

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3836-F

Appeal MA17-363

Toronto Catholic District School Board

September 23, 2019

**Summary:** In Interim Order MO-3746-I, the adjudicator ordered the board to conduct a further search for records relating to a complaint the appellants made to their son's school about bullying. In this final order, the adjudicator finds that the board's further search for responsive records is reasonable, and she dismisses the appeal.

**Statutes Considered:** *Municipal Freedom of Information Protection of Privacy Act*, R.S.O. 1990 c.F.31, as amended, s. 17.

### OVERVIEW:

[1] The appellants, two parents, submitted a request to the Toronto Catholic District School Board (the board or TCDSB) under the *Municipal Freedom of Information and Protection Act* (the *Act* or *MFIPPA*) for records relating to their son and their allegation that he was bullied by another student.

[2] In Interim Order MO-3746-I, I ordered the board to disclose the portions of the records containing the appellants' son's statement to the vice-principal and principal to which I found that the absurd result principle applied. I also ordered the board to conduct a further search for responsive records and to provide me with an affidavit outlining its further search efforts.

[3] The board subsequently conducted a further search for responsive records and located three additional records. The board also provided me with an affidavit outlining its search efforts.

[4] The board's affidavit was sent to the appellants who submitted representations in response and these were shared with the board for their reply. The board submitted reply representations.

[5] In this order, I find that the board's further search remedied the deficiencies with its previous searches outlined in Interim Order MO-3746-I, and I dismiss this appeal.

## **DISCUSSION:**

### **Did the board conduct a reasonable search in accordance with Interim Order MO-3746-I?**

[6] The appellants' original request sought access to:

All materials pertaining to the reported incidents between [their son and another student], including but not limited to:

- Incident reports made by TCDSB personnel
- Investigation notes, including but not limited to:
  - [The vice-principal's] 8 pages of handwritten notes that were made during her conversations with [their son and other student] on [approximate date]
  - [The principal's] notes based on conversation with [their son and other student] on [approximate date]
  - [The superintendent's] review of [the principal's] investigation
- Meeting notes by TCDSB personnel (made before, during or after the meetings) pertaining to in person meetings with [the appellants], specifically the meetings
  - Between [the principal and the father] on February 22, 2017; and
  - Among [the superintendent, the principal and the appellants] on March 29, 2017
- Assessments of any kind pertaining either to the incidents or the TCDSB investigations

- Internal correspondence among TCDSB personnel, primarily [the Education Director, superintendent and principal], between [specified dates] on which [either parent] is not a recipient.
- Any other materials that would be relevant to the incidents.

[7] In Interim Order MO-3746-I, I ordered the city to conduct a further search for electronic or physical records, including communications it exchanged internally or with third parties in which the appellants were not a party.

[8] The sole issue to be determined is whether the city's further search for responsive records in response to Interim Order MO-3746-I is reasonable.

***Representations of the parties***

[9] The board submits that its further search was reasonable. In support of this position, the board's Senior Manager of Archives, Records Management and Freedom of Information (the senior manager) submitted an affidavit describing the board's further search efforts. The senior manager advised that he directed that:

- the superintendent, trustee, former principal and former vice-principal, conduct a search of their electronic and paper record holdings for responsive records based on specified keywords or any other terms these individuals determined would assist their search;
- these individuals search for responsive records for the specified period of time identified in the request; and
- these individuals not confine their search to internal correspondence but to expand their search to correspondence exchanged with third parties, such as other parents or external parties.

[10] The senior manager advised that he personally searched the record holdings of the former director of education as this individual had retired from the board. He also advised that the electronic files and emails were searched within each record holder's own computer network account and that the paper files were searched based on their filing practices.

[11] Finally, the senior manager states:

All record holders contacted to perform a further search are aware of their obligations under the Education Act, and of TCDSB's records management policies with regard to the retention of files relevant to principals' investigations, as well as their legal obligations with regard to retention of TCDSB business records in general. I am satisfied that records of this nature have not been destroyed. With regard to email correspondence records containing the Appellants' personal information specifically, I

cannot confirm with certainty that all records relating to the forgoing search have been retained, as more than one year has passed since the date of the original date range of the search. It is possible that transitory emails and/or email records that each individual record holder determined to be no longer relevant to TCDSB business were disposed of as a matter of general file maintenance.

[12] The appellants believe that additional records apart from the three emails located as a result of the board's further search should exist. Most of the arguments advanced by the appellants in response to the board's affidavit had already been submitted and considered in Interim Order MO-3746-I.

[13] The common thread in the appellants' submissions is that additional records should exist given the involvement of various individuals, witnesses and third parties in the principal's investigation of their allegations of bullying. The appellants submit that they would have expected to see more correspondence, notes or emails generated in response to their complaint and inquiries. The appellants submit that they would have expected to see the exchange of emails or correspondence to follow up with concerns they raised with various members of the board. Similarly, the appellants stated that they would have expected to see the exchange of emails to capture communications addressing how board staff strategized to co-ordinate a response to their ongoing inquiries and formal complaints. The appellants also question the manner in which the board's email records are stored and archived and question whether records stored in cloud storage are searchable.

[14] The appellants submit that "[i]t is difficult to believe" that the board does not have a separate file for matters arising from their complaints, given that their son experienced over ten incidents and that the board's corporate counsel eventually became involved.

[15] Though the appellants acknowledge that the content of the records disclosed to them suggest that board employees discussed some matters verbally as opposed to creating a paper chain by exchanging emails, they take the position that additional records should exist which have not been located. The appellants make two main arguments in support of this position, which they did not present during my initial inquiry. First, they argue that the board's search failed to capture communications that were sent by cell phones, tablets or mobile devices, which "have the capability to bypass the [b]oard's computer network accounts when they communicate." Second, they raise concerns with the board's position that some records that would have been responsive may no longer exist. The appellants take the position that their complaints to the principal triggered a dispute resolution process which, in their opinion, should have extended the life, or retention period, of these records.

[16] Finally, the appellants provided a list of names, search terms and domain names they would like the board to include in a further search. The appellants also now ask for emails exchanged between themselves and three named individuals. In addition, the

appellants requested that the board, when disclosing further emails to them, provide at least one message below the top of the chain to provide them greater context of the subject matter of the email.

[17] As noted above, the board had an opportunity to review the appellants' representations and provide a response. In its reply representations, the board submits that:

- all email correspondence exchanged on Microsoft Office's Outlook is fully searchable by its users, and is stored on the board's network, which is the default or the user's local drive;
- it is not standard or recommended practice for board business to be conducted outside of the board's network and IT infrastructure, such as text messages or other communication platforms; and
- in some cases, communication between board employees about the subject matter of the request was legitimately conducted verbally.

[18] The board also stated in its reply representations that:

MFIPPA requires records containing personal information, including email correspondence, to be held by institutions for a minimum period of 1 year. TCDSB staff that hold records pursuant to this request are aware of this obligation, as well as their obligation to retain records relating to an ongoing appeal, regardless of the length of time of the appeal. The intent behind the affidavit submission regarding file retention is to express that the Board cannot submit with absolute certainty that transitory records were not destroyed during the period in question. The Board expresses confidence that records of business significance were retained, as can be evidenced by [the] breadth of records located pursuant to the request over time.

[19] Finally, the board submits that the list created by the appellants identifying staff, search terms and domain names, along with a request for emails exchanged between themselves and three named individuals, expands the scope of the request.

### *Decision and Analysis*

[20] Though the board's further search only located three records not previously identified, I am satisfied that the board's further search was reasonable and remedied the deficiencies outlined in Interim Order MO-3746-I.

[21] I ordered the further search in Interim Order MO-3746-I because I found that the board failed to provide a written summary of the steps taken in response to the superintendent's request to the principal to conduct a search for responsive records. As

a result of the lack of detail provided by the board during the inquiry, I was unable to determine who conducted the searches ordered or whether electronic searches of the principal's, vice-principal's, superintendent's, director's and trustee's record holdings were conducted. However, I am satisfied that the affidavit and reply representations submitted by the board in response to Interim Order MO-3746-I identify the names and positions of the individuals who conducted the further searches. In addition, I have been provided with information about the type of files searched, the nature and location of the searches, and the steps taken in conducting the searches. Accordingly, I am satisfied that the searches were completed by experienced individuals knowledgeable in the subject matter of the request and that the board provided sufficient evidence establishing that it made a reasonable effort to identify and locate responsive records.

[22] I also find that the board's explanation regarding the possible destruction of transitory records is reasonable. The appellants take the position that more records consisting of correspondence, notes or emails should exist given the involvement of various individuals in the complaints they filed with the board. The appellants also question the manner in which the board's email records are stored and archived and question whether staff discussed the subject matter of the request on communication platforms not supported by the board's IT infrastructure. I have reviewed the appellants' submissions and find that there is insufficient evidence establishing a reasonable basis to conclude that additional records should exist.

[23] It is clear that the appellants are disappointed with the manner in which the board handled their complaints, including the manner in which it documented their concerns and inquiries. As parents, the appellants are entitled to argue that the board could have better managed their concerns. However, the issue before me is whether the board conducted a reasonable search for responsive records for the purpose of section 17 of the *Act*, not whether the board should have created better documentation to support the decisions they made concerning the appellants' complaints. The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the board must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records, and I am satisfied that the board's further search has met this standard.

[24] Finally, the board submits, and I accept, that the scope of the appellants' original request was confined to correspondence in which they were "not a recipient." The board also submits, and I agree, that asking the board to include in its search individuals who appear to have had no substantial role in the subject matter of the request during its previously specified time period, represents an expansion of the scope of the request. To be considered responsive to the request, records must "reasonably relate" to the request.<sup>1</sup> In my view, the additional items identified in the

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<sup>1</sup> Orders P-880 and PO-2661.

appellant's submissions expand the scope of their original request. As the appellants' request for this information falls outside the scope of their original request, I cannot address it in this order. However, the appellants may file a new request under the *Act* for records not captured by their original request.

[25] For the reasons set out above, I find that the board's further search for responsive records was reasonable.

**ORDER:**

I uphold the reasonableness of the board's further search following Interim Order MO-3746-I and dismiss this appeal.

Original signed by

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Jennifer James  
Adjudicator

September 23, 2019