

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER MO-3688-F

Appeal MA16-644

Ottawa-Carleton District School Board

November 19, 2018

Summary: The board received a six-part request relating to bullying or racism at a specified school, pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*). In Interim Order MO-3648-I, the adjudicator addressed the issues relating to parts 4 and 6 of the six-part request. In that order, the board was ordered to conduct a search for any printed emails that predate July 2014. In this final order, the adjudicator finds that the board's further search is reasonable.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 24.

BACKGROUND:

[1] A media requester submitted a six-part request to the Ottawa-Carleton District School Board (the board), pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester specified that each part be treated as a separate request.

[2] Interim Order MO-3648-I dealt with parts 4 and 6 of the request, which was for the following records:

The last available drafts or copies of any memorandums, briefing notes or reports prepared, received or reviewed by [named employee #1] or [named employee #2] that were generated between May 24, 2016 and the date that the Ottawa-Carleton District School Board begins processing

this request that relate to, that mention, or that discuss the issue of bullying or racism within one of the school board's schools or that relate to, that mention, or that discuss the issue of bullying or racism by the school board.

Last available draft or copies of any memorandums, briefing notes, reports or personal notes prepared, received or reviewed by [named employee #1], [named employee #2] or [named employee #3] that were generated between Sept. 1, 2012 and the date that the Ottawa-Carleton District School Board begins processing this request that relate to, that mention, or that discuss former [named school] student [named student].

[3] In addition, the requester requested a fee waiver stating: "Please also waive any search or additional administrative fees required to retrieve these records as they may relate to public safety issues and are matters that are in the public interest to be disclosed..." He also provided a consent form signed by the mother of a former student.

[4] The board issued a decision for part 4, stating the following:

Records responding to this request have been collected as part of the search results for your other requests. (MFOI# 16-0012, #16-0013, #16-0014, #16-0016 and #16-0017.) As such, this request will be deemed as having no records responsive to the request.

[5] Following a 30-day time extension, the board issued a fee estimate for part 6 in the amount of \$527.10 and requested a deposit of \$263.55 to complete the request. The board estimated that the degree of disclosure for this request is approximately 5%. It also identified a number of exemptions that it will likely apply to deny access to some of the responsive records.

[6] The requester, now the appellant, appealed the board's decisions to this office.

[7] In Interim Order MO-3648-I, I ordered the board to search for any printed emails that predate July 2014.

[8] In compliance with the interim order, the board conducted a further search and submitted an affidavit, detailing its further search efforts.

[9] I invited and received the appellant's representations in response to the board's affidavit.

[10] In this final order, I find that the board's further search is reasonable, and dismiss the appeal.

DISCUSSION:

[11] In Interim Order MO-3648-I, I ordered the board to conduct a further search for

any printed emails that predate July 2014.

[12] Accordingly, my review of the board's further search is restricted to this aspect. Following the issuance of Interim Order MO-3648-I, the board conducted a further search for records and provided an affidavit detailing its search efforts to this office.

[13] The affidavit submitted by the board was prepared by its Information and Privacy Coordinator (the Coordinator). The Coordinator advised that she instructed eight board employees to search their records for emails predating July 2014. She also advised that the search resulted in additional records being located but they were outside of the time period specified in the appellant's request. As such, the Coordinator advised that she found these additional records were not responsive to the request. She further advised that a separate decision letter to this effect would be issued to the appellant.

[14] The appellant provided representations, in which he raised three issues, not specifically related to the issue of the board's further search. The first issue relates to when the board received his access request while the second issue is a request for more details about what steps the board took to retrieve the emails before the back-up tapes for the old email system were destroyed.

[15] As stated in my interim order, the board processed the appellant's request on Monday, August 8, 2016, which was the first day after the board's two-week shutdown was over. The appellant sent his request on Monday, July 25, 2016, which was the first day of the board's annual two-week shutdown. In my view, it is irrelevant to the issue of the board's search when the board received the appellant's request.

[16] With respect to the second issue, I decline to make any further comments about it except to state that the appellant did not raise this issue during the inquiry of this appeal. The only issue remaining in this appeal is the reasonableness of the board's search for emails predating July 2014.

[17] Finally, the appellant's remaining issue relates to the additional records located. He asks for more details about whether any of these records would have fallen within the scope of his other requests. In my view, these additional records do not fall within the scope of his other requests. Part 6 of his request deals with the time period from September 1, 2012 to August 8, 2016. Parts 2 to 5 deal with the time period from May 24, 2016 to August 8, 2016 while part 1 deals with the time period from July 10, 2016 to August 8, 2016. As such, if the additional records do not fall within the time period of part 6 (which is the request with the broadest time scope), they would not fall within the time period of the remaining five parts of his six-part request.

Analysis and findings

[18] 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 24.¹ 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.

[19] 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

[20] 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

[21] 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.⁵

[22] 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

[23] In Order MO-3648-I, I found that the board did not conduct a search for printed emails for the period predating July 2014. In its reply representations, the board had indicated that: "[It] has the ability to search for email records from that period which were printed and filed." Accordingly, I ordered the board to search for these emails.

[24] After having carefully reviewed the board's affidavit, I am satisfied that the board's further search was reasonable. The appellant maintains his position that a reasonable search was not conducted. However, he has not provided a reasonable basis for concluding that such records exist. Based on the board's affidavit, I find that the board conducted the search for the emails and located additional records. I further accept the board's explanation that the records are outside the scope of the appellant's request. Accordingly, I find the board's search is reasonable.

ORDER:

I find that the board's further search for any printed emails predating July 2014 was reasonable, and dismiss this appeal.

Original Signed by: _____

November 19, 2018 _____

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.

⁵ Order MO-2185.

⁶ Order MO-2246.

Lan An
Adjudicator