

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3486

Appeal MA16-144

Thames Valley District School Board

August 24, 2017

Summary: The Thames Valley District School Board (the board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)* for records relating to an incident involving the requester and a board employee, which occurred at a school. During its searches, the board located responsive records, including a report of the incident created as a result of the appellant's request.

This order finds that the appellant has not provided a reasonable basis for the adjudicator to conclude that additional responsive records exist and dismisses the appeal.

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

OVERVIEW:

[1] The Thames Valley District School Board (the board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)* for records relating to an incident involving the requester and a board employee, which occurred at a school.

[2] The board issued a decision stating that “. . . there are no notes, emails, reports or other correspondence pertaining to this incident.”

[3] The requester, now appellant, appealed the board's decision.

[4] During mediation, the board confirmed that following the issuance of its decision, at the appellant's request, it created a report relating to the incident in question. The board then disclosed this incident report in full to the appellant.

[5] The appellant stated that he believed more records should exist and provided his reasons to the mediator. The mediator relayed the appellant's search issues to the board. The board then conducted another search for responsive records.

[6] The board subsequently issued another decision disclosing in full an additional record. The board stated that "... there were no written reports or documentation of any kind of the incident ..."

[7] The appellant stated that he still believed that more records should exist and confirmed that he wished to proceed to adjudication.

[8] As mediation did not resolve the issues in this appeal, the file was transferred to the adjudication stage where an adjudicator conducts an inquiry. Representations were sought and exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[9] In this order, I uphold the board's search for responsive records and dismiss the appeal.

DISCUSSION:

Did the board conduct a reasonable search for records?

[10] The board was asked to provide a written summary of all steps taken in response to the request. In particular, it was asked:

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 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.

[11] The board states that when the appellant delivered his request, he made it very clear that he was seeking a report of a specific incident that occurred at a named school involving him and a phone call he made to a board employee. The board issued a decision letter to the appellant stating that a report of the incident was not created at that time and that no responsive records exist.

[12] The board states that subsequent to the decision letter, the appellant made numerous calls to the board office over a three-month period insisting that there should have been a report of the incident at the school. In response to his persistence, a report of the incident was created by the superintendent for the school on September 1, 2016.

[13] The September 1, 2016 report was emailed to the appellant by the board. The board states that this report did not exist at the time of the request and was created to satisfy the appellant.

[14] Concerning the initial search, the board states that the principal, vice-principal, and the superintendent for the school were all contacted to complete a search for any notes or reports created in relation to the incident. It states that if any records existed, they would have been held and/or at least have been accessible by one or more of these three individuals.

[15] The board states that during the mediation stage of this appeal, it agreed to expand the scope of the original request to include all records related to the incident, including the letter of trespass sent to the appellant and all records maintained by the health and safety specialist related to the incident. Specifically, it then undertook a new search, which entailed the following:

- A complete search of past emails, journals, files, and work notes for any and all documentation at [the school] regarding [the appellant]. The search was completed by [the principal, the vice-principal and the school secretary] ...
- A complete search of past emails, electronic files, and paper files for any and all documentation held by [the superintendent] in his office regarding [the appellant]. The search was completed by [the superintendent].

- A complete search of past emails, electronic files, and paper files for any and all documentation held by [the health and safety specialist] that may have been created as a result of the incident at [the school on date]. The search was completed by [the health and safety specialist].

[16] As a result of the new expanded search, the board states that an additional record was located, namely, a copy of an email sent from the school to the superintendent regarding the letter of trespass and the attached letter of trespass served on the appellant. It states that it mailed this record to the appellant. The board maintains that no other records exist that are responsive to the appellant's original or expanded request.

[17] The appellant did not provide representations as to his belief concerning the existence of additional records not yet located by the board. The appellant asked that I review the correspondence he previously sent to this office.

[18] All of the appellant's previous correspondence, as well as his correspondence during the adjudication stage of the appeal process, focuses on the substance of the incidents in the records, which is not the subject of this appeal, as this appeal only deals with the search issue.

Analysis/Findings

[19] 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 17.¹ 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.

[20] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.² To be responsive, a record must be "reasonably related" to the request.³

[21] 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.⁴

[22] 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

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

of the responsive records within its custody or control.⁵

[23] I find that the board provided sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.

[24] 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.⁶

[25] The appellant has not identified any responsive records in the board's custody or control that he does not already have copies of.

[26] Based on my review of the board's representations and all of the correspondence of the appellant on file, I find that the appellant has not provided a reasonable basis for me to conclude that additional responsive records exist within the board's record holdings.

[27] Accordingly, I uphold the board's search for responsive records as reasonable.

ORDER:

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

Original Signed by: _____
Diane Smith
Adjudicator

_____ August 24, 2017

⁵ Order MO-2185.

⁶ Order MO-2246.