Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4097

Appeal MA19-00440

Upper Grand District School Board

August 20, 2021

Summary: This order deals with an access request made by a parent (now the appellant) under the *Act* to the board. The appellant sought copies of certain letters allegedly sent from the appellant to a teacher and which were referenced by the board superintendent in a meeting. The board denied the request on the basis of a variety of exemptions and an exclusion.

The appellant appealed to the IPC and during mediation, the board issued a decision granting the appellant full access to several records, although it did not identify the letters referenced by the superintendent.

In this order, the adjudicator finds that the scope of the request is limited to specific letters allegedly sent by the appellant, which she denies sending. The adjudicator also finds, on the basis of the board's evidence in the inquiry, that the specific letters referenced by the superintendent do not exist. She accordingly upholds the board's search as reasonable, finding that further searches for records that do not exist would not yield the records.

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

OVERVIEW:

[1] This order deals with an access request made by a parent (now the appellant) under the *Municipal Freedom of Information and Protection of Privacy Act*[1] (the *Act*) to the Upper Grand District School Board (the board).

[2] Some brief context taken from the request and the parties' representations is necessary to understand the issues in this appeal.

[3] The appellant's child was a student in a specified teacher's class for the 2017-2018 school year. At a meeting that occurred in April 2018, the appellant was told by the board's superintendent that the teacher had become overwhelmed by letters sent by the appellant and that the teacher had involved her union about this issue. The school's principal was also in attendance.

[4] The appellant asked for examples of the letters that prompted the teacher to contact her union. Neither the superintendent nor the principal provided examples.

[5] In May 2019, the appellant made the following access request that is the subject to this appeal to the board:

> During [a] meeting on April 12, 2018 [the superintendent] stated that [the teacher] had to involve the Union because she became overwhelmed by the communication received from me.
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> I requested to provide examples of such communication – [the superintendent] has denied.
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> Then [the principal] elaborated that this would be letters saying "attached to this, and this, refer to this note, see email from this time."
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> I stated that I do not recall such letters from that period of time (we only had the daily communication log introduced by the Board in February 2018 which had a section for comments and questions). [The principal] also refused to show me any specific examples.
>
> Therefore, I request a copy of such letters [the principal] was referring to (that triggered [the teacher] to involve the Union and refuse all written communication with the parent).
>
> I'm concerned that those were not my letters and that I was not given a chance to see any examples to justify my actions.

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[1] R.S.O. 1990, c. M.56.

[6] The board issued a decision denying access to responsive records pursuant to a number of exceptions and the labour relations exclusion at section 52(3) of the *Act*.

[7] The appellant appealed the board's decision to the Office of the Information and Privacy Commissioner (the IPC).

[8] During mediation, the board issued a revised decision granting the appellant full access to more than 100 pages of records, including copies of her child's work, emails and communication journals. The board stated that it searched and produced records of communications from the appellant to the board but that it could not "pinpoint" which of these communications caused the teacher to involve the union, as described in the request.

[9] Also during the mediation, the appellant reviewed the records and she provided reasons why additional records ought to exist and clarified the scope of her request. Mainly, the disclosed records shed no light on the letters that she allegedly sent that caused the teacher to contact the union. The mediator conveyed this to the board and the board provided a response – that it was not a single communication but the volume of communications. This was conveyed to the appellant.

[10] The exchange of information at the mediation stage did not address the appellant's concerns and the appeal and was transferred to the adjudication stage. I decided to conduct a written inquiry about two issues: the scope of the request and whether the search was reasonable. I invited and received representations from the parties, which were shared with each other in accordance with the IPC's *Code of Procedure* and *Practice Direction 7.*

[11] During the inquiry, the board located additional records and issued a supplementary access decision in which it disclosed the additional records in full. The appellant maintains her position that the search was not reasonable.

[12] In this order, I find that the scope of the request is limited to the letters referred to by the superintendent, those letters did not exist and I therefore uphold the board's search as reasonable.

ISSUES:

A. What is the scope of the request? What records are responsive to the request?

B. Did the institution conduct a reasonable search for records?

DISCUSSION:

Issue A: What is the scope of the request? What records are responsive to the request?

[13] There is a dispute in this appeal about the scope of the request. Section 17 of the *Act* requires requesters to provide sufficient detail in their request and it requires institutions to provide assistance to reformulate requests when they are not sufficiently clear. Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. To be considered responsive to the request, records must "reasonably relate" to the request.[2]

The request and overview of the party's positions

[14] The complete request is quoted above. The core of the request is for copies of letters from the appellant to the teacher that the superintendent referred to during an April 2018 meeting that the superintendent said "triggered" the teacher to contact her union. In the appellant's words:

> Therefore, I request a copy of such letters [the principal] was referring to (that triggered [the teacher] to involve the Union and refuse all written communication with the parent).

[15] As is explained in the request itself, the appellant seeks access to these letters because she was told by the superintendent that she would no longer be permitted to write to the teacher because of the teacher's contact with the union, *apparently prompted* by her letters (which she did not recall writing). The restriction on written communications came as a surprise to the appellant. As indicated in the request, the appellant would like these letters so she can verify if they were from her and, if necessary, justify her actions.

[16] Although the board disclosed several records, it has not pinpointed which particular letter or communication caused the teacher to contact her union. This is because the board says that it was the volume of communications and not a particular communication that caused the teacher to contact her union. The board therefore disclosed *all* records of communication involving the appellant and teacher during the relevant school year.

[17] While this may appear straightforward, it has become complicated because the appellant formed the view that the teacher contacted her union in and around the April 2018 meeting. In this inquiry, the board has explained that the teacher contacted her union in November 2017. This new information has increased the appellant's skepticism

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[2] Orders P-880 and PO-2661.

in the board's response and it is why these details are examined carefully below.

Representations

[18] The representations from both parties in this appeal include information about the circumstances of the appellant's child and the historical relationship between the appellant and the school. Many of these details are not relevant to the issues under appeal and I have not summarized them in this order. What is relevant is that over the course of the 2017-2018 school year, there were different arrangements and protocols put in place to manage the frequency of communication between the teacher and the appellant. At some point, the principal also became involved in communications. I have intentionally described these arrangements and protocols in general terms because the parties disagree about how to characterize them, how they were agreed (or imposed) and why, none of which I need to decide for this order.

The board's representations

[19] The board's representations included affidavit evidence from the teacher, the principal and the board's FOI coordinator.[3]

[20] The teacher attests that she contacted her union in November 2017 – several months prior to the April 2018 meeting cited in the request – as a result of "the additional work that was required in meeting the [appellant's] expectations for communication." The teacher states that the communications from the appellant were "not belligerent or harsh but they were incessant, and invariably requested follow-up…."

[21] The teacher also attests that in preparing her affidavit she located additional records, which were disclosed in full to the appellant in a supplementary decision made by the board.

[22] The FOI coordinator explains how she understood and responded to the request. Regarding how she understood the scope, the FOI coordinator states that she learned about the different protocols and arrangements that had been made during the school year to manage the communications between the school and the appellant, and that the principal had become involved.

[23] The FOI coordinator also explains that she learned from the teacher that she had contacted her union in November 2017. The coordinator also learned that the reason for the contact was the volume of requests, not a particular letter. The FOI coordinator says that if she read the request literally, records post-dating November 2017 would not be responsive because they occurred after contact with the union. However, the FOI coordinator decided to disclose all communications involving the appellant and the teacher from September 1, 2017 to the April 2018 meeting. The FOI coordinator states

[3] The full title is FOI Coordinator and Executive Assistant to the Director of Education.

that she believed that by taking this approach she was providing the appellant with a "much broader range of records than she had requested," including records that post-dated the teacher's contact with the union.

[24] The FOI coordinator explains further that she did not include records of communications between the appellant and other teachers or those that occurred after the April 12, 2018 meeting in the responsive records.

[25] The principal also provided evidence about the scope of the request. With one exception, she corroborates the appellant's recollection of what was said by the superintendent at the April 2018 meeting (as referenced in the request). The principal states that the superintendent said that the contact with the union was in November 2017, information the principal was provided by the teacher.

[26] In summary, the board says that it understood the request to be those communications that prompted the teacher to contact the union, but that based on the evidence that there was not a particular communication but the volume of them, it treated all records of communication involving the teacher to be responsive. Put simply, as I understand the board's overall representations, it is not able to identify the particular communication(s) that "triggered" the teacher to contact the union because there are no particular communications that triggered the teacher to contact the union.

The appellant's representations

[27] The appellant questions the accuracy of the new information that the teacher contacted her union in November 2017. She submits that she has good reason to believe that the contact occurred closer in time to the April 2018 meeting based on what the superintendent told her and other statements that were made to her in other settings.

[28] She is also skeptical of the new information because of what she views as a significant inconsistency. She explains that it was not until April 12, 2018 that she was prohibited from communicating in writing with the teacher and that she was told that the reason for the restriction was because of the teacher's contact with the union. However, she says that from November to March, she was permitted to continue to communicate with the teacher in writing to some degree. She states,

> [Based on what was said at the April 2018 meeting], I made the conclusion that the event of the contact with the union resulted in stopping written communication. At the same time the teacher's affidavit […] states that in November 2017, the school implemented a written communication protocol. It is reasonable to assume that [the superintendent] was not referencing November 2017 contact with the union because it produced an opposite result (prohibiting written communication vs. implementing written communication). It is reasonable to assume that the same event (contacting the union in November 2017) cannot produce two opposite results – 1) insisting that all communication

> with the teacher is done in writing (November 2017); 2) insisting that all communications with the teacher is done on the phone and the teacher would not even write a single sentence to the parent (April 2018).

[29] As I understand it, the appellant argues that if the teacher's contact with the union was the reason why she was no longer able to communicate in writing with the teacher, this restriction would have been implemented in the immediate aftermath of the teacher's contact with the union – November 2017 – than when it actually occurred in April 2018. She suspects that there may have been another contact that was closer to the April meeting date.

[30] Moreover, the appellant continues to seek copies of the specific letters that prompted the teacher to contact the union and she remains unpersuaded by the board's explanation.

[31] The appellant also submits that the board should have consulted the superintendent to clarify the comments at the April meeting (among other events) to assist with locating "copies of letters that [the appellant] allegedly wrote around April 12 2018 period."

The board's reply

[32] In reply, the board states that "on April 12, 2018 [the superintendent] attended a meeting at which the appellant was also present, and at which the appellant was informed that her contact towards her son's teacher […] led the teacher to contact her union." The board refers then to the teacher's evidence about the date that she contacted the union.

[33] The board also says that when she conducted the original search, the FOI coordinator "verbally asked" the superintendent if she had any responsive records and the superintended responded "that she had been informed by telephone that [the teacher] had contacted her union, but had no records relating to this information."

Discussion

[34] The appellant's request is a relatively narrow and discrete one – the alleged specific letters that prompted the teacher to contact her union. These letters have not been disclosed to the appellant because they do not exist. Instead, the board has disclosed more than 100 pages of records that are not responsive to the request. In the discussion that follows, I find that the board acted in accordance with the *Act* by responding to the request the expansive way that it did; however, this does not change the narrow scope of the request itself.

[35] The inquiry has illuminated facts about the underlying circumstances that were not known to the appellant at the time the request was made or during the mediation. The appellant formed the view that the teacher had contacted the union in April 2018 as a response to alleged specific letters that were sent around that time. The sequence

of events is important to the appellant because she is confident that she did not send any written communications in March or April 2018 that could or should have prompted the teacher to contact her union.

[36] The appellant was surprised and felt disadvantaged by the board's decision to restrict her written communications with her child's teacher. As I understand it, the appellant simply did not believe the superintendent that there were any letters that caused the teacher to contact her union. Understandably, she asked to see the copies and eventually made this access request as a way to scrutinize or challenge the board's decision to restrict her communications with the teacher.

[37] Against that backdrop, I was presented with comprehensive evidence from the board that I accept. That is, I accept the board's evidence that the teacher contacted the union in November 2017, not April 2018. I also accept that there was not a particular communication that appellant sent to the teacher that caused the teacher to contact her union; the reason the teacher contacted her union was to address the additional work caused by the communication expectations of the appellant. I have reached this conclusion on the basis of direct evidence from the teacher.

[38] The board understood that the appellant sought the specific records that prompted the teacher to contact the union. The FOI coordinator understood that the teacher contacted the union as a response to the *volume* of the communications. Although the board was unable to pinpoint and disclose which communications in particular caused the teacher to contact her union, it decided to disclose all communications from the appellant to the teacher, including those that post-dated the teacher's contact with the union. I accept that the board did this to act in accordance with the principles of the *Act.*

[39] The records that the appellant seeks do not exist. In an effort to be responsive, the board attempted to approach the request in an expansive way and disclosed several records that are not responsive to the request. I find no fault with the board's approach; however, I observe that it may have assisted matters if the board had provided to the appellant the additional context that it provided to me in this inquiry.

Issue B: Did the board conduct a reasonable search for records?

[40] The appellant believes that there are additional records and she is dissatisfied with the search steps undertaken by the board. The board stands by its search.

[41] 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.[4] A reasonable search is one in

[4] Orders P-85, P-221 and PO-1954-I.

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.[5]

Representations

The board

[42] The board submits that it conducted a reasonable search. As noted, the board provided three affidavits in support of its position.

[43] To respond to the request, the FOI coordinator learned about the communication protocols that had been put in place over the course of the school year and that the volume of communications had been overwhelming for the teacher. The FOI coordinator worked closely with the principal to respond to the request.

[44] During the 2017-2018 school year, the principal had maintained binders of records (including printed emails) to consolidate and organize communications from the appellant. At the end of the school year, the principal reviewed the binders and maintained only records that she determined were relevant to the appellant's child's learning needs or were examples of communication strategies used.

[45] To respond to the request, the principal and the FOI coordinator met to review the principal's binders and to assemble copies of records that they deemed were responsive to the request. As described already, they were not able to identify specific letters from the appellant that prompted the teacher to contact her union so they decided to include records from September 1, 2017 to April 12, 2018 that involved the teacher (including copies of work completed by the appellant's child). The principal says that she did not include records that related to other teachers or that were dated after April 12, 2018. The principal also reviewed her saved emails using similar parameters but did not locate any other than those that had been retained in the binders.

[46] The principal also addresses a point that the appellant made during the mediation – that the records disclosed to her did not contain any that were dated after March 23, 2018.[6] The principal explains that the school was closed during the week of March 12 and that the appellant's child was absent for the weeks of March 26 and April 2, so there was "very limited communication" during this time.

[47] The principal explains that because of limitations to board storage space, she deleted emails from her account periodically throughout the school year and that at the

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[5] Orders M-909, PO-2469 and PO-2592.

[6] The appellant made this point because she was seeking copies of letters that she allegedly sent during this time period that caused the teacher to contact her union. As has already been discussed, these do not exist.

end of any given school year she deleted emails from that year.

[48] The teacher's evidence is focused mainly on the communication protocols and her contact with the union. However, she also explains that because of limited storage space, she (like the principal) periodically deleted emails from her inbox throughout the year and had a practice of deleting emails for a school year at the end of that school year. In this case, this means that she deleted her emails for the year in June 2018 (although in responding to this inquiry she found some emails that she had neglected to delete which were disclosed in full).

[49] The FOI coordinator states that she did not ask for an electronic search of emails because the board does not retain copies of deleted emails beyond 30 days of the date of deletion. She therefore determined that a search of the board's server, more than a year after the period relevant to the request, would not "be productive."

The appellant

[50] The appellant believes that there are more records – the alleged letter(s) – and she is dissatisfied with the board's search.

[51] To begin, she notes that the board did not provide copies of the records retention policies guiding the teacher and principal's deletion practices.

[52] The appellant argues that the board ought to have consulted or inquired with the superintendent to seek clarification about the scope and to locate responsive records. She says that a search of the superintendent's records is more important because the principal and the teacher deleted many of their records. The appellant also provides an example of a record disclosed to her that indicates that the superintendent has possession of some of her records.

The board's reply

[53] As already referenced above in relation to Issue A, the board replies that the FOI coordinator asked the superintendent if she had any responsive records and the superintendent said that she did not, explaining that she had been informed by telephone that the teacher had contacted her union.

[54] Regarding the example email indicating that the superintendent had possession of some of the records, the board submits that based on the subject matter of the email it would not have been responsive and, "would not in any case have been saved and available in June, 2019 when the FOI request was filed."

[55] In its reply, the board states, "that records responsive to the request are limited to records which relate to [the teacher's] decision to contact her union representative. A Superintendent would not have been copied on such communications, and [the superintendent] was not copied in this case."

[56] The board also provided, expressly for the information of the appellant, a link to

its policies without any representations or information about how they apply to the circumstances of the appeal.

Discussion

[57] I am satisfied that the board understood the request, took steps to locate the records and determined that they did not exist, as I have found at Issue A, above. That is, I have concluded that there are no specific letters from the appellant to the teacher that prompted the teacher to contact her union. This means that the very records that the appellant seeks do not exist.

[58] The board nevertheless searched and disclosed related records. The appellant was not informed until this inquiry that there was not a specific letter that caused the teacher to contact the union or about the rationale for why the board responded to her access request in the way that it did.

[59] Although the board's efforts to provide an expansive response were in accordance with the spirit of the *Act,* in the circumstances of this appeal, the board's actions caused greater skepticism on the part of the appellant. I understand the appellant's skepticism and I acknowledge her position. I also understand and appreciate the expansive approach taken by the board.

[60] In the end, the fact remains that the records the appellant seeks do not exist. In these circumstances, there is no basis to order the board to carry out further searches and I uphold the board's search as reasonable.

ORDER:

I dismiss the appeal.

Original signed by: August 20, 2021

Valerie Jepson
Adjudicator