

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3757

Appeal MA18-55-2

Hamilton-Wentworth Catholic District School Board

April 26, 2019

Summary: The Hamilton-Wentworth Catholic District School Board (the board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for records relating to the appellant's daughter. The board granted the appellant partial access to the records it identified as responsive. The appellant appealed the board's decision on the sole issue of whether it conducted a reasonable search for responsive records. In this order, the adjudicator upholds the board's search 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 10(1).

OVERVIEW:

[1] The Hamilton-Wentworth Catholic District School Board (the board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

I am requesting a copy of my daughter, [named individual]'s, entire file. These records should include but not be limited to all of the following: emails, correspondence, documentation and notes, any other records or information that personally identify my daughter starting from Junior Kindergarten to Grade 10. This would include daughter's OSR, any emails, correspondence, documentation and notes with any staff member of the Hamilton Wentworth Catholic District School Board that personally identifies my daughter.

Furthermore, any emails, correspondence, documentation and notes with any staff member of the Hamilton Wentworth Catholic District School Board and myself that personally identifies my [child].

[2] Subsequently, the requester narrowed her request to records pertaining three specific school years.

[3] The board issued a decision granting the requester partial access to the records it identified as responsive. In its decision, the board stated that any notes or emails that contained the names of other students had been redacted. The requester, now the appellant, appealed the board's decision.

[4] During the course of mediation, the appellant confirmed she was not pursuing access to any of the withheld information in the responsive records. She advised the mediator that she believed additional responsive records should exist and provided a letter outlining the records she believed were missing. With the appellant's permission, the mediator forwarded the letter to the board.

[5] After it received the letter, the board conducted another search, located additional responsive records, and issued a supplementary decision granting the appellant partial access to the additional records it identified. The appellant advised the mediator that she believed additional responsive records should still exist and she sent the mediator a second letter setting out what records she believed were still missing.

[6] The mediator forwarded the appellant's second letter to the board. The board told the mediator that the employee responsible for the access decisions confirmed that all of the responsive records had been located and disclosed to the appellant.

[7] The appellant advised the mediator that she continued to believe that additional records existed. As further mediation was not possible, the appeal proceeded to adjudication where an adjudicator may conduct an inquiry under the *Act*. The sole issue under appeal is whether the board conducted a reasonable search for responsive records.

[8] At the start of this inquiry, I sent the board a Notice of Inquiry outlining the facts and issues in this appeal and sought its representations. The board provided representations, which were shared in full with the appellant. The appellant was then provided with a copy of the Notice of Inquiry and was invited to make representations in response the issues set out in that notice and the board's representations.

[9] The appellant did not provide representations in support of her appeal. Instead, she provided copies of the two letters that she sent to the mediator, which were shared with the board during mediation.

[10] In this order, I uphold the board's search for records as reasonable and dismiss the appeal.

DISCUSSION:

[11] Where a requester claims 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 of the *Act*.¹ If I am satisfied 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.

[12] 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 it has made a reasonable effort to identify and locate responsive records.² 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.³

[13] 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 such records exist.⁴

The board's representations

[14] The board provided an affidavit from its Freedom of Information and Privacy Coordinator. In her affidavit, the coordinator states that she is responsible for reviewing and responding to access to information requests that the board receives. She says that in this case, the board's Superintendent of Education helped her locate and gather records that were responsive to the appellant's request.

[15] The coordinator says that after receiving the appellant's request, she wrote to the appellant to ensure that she understood the scope of the request. In response, she says the appellant advised her that she was revising her request to deal only with three specific school years. The coordinator states that she compiled the records by reviewing the student's "OSR and other Board files." She says that the superintendent conferred with staff at various schools to ensure that all of the requested information was provided and that he also requested information from a senior administrator at a different school that the student attended during the relevant period.

[16] The coordinator says that during mediation the board received a copy of a letter from the appellant to the mediator identifying the additional information she believed existed. A copy of the letter was provided as an exhibit to the coordinator's affidavit and

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Orders M-909, PO-2469 and PO-2592.

⁴ Order MO-2246.

I note that it is one of the letters provided by the appellant in lieu of representations for this inquiry.

[17] The coordinator says that after receiving the letter, she and the superintendent followed up with the individuals the appellant identified and obtained additional records. The coordinator states that the board sent the appellant the additional records, along with a letter responding to the issues she raised in her letter to the mediator. A copy of the board's response was also attached as an exhibit to the coordinator's affidavit.

[18] Following that exchange, the coordinator states that she and the superintendent followed up on a subsequent request from the appellant for the hand-written notes of a particular staff member. The coordinator says that the staff member told the superintendent that she did not provide the notes before because she believed the content was captured by a summary that had already been sent to the appellant. The board attached a copy of a cover letter to the appellant indicating that the staff member's notes were enclosed as an exhibit to the coordinator's affidavit.

[19] Subsequently, the coordinator says that the board received an additional list from the appellant setting out further information she believed was still missing. The coordinator states that she and the superintendent reviewed all of the board's files with respect to the student and spoke with the relevant individuals the appellant identified in this list. She attests that they did not find any further records and confirms her belief that no further responsive records exist.

[20] As noted earlier, the appellant did not make representations in support of her appeal. Instead, she provided copies of the two letters she sent to the mediator during mediation. Letter 1 is the same letter exhibited in the coordinator's affidavit along with the board's response. The second letter provided by the appellant (Letter 2) does not appear in the board's affidavit. However, based on the evidence before me, it appears to be the other communication referred to by the coordinator in her affidavit. Both Letter 1 and Letter 2 predate the coordinator's affidavit.

Findings and analysis

[21] For the reasons that follow below, I accept that the searches conducted by the board for records responsive to the appellant's request were reasonable and I uphold them.

[22] I have reviewed the letters the appellant provided and I am satisfied that the board has taken adequate steps in response to those communications. I also find that some of the issues raised by the appellant are not relevant to the issues set out in the Notice of Inquiry that was sent to her at the start of this inquiry.

[23] Specifically, I note that in Letter 2 she raises a number of concerns with the board's response to her first letter. In my view, the majority of issues the appellant raises do not relate to whether the board's search was reasonable, but rather focus on

establishing that the board did not properly investigate or document her complaints.

[24] For example, she says that that board “failed to document in detail” numerous complaints about a particular incident that she reported and she questions why no notes were taken regarding her complaints. The appellant also asserts that “it is evident that [the board’s] practice is oral and in a record free way to not document incidents where they can effectively avoid disclosure and scrutiny.”

[25] The majority of the appellant’s arguments focus on the absence of records. For example, in Letter 2, she asserts that the notes submitted from two specific staff members are “unacceptable as there should be more detail regarding the investigations/incidents.” She says that what has been provided is “one-sided” and that there is a conflict of interest because two of the staff members are related. The appellant is clear that she is unsatisfied with both the quality and quantity of records created in relation to the incidents she references. However, she provides no further context or explanation that would allow me to understand why she believes further responsive records exist.

[26] To the extent that the appellant is seeking an assessment of the board’s record keeping practices or a determination about the manner in which it responds to complaints, these matters are beyond my jurisdiction.⁵ The issue to be determined in this inquiry is whether the board conducted an adequate search for responsive records, not whether it should have created more records at the time of the incidents that the appellant refers to.

[27] To that end, I will outline the relevant arguments the appellant makes about why she believes additional records exist and explain why I do not find them persuasive.

[28] In Letter 2, the appellant says that she attended a meeting on a specific date during which the superintendent typed on a laptop the entire time. She says that the notes she received in relation to this meeting appear to be an incomplete summary. She explains that she also took notes during the meeting and says that the notes provided by the superintendent do not coincide with her own.

[29] The appellant did not provide copies of the notes she refers to, nor did she explain how the superintendent’s notes differed from her own. Furthermore, she has not explained why she believes that the alleged differences in the notes is evidence that further responsive records exist. In the absence of any further explanation or evidence, I am not persuaded that potential differences in notes taken by individuals attending the same meeting means that there are additional notes which have not been provided.

⁵ Order PO-3529 at para. 52.

[30] The appellant also asserts that following the meeting noted above, her child was interviewed and she was not provided with the questions and answers from that interview. However, the appellant has not explained the basis for her belief that there are recorded questions or answers from that interview. In contrast, the board has provided a sworn affidavit from the coordinator attesting that she and the superintendent reviewed all of the board's files, that they did not locate any further responsive records, and that she believes the records the appellant is seeking do not exist.

[31] The appellant was provided a copy of the coordinator's affidavit and was asked by this office to provide representations in response. She did not do so. As a result, it is not clear to me why the appellant continues to believe that there are additional records from the meeting or the interview that have not been provided.

[32] As the Notice of Inquiry sent to the appellant during this inquiry set out, a requester must provide a reasonable basis for concluding that additional records might exist even if they are not be able to precisely indicate which records the institution has not identified.

[33] The appellant has not provided me with any substantive explanation to support her position. In my view, the board has already addressed the concerns she raised in the two letters she provided in lieu of representations for this appeal. The appellant has not provided any evidence to contradict the information in the coordinator's affidavit, nor has she suggested that there is any reason to believe that coordinator was mistaken in the beliefs she attested to.

[34] As I noted earlier, it appears the appellant's primary concern is that additional records should have been created by the board at the time of the incidents she refers to. However, that is not the matter at issue in this inquiry.

[35] The issue in this inquiry is whether the board conducted a reasonable search for responsive records. Based on the evidence provided by the board, I am satisfied that the coordinator who conducted the search had the appropriate experience and training. I accept that she contacted the appropriate staff and followed up as required when the appellant provided additional information in order to locate any further responsive records. Finally, I accept her evidence that she has thoroughly canvassed the appropriate parties and that no additional responsive records exist.

Accordingly, I find that the board has provided me with sufficient evidence to demonstrate that its searches for records responsive the appellant's request were reasonable and in compliance with its obligations under the *Act*. Therefore, I uphold the board's search and dismiss this appeal.

ORDER:

I uphold the board's search as reasonable and dismiss the appeal.

Original signed by _____
Meganne Cameron
Adjudicator

_____ April 26, 2019