: Did board trustees or staff tamper with documents, or attempt to inappropriately influence or interfere with the processing of the appellant's request?

[11] I conclude below that:

A: It is not necessary for me to determine whether the records qualify for exemption under sections 7 and 14 of the *Act*, since these issues were resolved during the inquiry stage of the appeal process.

B: There is no evidence that board trustees or staff tampered with documents, or attempted to inappropriately influence or interfere with the processing of the appellant's request.

DISCUSSION:

Issue A: Do the records qualify for exemption under sections 7 and 14 of the *Act*?

[12] During the course of this inquiry, the board issued a revised decision and provided the appellant with the portions of the records that had been withheld under section 7.

[13] After reviewing the revised package of records, the appellant advised this office that she did not wish to pursue access to the remaining portions of the records which were being withheld pursuant to section 14 (invasion of privacy) of the *Act*.

[14] The appellant further advised this office that she continued to have concerns regarding the board's processing of her FOI request. In particular, she wanted this office to investigate the allegations of document tampering and interference with the freedom of information process by trustees and board staff, as outlined in issue B.

Issue B: Did board trustees or staff tamper with documents, or attempt to inappropriately influence or interfere with the processing of the appellant's request?

Conduct of the inquiry

[15] During our investigation, we interviewed several board staff, including: the Director; the Comptroller of Finance (the "Comptroller"); the Coordinator; the Audit and Risk Manager (the "auditor"); the Administrative Assistant to the Coordinator; and the Administrative Liaison for Board Services.

[16] We also interviewed several current and former board trustees as follows: Chris Bolton; Sheila Carey-Meagher; Gerri Gershon; Howard Goodman; Shelley Laskin; Elizabeth Moyer; and Mari Rutka. In addition, we notified all trustees who held that position at the time the request was made and invited them to provide us with any information that they believed might be helpful.

[17] In addition, we received and reviewed documents from board staff and trustees. These documents included email correspondence between the staff and trustees who were alleged to have attempted to influence or interfere with the FOI process. We also received internal board documents related to the audit and FOI processes, as well as individual staff recollections of the events that transpired from the time that the FOI request was made until after the media article was published in October.

Background to the trustee expense audit

[18] In 2013, the Ministry of Education (the ministry) appointed Ernst and Young LLP (EY) to conduct a forensic audit of the board's processes as they related to internal audits and financial reporting, among other matters. In addition to the forensic audit, EY was asked to include recommendations for future actions. In the resulting report dated December 2, 2013, EY identified potentially ineligible spending within the trustee expense accounts. One of EY's recommendations (section 9.2.2 Review of Trustee expense claims) was that the board should consider performing a review of trustee office and other expenses to assess compliance with policies.

[19] As a result of the recommendations put forward in the EY report, the board undertook an internal audit of trustee expenses and reviewed compliance with board policies for the period from September 2010 to January 2014. The audit was conducted between December 2013 and February 2014.

[20] In early March 2014, the Director provided each board trustee with a draft of the audit report findings specific to their individual expenses. Trustees were given an opportunity to correct and respond to the findings, by providing written explanations to the Comptroller by March 19.

[21] On March 26, the Comptroller informed trustees that the deadline for providing written responses to the findings and any additional information was being extended to April 4. Eleven trustees provided responses about their expense claims between March 5 and April 4.

[22] On April 11, the Director sent an email to trustees advising that they would each be receiving their own individual revised report electronically from the board's internal auditor later that day. The Director advised that this report incorporates the individual responses received from the trustees between March 5 and April 4. She also noted that, for those trustees who had indicated an intention to reimburse amounts claimed as expenses, they should forward cheques to the Comptroller by April 17. She noted that this would allow the final report to be updated with the responses and amounts reimbursed prior to the finalization of the review findings.

[23] Later that same day, trustees received an email from the auditor which included a copy of their own individual revised audit report.

[24] Shortly after receiving their individual revised audit reports (collectively referred to as the "April 11 report"), a number of trustees contacted the auditor with concerns that their earlier responses had not been incorporated into this report. According to documents provided by the board, between April 11 and April 28, nine trustees provided the auditor and/or the Comptroller with additional clarification and requests for corrections to their individual findings, as well as reimbursements. In communications with the auditor and the Comptroller, a number of trustees were advised that certain items may be removed and/or corrected if justified under the board's policies.

[25] On April 15, the Director held a meeting with the auditor to discuss a "change in direction" with respect to the format of the final audit report. As a result of this change in direction, the final audit report would no longer include 22 individual trustee expense reports with detailed transactional findings. Rather, based on instructions from the Director, the final report would only outline general weaknesses of the policies and procedures, and common areas of non-compliance, without naming any specific trustees or wards.

[26] During her interview with our office, the auditor indicated that once this change in direction was made, her focus shifted to finalizing the audit report by April 28. As a result, priority was no longer given to revising the 22 individual audit reports to include all trustee responses and corrections. Since these individual reports were no longer part of the final report, the auditor explained that the documents and subsequent trustee responses were retained on her network drive as "audit working papers" and were updated on an ongoing basis.

[27] The final audit report without trustees' names was presented at the April 28, 2014 Audit Committee meeting.

[28] During the June 16 Audit Committee meeting, which was attended by both the appellant and the Coordinator, the Director made reference to a more detailed report on trustee expenses which had not been presented at the April 28 meeting. As a result, the appellant submitted the FOI request resulting in this appeal for access to the "detailed report on trustee expenses."

Processing of the FOI request

Receipt of request and initial steps

[29] The appellant's FOI request was received by the Coordinator on June 18. During her interview with our staff, the Coordinator stated that when she received the appellant's request, she believed it to be straightforward, and not requiring clarification from the requester as to which particular records were being sought.

[30] On June 20, the Coordinator sent a memo to the Director advising her of the request and asking her to initiate a search for the responsive records, or to advise immediately if there was someone else she should contact. She asked for a response by July 4, in order to meet the legislated response date; however, no response was received from the Director. The Director did not initiate the search for responsive records, nor did she advise the Coordinator that she was not initiating the search.

[31] On July 22, the Coordinator sent a letter to the appellant advising that, under section 20 of the *Act*, she was extending the time limit for responding to the request to August 15, because additional time was required to complete the search for the responsive records. That same day, she also sent a memo to the Comptroller and an associate director advising them of the request, and asking them to initiate a search for responsive records, and to provide a response by August 5. The Comptroller responded the next day, advising that this request belongs to the Coordinator, since the auditor (who reported directly to the Coordinator) is the holder/author of the requested report.

[32] On July 28, the Coordinator's assistant sent an email and memo to the auditor advising her that they had received a request regarding "the detailed report of Trustee Expenses." The auditor was asked to initiate a search for responsive records and to provide a response by August 5. During her interview with our staff, the auditor stated that, upon receiving this email, she immediately requested a meeting with the Coordinator to clarify exactly which records were being requested.

July 29 meeting

[33] A meeting was held the next day, July 29, to discuss the access request, as well as another unrelated matter. It was attended by the auditor, the Coordinator and the Coordinator's assistant, as well as the board's legal counsel who participated by phone. The auditor stated that the meeting was extremely rushed because the Coordinator was leaving for vacation. The auditor said that she did not receive any instructions about what to do with this access request, and that she was not clear about which records were specifically being requested.

[34] The Coordinator's recollection of this meeting was somewhat different. She stated that, during this meeting, the auditor told her the audit report was complete, there were no further changes, and each trustee had received their own report. The Coordinator stated that at this time, there was no question as to which records were responsive – she believed that the April 11 report was the responsive record, and that the auditor was going to provide her office with a copy.

[35] The Coordinator's assistant also provided us with her recollection of the July 29 meeting, as well as her notes from this meeting. She indicated that the meeting lasted approximately 20 minutes, and although she could not recall many details, she understood that the auditor had the responsive document, and would be sending a copy to her and the Coordinator. She stated that she was also asked by the Coordinator to prepare third party notices in relation to this request. The assistant's notes from this meeting contain no specific reference to the April 11 report, or any discussion about clarifying the responsive record.

[36] By this time, more than 40 days had passed before the person familiar with the audit records (the auditor) was even notified of the request and asked to initiate a search for responsive records. Much of this delay was attributable to FOI staff vacations over the summer and the initial lack of response from the Director. However, the resulting lack of follow-up from the FOI Office to determine exactly what the responsive record was ultimately led to unnecessary confusion among the auditor, the FOI Office and the trustees.

[37] The auditor advised us that the Coordinator's concern referenced in the newspaper article about "sudden confusion" about the records,

...stems from severe weaknesses in Board services' FOI process. As mentioned in my email dated August 29, 2014 to her and to the Director, there was no document review meeting prior to her release of the letters to the Trustees, informing them about the FOI request. It appears Board services placed significant reliance on me, an internal auditor, with no training on FOI and no legal background, to interpret the FOI request, to self-learn the [Act], and to be able to give her assurance on July 29, 2014,

just one day after I was even notified of the FOI request, that the information I have is relevant to the FOI.

Third party notice to trustees

[38] On August 15, third party notices were sent out to all 22 trustees, advising as follows:

The [board] has received a request under the [Act] to provide records which relate to:

...I would like to request a copy of the detailed report on trustee expenses referred to by Director of Education Donna Quan (more than once) at a meeting of the board's audit committee on June 16...

The Board intends to determine whether or not to disclose the requested records, which may affect your interests. You have the right to make submissions to the Board as to whether disclosure is permitted in the circumstances.

Section 21(5) of the Act provides that you may, within twenty days after this notice has been given, make written representations to the head of the [board] as to why the records should not be disclosed...

...
Please contact [the Coordinator] if you have any questions.

[39] The Coordinator stated that her assistant did not enclose the responsive record with the third party notice (as is their usual practice) because the auditor had confirmed during their July 29 meeting that it had already been provided to the trustees. It is important to point out that the third party notices were sent out without the FOI Office having ever seen or received the responsive record, and that the notice did not indicate precisely which records were at issue.

[40] Also on August 15, the Coordinator sent a letter to the appellant advising that, in accordance with section 20 of the *Act*, she was extending the time limit for responding to the request to September 15. She advised as follows:

The search for responsive documents is now complete. However, the disclosure of the requested records may affect the interests of other parties. Those parties are being given an opportunity to make representations concerning disclosure of the records. After considering any third party representations, you will be advised of my decision whether or not to disclose the requested records or parts thereof.

[41] The Coordinator's statement that "the search for responsive documents is now complete" was not entirely accurate. Although the Coordinator believed that the April 11 report was the responsive record, it is clear that there had been many changes and corrections to this report after April 11, which led the auditor and the trustees to seek further clarification about which specific "version" of the report was being requested.

[42] As soon as the trustees received the board's notification letter, many of them contacted the auditor, the Comptroller, and the Coordinator with questions and concerns about the request. Many trustees wanted to ensure that the corrected version of their individual report was going to be provided to the appellant, and sought clarification about this. Since they were not provided with a copy of the record that would be released, many trustees understandably wanted clarification about exactly which version of the report was being considered for release.

Audit working papers

[43] As noted above, on April 15, the Director had instructed the auditor to change the format of the final audit report to include only general weaknesses to the policies and procedures, without naming individual trustees or including their detailed findings. The auditor explained that since the individual reports were no longer part of the final report, all of the subsequent trustee responses were retained on her network drive as "audit working papers" and were updated on an ongoing basis.

[44] The auditor confirmed that all of the changes made to those working papers were based on meeting discussions and fieldwork conducted from December 12, 2013 to April 28, 2014. The auditor indicated that she had repeatedly advised the Coordinator that there is only one final report, being the one presented at the April 28 Audit Committee meeting. She stated that all other versions are audit working papers, which go through numerous edits throughout the audit period and sometimes even after the audit report is released. The Comptroller also confirmed with this office that the changes to the audit report occurred before June 18.

[45] Some of the confusion regarding this request relates to the notion of "audit working papers" and a misunderstanding on the part of the auditor and the trustees as to whether these documents are subject to the *Act*. Most of the trustees we interviewed recalled being advised by someone during the audit process (they could not recall specifically who) that the auditor's working papers would not be releasable under the *Act*. One trustee indicated that this information was relayed to them during one of the trustee seminars which occurred in March 2014. The Comptroller also confirmed her belief that trustees were advised that the audit report was a "working document", and that this fact was also conveyed to trustees during phone conversations.

[46] The auditor's understanding of this issue is highlighted in the following email, which she sent to Trustee Gough on April 30 (and copied to the Coordinator):

As mentioned in our last phone conversation, we have and will continue with edits to our working papers to reflect information received from Trustees and management. How these documents will be sent to the Trustees is another issue and I need to confirm this with the Director.

I will be incorporating Trustees reimbursements into our working papers. We are also planning to quantify the amounts of potential repayments by Trustee and communicate that separately. As you can see all of these are still a work in progress and I assure you that you will receive the updates applicable to your ward shortly.

It is also my understanding, that auditor's working papers are not FOI-able. Our reports go through multiple edits before it becomes final. The working papers sometimes do contain errors (because they are preliminary findings that have not been fully vetted by myself or verified by the auditee). It would become very problematic if those documents can be accessed by the media. I will ask [the Coordinator] to confirm this. Nonetheless, we are making the changes and we will be in touch shortly.

[47] The Coordinator replied to the auditor's email that same day, saying:

A quick heads up between us...Just to save us future headaches, I would rather not provide written assurances regarding whether or not info can be FOIed (which anything may be requested); however, for us to release such information, it has to clear several hurdles including whether or not denial to release falls within specific legislative exclusions.

[48] This email illustrates why some of the trustees had questions about whether these "audit working papers" could be disclosed in response to an FOI request. As a result of this confusion, as well as general confusion regarding the responsive records, a meeting was held when the Coordinator returned from vacation in late August.

Meetings during the week of August 25, 2014

[49] By the week of August 25 it was clear that there was confusion surrounding the responsive records, which the FOI office had still not received from the auditor. Upon her return from vacation, the Coordinator stated that she learned from her staff that there may be different "versions" of the audit report.

[50] On August 26, several meetings were held with the Coordinator, the Coordinator's assistant, the Administrative Liaison for Board Services, and the auditor. On August 29, a meeting was also held with the Director, the Coordinator and the auditor, in which attempts were made to sort out the ongoing confusion regarding the

responsive record and the various versions that existed. During interviews with our staff, each of these individuals provided their recollection of these discussions.

[51] The Coordinator stated that during the week of August 25, she became aware that the report was a changing document and was trying to ascertain what the responsive record was. According to the Coordinator, the auditor advised her that she was making changes to the document, particularly in relation to Trustee Laskin's report. She stated that she then reminded the auditor that third party notices had been sent out based on the assumption that the document was complete. She said that the auditor advised her that there had been a lot of changes to the report, and that there was a third version of the report. She said that the auditor wanted to know what version she was planning to release, and at this point, the Coordinator asked the auditor to provide her with all existing versions of the report, as well as to identify which changes had been made.

[52] The auditor stated in her interview with us that she still did not know what version of the report was responsive to the request, and throughout these meetings, staff were trying to clarify which version of the report would be responsive. She noted that the April 11 report was not accurate or updated, and that there had been many changes to the report since it was sent out to trustees on April 11. The auditor stated that she suggested the Coordinator provide the appellant with both versions of the report (April 11 and the version with corrections), or at least provide the appellant with an explanation about the April 11 report if it was going to be sent out without revisions. The auditor stated that once the third party notices were provided to the trustees, a number of them contacted her to find out which version of the report was going to be sent out. The auditor said that she provided Trustee Laskin with a copy of her revised report, which included changes that had been suggested on April 17, well before the date of the FOI request.

[53] In our interview with the Director, she advised us that the auditor had expressed frustration with the lack of clarity surrounding this request, and that she didn't know what she was being asked for. The Director stated that she was aware the auditor was continuing to update her working papers after the April 11 report had been sent out, but noted that there would have to be a cut-off date at some point, although such a date was never finalized. She stated that, given the confusion in trying to interpret the request, she advised the auditor to give the Coordinator everything that she had in relation to the audit reports. When asked why she never responded to the Coordinator's request to initiate a search for responsive records, the Director said that she did not realize any action was required, as it was not the normal process for her to receive FOI requests or to conduct searches, and she therefore assumed that the Coordinator had followed up with the auditor. The Director also stated that she had asked the auditor whether she had experienced any pressure to change the records, and the auditor advised her that she had not.

[54] During our interviews with FOI staff, the same narrative emerged as outlined above. Generally, there was confusion between the Coordinator and the auditor about which version of the report was responsive to the request, questions about what had been changed and when, and questions about which version had been provided to the trustees. In the end, the auditor agreed to provide the FOI office with everything that she had.

[55] On August 28, the auditor sent the Coordinator an email containing the following attachments:

- Document #1 "All Trustee findings.zip" – April 11/14 (emailed to all Trustees);
- Document #2 "Draft Trustee expense report April 2014 with reimbursement info and Trustee responses" – April 11/14 to April 30/14 (not sent to all Trustees; it was only sent to Trustee Gough on May 1/14 and Trustee Laskin on August 19/14);
- Document #3 "List of Trustee Reimbursements April 2014" – April 28/14 (not sent to any Trustees); and
- Final Trustee expense report – April 28/14 (the auditor noted that this was released at the April 28/14 Audit Committee meeting.)

[56] The auditor noted in her email to the Coordinator that:

I was under the impression that Document #2 was to be released as per the FOI, not Document #1. Because the FOI states "a copy of the detailed report on Trustee expenses referred to by the Director at a meeting on June 16" I interpret this as the latest version of the detailed report on hand. If not, then I do not know which cut-off date the FOI would be referring to, the report was being updated throughout Dec 27, 2013 to April 11, 2014, and from April 11, 2014 to April 28, 2014.

I was also under the impression that I was able to share Document #2 with Trustees upon request. I thought I was instructed to do so during the July 29/14 meeting, but apparently I have misheard and I apologize for the misunderstanding.

I was told on August 20, 2014 that I am to forward all future FOI-related requests to Board services and I have complied. I have not been specifically instructed to deflect their requests prior to August 20/14.

Allegations of tampering and interference

[57] As noted earlier, on August 15, third party notices were sent to all 22 trustees advising them of their right to make submissions to the board as to their views on disclosure of the requested records. The trustees were advised that they may, within 20 days, make written representations as to why the records should not be disclosed, and that they may contact the Coordinator if they had any questions.

[58] Since they had not been provided with a copy of the record at issue, a number of trustees contacted the auditor, the Comptroller and/or the Coordinator to seek clarification about the records at issue and whether the appropriate corrections had been made to their individual report. These communications took different forms – some were by email, some by telephone, and a few trustees even attended the board's offices in person. Although some of these interactions between trustees and staff may have been unpleasant, the issue before me in this appeal is whether there is any evidence of document tampering or inappropriate influence or interference with the processing of the request. It should be noted that the Coordinator was away on vacation from August 13 to 25, and so was not available to take calls from trustees during that time period. However, upon seeing emails between trustees and staff, the Coordinator sent an email to her assistant and the auditor on August 20, advising them that if any trustees had questions about the FOI process, they should be instructed to contact her directly.

[59] During our interview with the Coordinator, we asked her specifically about her allegations of trustee tampering and interference with the process, and about whom she was making these allegations. She advised us that throughout the processing of this request, and particularly after the third party notice was provided, the "level of interference was extraordinary." According to the Coordinator, a number of trustees called and emailed to explain why they felt the document should either be changed or not released, and to question whether the auditor's working papers could or should be disclosed in response to an FOI request.

[60] The Coordinator stated that her particular allegations of tampering and interference with the processing of this FOI request were against the auditor and Trustee Laskin. She stated that Trustee Laskin was arguing against the release of documents under FOI, and that Trustee Laskin and the auditor were both trying to tell her how to do her job, and what to release or not release. She stated that Trustee Laskin had also contacted the Director to try to stop the FOI process. During our interview, the Coordinator provided her opinion that trustees do not understand the delineation between the operational process and the political process, and that they have a tendency to micro-manage situations. She said that she relied completely on the auditor that the final version was completed, and to provide her with the relevant record. She noted that it was two months after the date of the request before she received the record.

[61] During our interviews with the trustees, they were asked to provide us with their recollections regarding the audit process, the processing of this FOI request, their response to the third party notice, and whether they had knowledge of any document tampering or interference with the process.

Gerri Gershon

[62] Trustee Gershon stated that she has over 25 years of experience on the board, and that this was the first time she had ever received a notice inviting her to phone with questions or concerns in regard to an FOI request. Upon receipt of the notice, she said that she wanted to know what the responsive record was and told the Coordinator that there were two or three reports. She stated that the notice was not clear about which record was going to be given out. She advised the Coordinator that she did not understand the process and was very concerned about the request and the process; however, she felt that the Coordinator was avoiding her questions and would change the subject.

[63] Trustee Gershon stated that her understanding of the audit was that it was an internal audit, and "never really a final report, just drafts and preliminary findings." She stated her belief that it was not a finished document, just "working papers", so perhaps that was why her permission to disclose was needed. She stated that she had no knowledge of any trustee tampering or attempts to delay, although she said that she knew a lot of people had questions that might have delayed it. She noted that she has never received any FOI training and was always under the impression that it had nothing to do with the trustees.

Howard Goodman

[64] Trustee Goodman stated that the draft audit came out and comments were requested. He said that he went in and discussed his changes with the Comptroller; however, when the final report came out around April 12, it bore no relation to what he had said. He therefore sent an email on April 13 asking the Comptroller to change the report to reflect his remarks. He stated that these changes were not made and he was not sent another draft. He said that he was told he was not allowed to change the report and therefore asked for his comments to be redacted.

[65] Trustee Goodman said that the appellant called him after the report was released to ask him about the redactions, and he therefore sent her his response. He stated during the interview that he was not trying to hide anything, but that he did not want a document out there that was not accurate. He said that he understands why people would want corrections made, but that he did not go to any staff to direct them to take anything out. He stated that he was under the impression that "working papers" were not going to be made public and were only internal documents. He also stated that he did not know which version the third party notice was referring to, and he therefore

asked which version was being released. He stated that he had no knowledge of the *Act* and believes the Coordinator and board staff had a duty to educate and provide guidance to trustees about the FOI process.

Elizabeth Moyer

[66] Trustee Moyer stated that she has never had any FOI training and that her only previous experience with FOI requests was that she was just informed about them, but had never been asked for her opinion. She said that she did not respond to the third party notice because she thought it should have been the FOI office's decision. She stated that she received an email from the FOI office asking whether she consented, and that the Coordinator called her and told her she had a right to object. However, she stated again that she thought it was the Coordinator's job to determine what should go out. During her interview, Trustee Moyer stated that this process was "strange" and different from her previous experience. She said it was her understanding that "working papers" were not covered, and that when she received the notice she did not understand what the record was. She said she did not know which version it was and noted that she had previously been given the audit report, but was told it was a draft and was asked to comment. She stated that she provided comments in a spreadsheet "working document" but did not know the process. She thought it was a working paper, as it had "Draft" written on it, and she therefore did not think it was a final report. She stated that there were concerns among the trustees about what was being released, whether they were working papers, which version of the report was at issue, and whether it should go out if it was not finalized.

Mari Rutka

[67] Trustee Rutka noted that she had been a trustee for 11 years, and was also the chair of the board since June 2013. She stated that she had never received any FOI training and does not know what is required of the trustees, and has no knowledge of FOI or the process. She also stated that she has no knowledge of any previous FOI requests, except for one in 2012 regarding work orders. She stated that she received the notice, but did not really know what it meant. She stated that the Coordinator would not talk to anyone about it, and that trustees did not have any details, but it was seen as inappropriate to ask questions. She noted that the draft document had errors or items that may have required clarification. She stated that she remembers clearly from an audit committee meeting the question as to whether the draft documents were FOI-able, and that she clearly remembers the answer was "no", although she could not recall who said it.

[68] Trustee Rutka said that the Director spoke to her before the requested documents were released under the *Act*, as she was concerned about the election and asked her what she thought. She said that the Director told her they were considering releasing the documents, but in fairness to the trustees, they should also release the

explanations. She said there were many concerns from trustees regarding the FOI process, and that they felt they should at least be told when an FOI record is going to be released. She said that Trustee Laskin cited some exemptions that might apply, but that trustees had no advice and, in her view, this was handled badly. She stated that she has no knowledge of any tampering, that people were only trying to seek or present information, and that there was general confusion about what to do. She said that after the report was released, she met with Trustee Laskin and the Director to discuss the fact that trustees need FOI training and orientation, and that they need to understand their obligations and what is accessible under the *Act*.

Chris Bolton

[69] Trustee Bolton stated that he left the country on June 13 and therefore did not know anything that happened while he was away. With respect to the audit, he recalled that each trustee received a report prior to the March break, and he was surprised to find discrepancies. He said that the date kept being extended for people to pass on comments about expenses. He said that he met with the Comptroller on April 1 to go through what he disagreed with, and followed up with an email to stipulate the changes that should be made. He said that after that, senior staff identified the need for significant changes to the process and rules. He stated that he only saw one detailed version of the expenses and that for the majority of trustees it was not an issue but required clarification.

[70] Trustee Bolton said the staff took an inordinate amount of time to deal with the audit expenses. He stated that the audit report was a changing document, but had not been changed before he left. He stated that when he received the notice of the FOI request, he did not have a problem with it but did not see the records to be released. He stated that he assumed it was all of his expenses, but that he definitely expected that his changes would be incorporated into what was released under FOI.

[71] Trustee Bolton stated that he never tried to influence the process and that he was not aware of anyone else trying to influence the outcome. He said that trustees were unhappy with the process and disappointed with the auditor and Comptroller that they did not seem to see any difference in the report.

[72] Trustee Bolton indicated that trustees were spoken to about FOI legislation, and that he always warned trustees that what they put in emails could be requested. He recalled having discussions at the in-service training, but stated that there was no formal FOI training. He stated that people walked away with binders and knew there were FOI staff who they could go to.

Sheila Cary-Meagher

[73] Trustee Cary-Meagher indicated that she has been a trustee for 28 years and had never received FOI training. However, she said that she has always pushed to have trustees' expenses published, and that she believes it is common sense to keep expenses public. She said that she received a copy of the audit in March but it was incomprehensible to her and she did not understand it. She stated that she had an appointment with the Comptroller to go through it and was told not to worry about anything. She does not remember making any changes to her report. During her interview, she stated that she did not recall receiving the third party notice, but would not have had any concerns about releasing it and so would not have responded.

Shelley Laskin

[74] The Coordinator made specific allegations of tampering and interference against Trustee Laskin, and I will therefore now focus on this aspect of our inquiry. As noted earlier, upon receiving the April 11 report from the auditor, Trustee Laskin provided the auditor with her response around April 17, which contained the reimbursements and corrections that she wanted to be incorporated into the final report. At that time, she requested a copy of her own revised report; however, it appears that she did not ever receive a revised copy of her own report. During her interview with our staff, Trustee Laskin stated that once she received the third party notice in relation to this FOI request, she sought clarification about which specific report was being considered for release.

[75] On August 19, Trustee Laskin sent an email to the auditor and the Comptroller requesting a copy of the report, saying:

I understand there has been an FOI request and I want to ensure I know what is being released.

[76] The auditor then sent her the revised version of the report, which eliminated six expense findings (referred to as "notable transactions") as compared to the April 11 report. Upon receipt of the report from the auditor, Trustee Laskin left a message for the Coordinator seeking to make representations regarding disclosure of the records. Trustee Laskin also sent another email on August 19 to the auditor and the Comptroller, indicating:

You told us in Audit Committee these were working documents and would not be released?

[77] The auditor responded by email that same day, indicating:

This was my understanding. [The Coordinator] will be returning from vacation on August 26th and we can discuss the rules surrounding FOI requests upon her return. I believe you may have the right to appeal the release of this information.

[78] From August 19 through September 4, a number of emails and telephone calls were exchanged between Trustee Laskin and the Coordinator, in which Trustee Laskin was requesting clarification about the specific report that was being requested, and whether or not these types of records should be disclosed.

[79] On September 4, Trustee Laskin sent an email to the Coordinator, stating:

...after our conversation I am still confused on what will be released...the file I got from [the auditor] was marked "Draft audit working papers" and as far as I know, as such are not subject to FOI. Please confirm if this is what you are planning to release or is it another version.

[80] The Coordinator responded by email, indicating:

[The auditor] confirmed [she] had sent to you on April 11, your trustee expenses which also included your responses. Please advise whether you consent to its release.

[81] Trustee Laskin sent a further response, as follows:

...according to the email trail, the version in the attached has been updated from April 11. The latest version with my comments is clearly marked...DRAFT REPORT – TRUSTEE EXPENSE AUDIT 2010-2014 – AUDITOR WORKING PAPERS – APRIL 2014. Trustees were given an opportunity to comment and update the April 11 Report. I ask again... what is being submitted? If the individual trustee audits were working documents "within the organization" to help revise policy, are they not exempt?

[82] The Coordinator then responded as follows:

The draft nature of the documents are noted; we comply with all FOI requests as per the legislation. Staff and the staff notes confirm that an email dated April 11 was sent to you containing trustee expenses and your responses. Please do not involve other staff in FOI discussions as this is not their area of responsibility nor their expertise...

[83] Upon receipt of that email, Trustee Laskin asked the Coordinator to confirm which version of the report she intended to send out: "I know you are the FOI Head.

In your responsibility are you exempting these 'DRAFT WORKING DOCUMENTS' or not?" She then followed up with another email attaching a copy of a report which contained 15 notable transactions, asking the Coordinator, "Is it this version that you are planning to release? Please confirm ASAP."

[84] In response, the Coordinator's assistant sent Trustee Laskin an email attaching a copy of a report which contained 21 notable transactions, and confirmed: "The attached is the version that will be released once you provide consent."

[85] Following this, numerous emails were exchanged between Trustee Laskin and the Coordinator's assistant. In these emails, Trustee Laskin expressed that all trustees were provided with an opportunity to respond to the report they are considering releasing, and that it is not the latest version. The assistant responded that it was the latest version that trustees had in their possession which was in existence at the time when the FOI request was made.

[86] Finally, also on September 4, Trustee Laskin sent the following email to the Coordinator, in which she states:

... I really object to the way this has been handled and would appreciate the opportunity to discuss...[the April 11th] version does not include the fact that I repaid telephone costs...as a result it misleads the public...very, very disappointed but **I will not object to the release of [the April 11th] version.** [my emphasis]

September 11, 2014 decision

[87] On September 11, the Coordinator issued her access decision to the appellant. As noted earlier, the Coordinator indicated in item 2 of the decision that:

...this report is a draft document and it has not been finalized and is subject to addition and correction. Any additions to the document since the date of the request have been highlighted in yellow. For the sake of clarity there are no deletions or other amendments.

[88] It is important to note that, although Trustee Laskin did not object to the April 11 version of her expenses being provided to the appellant, the Coordinator ultimately sent the appellant a redacted version which, understandably, upset Trustee Laskin. When contacted by the appellant to discuss why there were redactions made to her expenses, Trustee Laskin explained to the appellant that she had not requested any redactions to her expense report. In turn, Trustee Laskin provided the appellant with her version of the complete (unredacted) version of her expense report.

[89] Trustee Laskin followed up with an email to the Director and the Coordinator, indicating that she had clearly consented to the release of the document, and requesting a meeting with them to discuss this further. The Coordinator indicated that she could not meet with her, as it would be inappropriate to discuss the matter further. Trustee Laskin therefore requested a meeting with the Director and Trustee Rutka (the chair of the board) on September 17 to discuss this particular request and the FOI process in general.

[90] During her interview with our staff, Trustee Laskin stated that she was upset that her document was redacted even though she had clearly consented to its release. She stated that trustees were not given any FOI training during this term and she believes that they need to understand the process better. She stated that she did not ask the Director to "stop the FOI process" as alleged by the Coordinator, and pointed out that her meeting with the Director took place well after the board's final decision was issued in regard to this matter. She stated that the purpose of her meeting with the Director and the chair was to discuss the trustees' understanding of working papers being exempt from FOI, to emphasize the need for trustees to receive FOI training, and to express her frustration and find out why her information was redacted when she had clearly consented.

[91] During her interview, Trustee Laskin stated that upon receipt of the third party notice, she asked many questions of clarification and was trying to confirm what was going to be released. She noted that she had received two different versions of the report, one from the auditor and one from the Coordinator's assistant. She indicated that she therefore sought clarification about which version was going to be released, but at no time did she tamper with the documents or interfere with the process. She stated that she was told during an audit committee meeting that working papers were not FOI-able, and that she was confused about what she was consenting to, as she always thought there were various versions of working papers. She stated that she was under the impression that she could continuously update and provide reimbursements.

[92] During our interview, Trustee Laskin admitted that she "did battle and question exemptions", but that she never interfered with the process. Rather, she pointed out that she was responding to the third party notice, which had requested her comments by September 4.

Comptroller of Finance

[93] During her interview with our staff, the Comptroller stated that she was not aware of any trustees attempting to stop or delay the FOI request. She stated that throughout the audit process, the deadlines for changes were not firm and that trustees had never felt there was a finalization of the findings. She noted that many trustees had made appointments to see her about their own findings and were continuing to make changes after April 11. She said the final reimbursement was made on June 18,

and that she felt that was acceptable. However, she confirmed that none of these changes were requested by trustees after the date of the FOI request. She stated that the auditor had followed the normal audit process and that any changes to the audit reports and working papers were part of the normal course of events in an audit process. She stated that she had received calls and visits from trustees asking what the responsive document was, and that many were upset that their changes had not been incorporated and provided to the Coordinator.

The auditor

[94] During her interview with our staff, the auditor stated that at no time during the processing of this request did she ever receive pressure from any trustees to change or tamper with the audit documents. Further, she stated that trustees do not have access to the audit documents and it would therefore not be possible for a trustee to tamper with the board's copy of the audit document. She stated that she did receive calls from trustees seeking clarification about which version of the report was going to be released, and that she and the trustees were concerned about the Coordinator releasing the April 11 version without incorporating the corrections that had previously been requested by the trustees.

[95] During her interview, she provided an overview of the audit process, and explained that every change to the audit report was saved under a different name and date. She stated that after the final audit report was released on April 28, she then had a chance to start updating and revising her working papers. She noted that the Coordinator's statement that "there are at least three versions" is true, and indicated that whenever she made a change to an existing document, she saved the revised document under a different file name. She said that the Coordinator was provided with the different versions and the dates when each revised document was created or edited, and that the Coordinator was fully aware of the changes in each of the documents that were revised since the April 11 draft report date. The auditor stressed that all of the changes made to the working papers were based upon meeting discussions and fieldwork conducted from December 12, 2013 to April 28, 2014.

[96] The auditor stated that on August 19 she received a call from Trustee Laskin asking her what was going to be released. In response, she sent Trustee Laskin a copy of her revised report, which incorporated the changes that had been agreed upon on April 17 and noted that all of the removed findings were already discussed and agreed upon over three months prior to her knowledge of the FOI request. She said that she subsequently advised the Coordinator's assistant that she had sent this revised report to Trustee Laskin. She stated that during their meeting of August 29, she warned the Coordinator that the April 11 report was not accurate and suggested sending the requester a copy of both versions. She stated that the Coordinator declined to do so, responding that it would be redundant. During our interview with the Coordinator, she said that she did not recall saying this to the auditor.

[97] In any event, the auditor said that she ultimately sent all versions of the audit reports to the Coordinator and that she referred any other calls from trustees to the FOI office. She indicated during her interview that she has never received any FOI training, although she had requested it. She maintained that she did not tamper with any documents, and did not attempt to influence or interfere with the process. She stated her belief that these allegations stemmed from a failure in the FOI process to ensure that the request was properly responded to and noted in her submissions that,

In another FOI request I was part of...Board services, Communications, Budget departments and I all met to discuss and interpret the FOI request received before the document was pulled, revised and released. I do not understand why this Trustee expense FOI request, which carries high political risk, appears to be taken more lightly than the other FOI request that I was involved in.

.
The FOI request was dated June 18, 2014. However, I was not informed about this request until July 28, 2014, a couple of days before [the Coordinator] went on her 2-week out-of-country vacation. From June 18, 2014 to August 26, 2014, she has not once asked to discuss the FOI contents with me, or obtain a copy of the "detailed trustee expense report" documents. When she returned from her vacation on August 26, 2014, I had told her about the changes made in August 2014 and have provided her with all twenty-two original reports, Trustee Laskin's original April 2014 report and the revised August 2014 report.

It is unclear why their office waited over a month before informing me about this request and then decided to criticize and blame me for delaying and manipulating their process. Had the request been shared with me sooner, we would be able to analyze the request in more detail and have a proper document review process before the letter was sent to Trustees.

[98] With respect to the Coordinator's statement that "the version of the audit below is entirely inconsistent with the discussions we have had and deliberately obfuscates what information has been changed in the reports and undermines the credibility on the completeness of the information being provided to the requestors", the auditor responded as follows:

I have provided her with all versions of the reports, and we have even printed them out and compared them side-by-side on her desk in the presence of her staff...With regards to the completeness of information, both the Director and I have suggested to her that both the old April 11, 2014 report and the revised reports be provided to the requestor to ensure completeness of information. Based on her response at an August 29 meeting, she called the sending of both original and revised documents

"redundant", and indicated to me that she is not concerned about completeness of the report and will not be including those trustee responses sent after April 11, 2014 even though they were provided to her and form part of the report...By September 2, 2014, all documents relating to the FOI were given to her with the explanation of dates revised and what each contains, and it is the FOI office's responsibility to determine what to release and what to censor. No one can "tamper" with that.

...

Talking to Trustees and dealing with them on Trustee expense report responses are all part of my daily responsibilities and [the Coordinator] has never informed me that I should not be talking to Trustees during the FOI process until August 20, 2014.

I fully understand that I cannot control what the FOI office releases and I have never tried to interfere with [the Coordinator's] ability to carry out this request. However, I believe I have the right to warn the Board services department about inaccuracies contained in the first version of the report and the associated risks, and that is just what I have done...I did express my concerns to her about accuracy and completeness of information if only the April 11, 2014 version of the report was provided without proper accompanying trustee responses or reader-beware warnings. It is my duty of care to ensure that any audit report under my name that will be publicly released is accurate and complete. I have spent 5 full months working on the Trustee expense report and the final report went through a vigorous vetting process before it was released. I expressed my concern to her that release of incomplete and inaccurate information now, will compromise all of the efforts that our internal audit team has put in.

Analysis and Findings

[99] In seeking access to information under the *Act*, both the requester and the government institution have important responsibilities. The requester has a responsibility, under section 17(1) of the *Act*, to provide sufficient detail to allow the institution's employees to identify records that are responsive to the request. However, in recognition of the inherent difficulties that a requester may have in sufficiently describing records that the requester has likely never seen, section 17(2) of the *Act* directs government institutions to assist the requester in formulating or revising requests where the request is unclear or in need of clarification. In my view, the problems in this appeal arise from the board's failure to identify the need to clarify the appellant's request.

[100] In Order MO-3013, Adjudicator Frank DeVries stated:

Determining the scope of the appeal is vital in ensuring that the records at issue are responsive to a request. Previous orders of the Commissioner have established that to be responsive, a record must be "reasonably related" to the request. In Order P-880, former Adjudicator Anita Fineberg stated:

[T]he need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to a request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request.

[101] In Order PO-3255, Adjudicator Daphne Loukidelis stated:

The importance of ensuring a request's clarity early on in the process, so that an institution might meet its obligations under the *Act*, has been discussed in many orders of this office. Adjudicator Frank DeVries recently summarized it in Order MO-2863, as follows:

...Clarity concerning the scope of a request and what the responsive records are is a fundamental first step in responding to a request and, subsequently, determining the issues in an appeal. Furthermore, adopting a liberal interpretation of the request ensures that records which might be responsive to the request are not omitted from the search. In addition, if an institution chooses to adopt a limited interpretation of a request, it ought to indicate to a requester the limits of its search.

[102] I agree with Adjudicators Loukidelis and DeVries. In the circumstances of this appeal, the board failed to properly identify the nature and scope of the request, and confirm it with the appellant, particularly when it became apparent to the Coordinator that staff and trustees were confused about which records might be responsive. The board had an obligation to indicate to the appellant the limits of its identification of responsive records earlier on in the processing of the request, or at least as soon as the auditor and trustees had expressed concerns about responsiveness.

[103] Having considered all of the information before me, I find that there is no evidence of tampering with trustee expense audit documents or any attempts to

inappropriately influence or interfere with the processing of the appellant's FOI request by board trustees or staff.

[104] The chronology of events set out above shows that there was a great deal of confusion and misunderstanding among the Coordinator, the trustees and the auditor as to what record was responsive to this request. Throughout the audit process there were, in fact, many different versions of audit reports that were prepared at various stages of the audit process. It is clear that, in the mind of the auditor and the trustees, the April 11 report that was sent out to trustees was not a final report, and they were given an opportunity to submit additional changes to the April 11 report, which many of them did. When the auditor received the FOI request, it is understandable that she would be concerned about the accuracy of the information being provided to a requester.

[105] While the request may have appeared straightforward when it was first received by the Coordinator, and therefore not in need of clarification, as time went on, it became obvious that this was no longer the case. By the time the Coordinator returned from vacation in late August, it was quite plain that there was confusion regarding the responsive records, and that there were different versions in existence. At this point, the Coordinator should have contacted the appellant to discuss this with her, and to ascertain exactly which version or versions of the report she wanted to obtain. It certainly should have been clear to the Coordinator, after receiving an electronic copy of *all* versions of the reports from the auditor on August 28, that clarification with the appellant was warranted.

[106] If the appellant had been provided with at least a summary of the background to the audit process, and the different versions and types of records (including auditor's working papers) that were in existence, she would have been able to decide for herself which version or versions she was most interested in receiving. The Coordinator's position that this request did not ever require clarification, which she maintained even during her interview with our staff, is untenable.

[107] The Coordinator's allegations against trustees and board staff are unfounded. The Coordinator sent trustees a notice letter about the request seeking their views regarding disclosure of the records at issue. She then accused some of the trustees of interfering with the process when those trustees sought to provide their views. Any changes that were made by trustees to their individual reports were all submitted by the trustees *well before* the FOI request was ever received by the board. The FOI office should have communicated more clearly to the auditor what the request was for, and if it was in fact for the April 11 report, then the auditor should have been provided with direction that no revisions should be included as part of the responsive records. Ultimately, the FOI office did receive all versions of the auditor's reports on August 28 and, therefore, the FOI office had the final say in regard to identifying the relevant record for this request.

[108] Trustees were notified about the request and asked for their representations regarding disclosure. This notice did not clarify what record was being requested, as trustees were not provided with a copy of the responsive record that was to be released to the appellant. Many trustees had identified problems or concerns with the April 11 report, and had previously sought changes to address these issues. The trustees wanted to understand which of their own reports was going to be sent to the appellant – the original or corrected version. In my view, seeking such clarification in no way supports allegations that trustees attempted to tamper with documents, subvert the process, or mislead the appellant in any way.

[109] Similarly, the auditor wanted to ensure that the appellant was provided with an explanation regarding the April 11 report – that it was not a final report and that there had been ongoing changes and corrections requested to the individual trustee audits. Any revisions that were made subsequent to the date of the FOI request were those that had been previously sought by the trustees well before they were made aware of this FOI request.

[110] In the circumstances of this inquiry, it is clear that there were a number of problems that contributed to the poor handling of this request. As described above, there was a great deal of confusion regarding the responsive records. The FOI office should have clarified the request with the auditor and the appellant prior to sending out the third party notices to the trustees. The third party notices should not have been sent out to the trustees without confirming which specific records were responsive to the request.

[111] It is also clear that the required follow-ups did not happen during the initial stages of processing this request, largely due to staff vacations throughout the summer. In fact, two separate time extensions were claimed by the Coordinator during the processing of this request, one of which was appealed to this office. Although the time extension issue was resolved when the board issued its access decision on September 11, it is important to briefly address the issue of staff vacations in the context of this inquiry.

[112] In Order PO-2168, Adjudicator Maria Tzimas considered three time extension decisions that were claimed by the Ontario Human Rights Commission (OHRC) due to staff vacations. Adjudicator Tzimas found that the OHRC's time extensions were not in accordance with the provincial equivalent of section 20(1) of the *Act*. She also referred to Order 28, in which former Commissioner Sidney Linden suggested courses of action that an institution might consider when compliance with the time limits set out in the *Act* places inordinate strain on resources. One of these suggestions is to "allocate its resources in such a way that it can import, on an emergency basis, additional staff to assist those routinely working on Freedom of Information requests in situations in which there is a sudden influx of requests." Adjudicator Tzimas stated:

...[T]he views expressed above regarding the planning of adequate staff and resources are applicable in the circumstances of this appeal given that the reason for the time extension is due to staff vacations.

[113] I agree with Adjudicator Tzimas. In the circumstances of this appeal, staff vacations contributed to a lack of follow up and overall delays which surrounded the processing of this FOI request. I therefore will recommend that the board consider allocating its resources in such a way that additional staff be available to assist with the processing of FOI requests when those who routinely work on them are away on vacation for extended periods of time.

[114] Compounding this confusion further was the fact that the auditor and the trustees were under the mistaken impression that working papers are not subject to FOI legislation. Throughout my review of the documentation, and during our interviews with trustees and staff, it became clear that a lack of FOI training and knowledge of the *Act* was another key factor giving rise to the issues in this inquiry.

[115] During our interviews, I requested that the Coordinator provide this office with a copy of the board's FOI training materials. The only document that I subsequently received in relation to training is a nine-page presentation entitled *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* dated September 16, 2014. The other documents describing the FOI process at the board consist of *FIPPA Operational Procedures* and an *FOI Process Flowchart*. According to the flowchart, between days 1 and 15 after receiving a request, it is to be sent to the Executive staff lead on file and board staff are to provide records. Between days 15 and 29, board services is to receive the responsive records so they can be reviewed by the Coordinator and her assistant. It is also indicated that within this timeframe, a meeting should be arranged with staff to review the responsive records, and that they should receive staff sign off on records that have been provided confirming the nature of the information provided. In this matter, the board's office of the Coordinator did not follow its own process, since the records were not received or reviewed with the auditor during the prescribed time frame.

[116] During their interviews with this office, trustees and staff indicated that they had never received any FOI training, but indicated a desire to learn about the *Act*. Having completed my review of this matter, I believe that a main cause of the problems in processing this request is inadequate knowledge of the *Act* and the FOI process on the part of board staff and trustees. As this office has frequently said, access to government information and transparency of government action are at the core of our democratic values. Our democratic institutions must function, and must be seen to be functioning, consistently with the principles of openness and transparency set out in the *Act*. I will therefore recommend that the board undertake to provide FOI training to relevant board staff and trustees to ensure that they have a sufficient understanding of the board's obligations under the *Act*.

SUMMARY OF FINDINGS AND RECOMMENDATIONS:

1. I find that there is no evidence of document tampering or any attempt by board trustees or staff to inappropriately influence or interfere with the processing of the appellant's access request under the *Act*.
2. I recommend that the board review its practices and procedures for responding to FOI requests, with a view to preventing problems of this nature arising in the future, including:
 - (a) To ensure that staff resources are allocated in such a way to adequately respond to FOI requests; and
 - (b) To ensure that notices to affected parties include a reasonably accurate and informative description of the records that are being considered for release.
3. I recommend that the board provide comprehensive access and privacy training to board staff who are regularly involved in responding to FOI requests, to ensure that they are fully apprised of the board's legal obligations and best practices under the *Municipal Freedom of Information and Protection of Privacy Act*.
4. I recommend that the board provide all trustees with a training session on access and privacy. This training session should also be a mandatory component of the "in service" orientation for new trustees.
5. The board should report back to this office on its responses to my recommendations in paragraphs 2-4 above by **December 31, 2015**.

POST SCRIPT

The issues and concerns raised by this appeal result from a request by a member of the media seeking to learn more about trustee expenditures of public funds. I note that the board's website indicates that in September 2014, the board passed a motion to post trustee expenses. Currently, the website contains trustee expense information for the 2013-2014 year, in the form of summary reports. The board's website indicates that, moving forward, trustee expenses, including those of the office of the chair and the vice-chair, will be posted on a quarterly basis within 30 days of the end of each quarter to ensure greater transparency and accountability. While I commend the board for implementing these changes, as of the date of this order, the trustee expense documentation currently available on the website is out of date, with the latest information dating from November 2014. Further, the information that is posted is fairly general, containing aggregate figures relating to trustee expenses, without

detailed breakdowns for the dollar amounts. I encourage the board to review its trustee expense disclosure practices to ensure that they provide the public with detailed and up-to-date expense information.

Original Signed By: _____
David Goodis
Assistant Commissioner

_____ August 17, 2015