Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4357

Appeal MA19-00654

MonAvenir Conseil Scolaire Catholique

March 30, 2023

Summary: This order deals with an appeal of an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) received by the MonAvenir Conseil Scolaire Catholique (the board) for information about the appellant's child for a specific school year. The board granted partial access to responsive records, relying on the section 52(3) exclusion (employment or labour relations), as well as the section 14(1) and 38(b) exemptions (personal privacy) to withhold parts. In this order, the adjudicator partially upholds the board's decisions. She finds that several portions of the records are not responsive to the request and one record is excluded from the *Act* under section 52(3)3. She also finds that the remaining information claimed to be exempt under sections 14(1) and 38(b) is not personal information and she orders it disclosed to the appellant. She further orders the board to provide the appellant with a clearer copy of one page of a record. Finally, she finds that the board's search was reasonable.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 2(2.1), 17, 37(3), 38(b) and 52(3).

Order Considered: Order PO-1775.

OVERVIEW:

[1] The requester[1] sought access pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the MonAvenir Conseil Scolaire Catholique (the board) for all information and records about the requester's child for the school year 2018-2019.

[2] The board issued an initial decision, dated September 11, 2019, granting full access to certain records responsive to the request, followed by another decision, dated September 18, 2019, granting partial access to additional records responsive to the request. Access to the withheld information was denied pursuant to sections 14(1) and 38(b) of the *Act.*[2]

[3] The requester (now the appellant), appealed the board's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[4] During the mediation, the board issued a number of additional decisions and the appellant raised or confirmed his pursuit of certain information and issues. In particular:

- The board issued a supplemental decision, dated November 21, 2019, granting partial access to 13 additional records, withholding parts pursuant to sections 14(1) and 38(b) of the *Act.*

- After conducting additional searches, the board issued a supplemental decision dated July 6, 2020, granting partial access to 18 additional records, withholding parts pursuant to section 14(1)[3] and the exclusion in section 52(3) of the *Act*, and on the basis that some information was non-responsive to the request. The decision states in part:

  [TRANSLATION] The board has not accounted for text messages or any other messages on telephones that are in its possession or under its control. The board notes that any reference to a mobile phone in the emails that have been disclosed is the result of the board staff's use of an email application on their mobile phones. All of the relevant emails have been documented and disclosed. The board notes that there is no additional report connected to the subject of the access to information request beyond the documentation sent.

- The board:

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[1] The request was made by the parents of a child who attended a school operated by the board during the school year 2018-2019. I refer to them in the singular in this order and only in the plural, where necessary.

[2] The board also claimed section 21(1)(a) to withhold information, however, it is not an exemption from the right of access and relates to "Notice to affected party".

[3] The possible application of the discretionary exemption at section 38(b) of the *Act* was added as an issue because the records accompanying the July 6, 2020 supplemental decision appear to contain information relating to both the appellant's child and other identifiable individuals.

- granted further access to previously withheld information;
- stated that "[TRANSLATION] The name of the board employees who have been identified within the framework of their professional activities was not redacted."
- declined to provide a transcript of handwritten notes disclosed with the previous supplemental decision, stating:

  [TRANSLATION] . . . the board maintains that it is not required, within an access for information request, to create new documents. As such, the digital version of the documentation in question is sufficiently legible and clear to allow the reader to read the content.

- advised that, with regard to black markings in the unsevered versions of records 2 and 11 of the November 2019 disclosure:

  [TRANSLATION] . . . the marker-redacted versions of these documents are the originals in the possession and under the control of the board. The board's research (including those completed this week) confirm that the original version of the documents in the possession or under the control of the board have been redacted with marker. The board's research did not allow them to find a non-redacted copy (i.e., without the marker) . . . the non-redacted copy submitted by the board (which is blacked out with marker) is the only version of the document that exists (with or without redactions). In short, there is no non- redacted version of the document that is in the possession or under the control of the board.

- The appellant advised the mediator that:
  - he is not seeking access to students' names;
  - he is raising the issue of legibility with respect to the last three pages of record 2 of the November 2019 disclosure; and
  - he continues to believe additional responsive records exist and reasonable search was added as an issue on appeal.

[5] No further mediation was possible and this appeal was transferred to the adjudication stage of the appeals process, in which an adjudicator may conduct an inquiry under the *Act*.

[6] I am the adjudicator assigned to this appeal and I decided to conduct an inquiry for this appeal. I began by inviting representations from the board on the issues set out in a Notice of Inquiry (the NOI). I received the board's representations and shared a severed copy with the appellant, who was invited to respond to the NOI, as well as to

respond to the board's representations. I received representations from the appellant. I then requested and received reply representations from the board and sur-reply representations from the appellant.

[7] In this order, I partially uphold the board's decisions. I find that several portions of the records are not responsive to the request and one record is excluded from the *Act* under the section 52(3)3 exclusion. I find that specific portions of the records do not contain the personal information of other individuals and order the board to disclose this information to the appellant. I also order the board to provide the appellant with a clearer copy of one page of a record. Finally, I find that the board's search was reasonable.

RECORDS:

[8] As the appellant advised during mediation that he is not seeking access to the names of other students, I have removed such information from the scope of this appeal. As a result, the information remaining at issue is that which was withheld from the following records (collectively, the records):

- records 2, 6, 7, 8, 9 and 11, in part, from the November 2019 disclosure package; and
- records 1-13, in part, from the July 2020 disclosure package.

ISSUES:

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

B. Does section 52(3) exclude the withheld email in record 8 of the July 2020 disclosure package from the *Act*?

C. Do the remaining records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

D. Does section 37(3) of the *Act* require the board to provide the appellant with access to a comprehensible form of record 2 of the November 2019 disclosure package?

E. Did the board conduct a reasonable search for records?

DISCUSSION:

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

[9] This issue relates to portions marked by the board as non-responsive to the request in records 1 to 13 from the disclosure of July 2020, as well as information contained in records 2, 6, 7, 8, 9 and 11 from the November 2019 disclosure package.[4]

[10] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> > (a) make a request in writing to the institution that the person believes has custody or control of the record;
> >
> > (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
>
> . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[11] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[5]

[12] To be considered responsive to the request, records must "reasonably relate" to the request.[6]

Representations of the parties

[13] The board submits that the scope of the access request was interpreted broadly and liberally. It explains that it refused to disclose portions of records 1 to 13 from the disclosure of July 2020 because they do not relate to the access request. It submits that even with a broad and liberal interpretation of the access request, the redacted unresponsive portions of these records are not "reasonably related" to the request.

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[4] I am considering whether this latter information is also not responsive as it is similar to the information claimed by the board to not be responsive in records 1 – 13 of the July 2020 disclosure package.
[5] Orders P-134 and P-880.
[6] Orders P-880 and PO-2661.

[14] The appellant did not directly address this issue in his representations.

Analysis and findings

[15] I have reviewed the appellant's access request and it is my view that it provides sufficient detail to identify responsive records. I find that the scope of the access request is clear as it relates to "all information/records about [the appellant's child], for the school year 2018-2019."

[16] I have reviewed the board's confidential representations, explaining how the withheld unresponsive portions of the records are not responsive as they are not "reasonably related" to the request.

[17] I agree with the board that the withheld unresponsive portions of some records relate to its efforts to respond to the access request and facilitate the processing of the records. In support of this, I note that these portions are dated after the date of the request. I also agree with the board that the withheld portions of the records relate to events involving other students and employees of the board, and that these portions do not relate to the appellant's child.

[18] Accordingly, I find that the withheld information in the records is not responsive because they are not "reasonably related" to the access request. I uphold the board's decision to withhold these unresponsive portions of the records.[7]

[19] With the exception of the information above, I find that the remaining withheld information in record 8 of the July 2020 disclosure package and in records 2, 6 and 8 of the November 2019 disclosure package reasonably relates to the appellant's request and is responsive. I will consider the appellant's access to this information below.

Issue B: Does section 52(3) exclude the withheld email in record 8 of the July 2020 disclosure package from the *Act*?

[20] The board relies on paragraph 52(3) of the *Act* to withhold only the second email in an email chain found in record 8 from the disclosure of July 2020 (the withheld email in record 8).[8] In the circumstances, I consider this email to be a separate record and

[7] With respect to the black markings in the unsevered version of records 2 and 11 of the November 2019 disclosure, I understand from the board that these marks appear on the original copy of these records. However, my review of these records reveals that the context surrounding these markings confirms that they do not relate to the appellant's child and are therefore unresponsive to the request.

[8] With respect to record 8 of the July 2020 disclosure package, the board chose to identify an email chain under one record number. It has only withheld the second email in the chain under section 52(3) and the remaining emails in the chain are either unresponsive or have already been disclosed to the appellant. For the purposes of analyzing the application of an exclusion, the IPC uses a whole record approach. See Order PO-3572. However, given the context of the second email, including the sender and recipient, I consider it to be a separate record and I will consider the potential application of this exclusion to this email only.

have treated it as such for the purposes of the potential application of the section 52(3) exclusion.

[21] Section 52(3) states:

> Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> 1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
>
> 2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
>
> 3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[22] If section 52(3) applies to the records, and none of the exceptions found in section 52(4) applies, the records are excluded from the scope of the *Act*.

[23] For the collection, preparation, maintenance or use of a record to be "in relation to" the subjects mentioned in paragraph 1, 2 or 3 of this section, it must be reasonable to conclude that there is "some connection" between them.[9]

[24] The "some connection" standard must involve a connection that is relevant to the statutory scheme and purpose understood in their proper context. For example, the relationship between labour relations and accounting documents that detail an institution's expenditures on legal and other services in collective bargaining negotiations is not enough to meet the "some connection" standard.[10]

[25] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to analogous relationships. The meaning of "labour relations" is not restricted to employer- employee relationships.[11]

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[9] Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).
[10] Order MO-3664, *Brockville* (*City*) *v. Information and Privacy Commissioner, Ontario*, 2020 ONSC 4413 (Div Ct.).
[11] *Ontario* (*Minister of Health and Long-Term Care*) *v. Ontario* (*Assistant Information and Privacy Commissioner*), [2003] O.J. No. 4123 (C.A.); see also Order PO-2157.

[26] The term "employment of a person" refers to the relationship between an employer and an employee. The term "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.[12] The phrase "in which the institution has an interest" means more than a "mere curiosity or concern", and refers to matters involving the institution's own workforce.[13]

[27] The type of records excluded from the *Act* by section 52(3) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees' actions.[14]

Representations of the parties

[28] The board submits that:

> [TRANSLATION] In this case, the board relied on paragraph 52(3)(2) to withhold a portion of document 8 of the July 2020 disclosure due to the fact that the document in question had been prepared and used by the board for a discussion and communication regarding labour relations, as well as questions regarding employment in which the board had an interest.
>
> . . .
>
> [TRANSLATION] In light of the above, the board submits that the document in question was a document prepared and used by the board for a discussion and communication regarding labour relations, as well as questions regarding employment in which the board had an interest.

[29] In confidential representations, the board provides me with additional information to support this claim, which I do not summarize here, but which I have considered. It also submits that record 8 does not fall under any of the exceptions listed in section 52(4) of the *Act*.

[30] The appellant did not directly address this issue.

Analysis and findings

[31] While the board claims the exception at section 52(3)2, which deals with "negotiations or anticipated negotiations", the substance of its representations refers to section 52(3)3, namely, "discussions or communications about labour relations or

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[12] Order PO-2157.
[13] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.
[14] *Ministry of Correctional Services*, cited above.

employment related matters in which the institution has an interest." Accordingly, I have considered the application of section 52(3)3 to the withheld email in record 8.

[32] For section 52(3)3 to apply, the institution must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;

2. this collection, preparation, maintenance or use was in relation to meetings, consultations, discussions or communications; and

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

[33] The withheld email in record 8 is an internal email communication between the board's employees about the employment duties of an employee of the board. As such, I find that it was prepared and used on behalf of the board, as an employer, in relation to a communication about employment-related matters concerning an employee of the board. This is a matter in which the school board has an interest as employer. Accordingly, I find that the withheld email in record 8 is excluded from the *Act* under section 52(3)3.

[34] Accordingly, I find that the withheld email in record 8 is excluded from the *Act*. I also find that none of the exceptions listed in section 52(4) of the *Act* applies to it. As a result, I uphold the board's decision to not disclose to the appellant the withheld email in record 8 from the disclosure of July 2020.

Issue C: Do the remaining records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[35] Based on my findings above, the only information remaining at issue in this appeal is the withheld information in the following records (the remaining records) from the disclosure of November 2019:

- first redaction at the top of page 2 of record 2;

- first redaction at the top of page 1 of record 6; and

- two redactions on page 1 of record 8; and (collectively, the withheld information).

[36] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the remaining records contain "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[37] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[15]

[38] Section (2.1) also relates to the definition of personal information and states:

> (2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

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[15] Order 11.

[39] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[16]

[40] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.[17]

[41] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[18]

Representations of the parties

[42] The majority of the board's representations, including their confidential representations, relate to how the records contain the personal information of others, including other students. I have considered them, even though I do not fully summarize them here.

[43] Essentially the board's representations are as follows, as they relate the withheld information:

> [TRANSLATION] The fact that a third party (other than the parties to the appeal) could reasonably expect to be identified if the information was disclosed means that the information in question constitutes personal information in the sense of section 2(1) of the [*Act*] (see: *Ontario (Attorney General) v. Pascoe*, [2002] O.J.) No. 4300 (C.A.)).
>
> [TRANSLATION] The board notes that the appellant has indicated that they do not want access to the names of third-party students. However, the appeal filed by the appellant refers to multiple documents where the personal information in question belongs to third-party students. The board respectfully submits that most of the redacted personal information is personal information (e.g., name, information concerning the education of third-party students, or information allowing the identification of third-party students).

[44] The appellant does not directly address this issue in his representations.

Analysis and findings

[45] The IPC applies the "record-by-record" method of analysis to records subject to

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[16] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[17] Orders P-1409, R-980015, PO-2225 and MO-2344.
[18] Order PO-1880, upheld on judicial review in *Ontario* (*Attorney General*) *v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

an access request. Applied to requests for access to one's own personal information, the "record-by-record" approach gives requesters a right of access to an entire record (or the withheld portions of records) that contain their own personal information, subject to any applicable exemptions. Under this method, the unit of analysis is the whole record, rather than individual pages, paragraphs, sentences or words contained in a record. In addition, where the information at issue is the withheld portion of a record that has been partially released, the whole of the record (including released portions) is analyzed in determining a requester's right to access the withheld information.[19]

[46] Based on my review of the remaining records and the board's representations, I find that they contain the personal information of the appellant and his child, as well as the personal information of other students and employees of the board, pursuant to the definition of "personal information" in section 2(1) of the *Act*. Specifically, they contain names, initials, email addresses, observations of teachers about the appellant's child, other students and employees of the board, information about their education, and other identifiable information about them.

[47] While I note the withheld information in the remaining records does not contain the appellant's personal information or that of his child, it is the entire record that matters for the personal information finding and since I find that the remaining records contain the personal information of both the appellant and his child, and other individuals, I will consider the application of the discretionary personal privacy exemption in section 38(b) of the *Act* to the remaining information.[20]

[48] The board has withheld information in records 2, 6 and 8 as the personal information of identifiable individuals, specifically, its employees. Based on my review, I find that this information does not qualify as the personal information of the board employees as it relates to them in their professional capacity and does not reveal anything personal about them. As this information is not personal information, it cannot be exempt under section 38(b) of the *Act*. As the board has not claimed any other exemptions to withhold this information, I will order it disclosed to the appellant (excluding any information found to be unresponsive above).

[49] As I have found that the withheld information is not personal information, I do not need to consider the application of section 38(b) to it.

Issue D: Does section 37(3) of the *Act* require the board to provide the appellant with access to a comprehensible form of record 2 of the November 2019 disclosure package?

[50] During mediation, the appellant raised the issue of legibility with respect to the

[19] See Orders M-352 and PO-3642.

[20] When a record does not contain a requester's personal information, the applicable personal privacy exemption is the mandatory one in section 14(1).

last three pages of record 2 of the November 2019 disclosure (record 2), however, his representations refer to the legibility of all pages of record 2.

[51] Once it has been determined that a requester is to be given access to their own personal information, section 37(3) of the *Act* prescribes the form in which the institution must provide access. This section states:

> Where access to personal information is to be given, the head shall ensure that the personal information is provided to the individual *in a comprehensible form* and in a manner which indicates the general terms and conditions under which the personal information is stored and used. (Emphasis added.)

[52] Previous IPC orders have addressed the meaning of the term "comprehensible form" and found that this section creates a duty to ensure that the average person can comprehend the records, without further creating a duty on the institution to assess a specific requester's ability to comprehend a particular record.[21]

Representations of the parties

[53] The board submits that:

> [TRANSLATION] IPC precedent shows that the paragraph 37(3) imposes on the institution a need to ensure that the documents are generally understandable (Order M-276).
>
> [TRANSLATION] IPC precedent confirms however that the [*Act*] does not impose the obligation to create documents or provide documents in the format requested by the author of the access for information request (Order MO-3052).
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> [TRANSLATION] The board submits that document 2 of the November 2019 disclosure constitutes a copy of the original document and that this was shared with the appellant in a readable format.

[54] The appellant submits that it is difficult to read record 2. He explains that he is not asking for every handwritten disclosure to be typed out; he is only asking for record 2 to be typed out. He believes that the board is just trying to be difficult and discourage him from pursing this matter.

[55] In response, the board submits that, while the appellant submits that record 2 is difficult to read, he has not submitted that it is impossible to read or to decipher its contents.

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[21] Orders 19, M-276 and P-540.

[56] The appellant responds that record 2 is difficult to read, to the point that he is guessing at some of the words, which is making it impossible to know the true meaning of what is written. He also responds that his request is not unreasonable.

Analysis and findings

[57] Above, I found that, as a whole, record 2 contains the mixed personal information of the appellant and his child, as well as others. I also found that the black markings in the unsevered versions of records 2 and 11 of the November 2019 disclosure package were unresponsive to the request.[22]

[58] I have reviewed record 2 and the parties' representations. While I agree with the appellant that some portions of record 2 are difficult to read, I also agree with the board that record 2 is not impossible to read (except for page 9, which I will address below). In some instances, I attribute the difficulty in reading to the nature of the record; record 2 contains the handwritten notes of an employee of the board, at times taken while speaking with others or recording her observations of events. They are her attempts to capture relevant information, meaning that incomplete words and sentences were used.

[59] In Order PO-1775, where a requester sought access to personal information in a format different from that in which the records existed, the institution was required to effect the change of format where it is reasonably practicable for it to do so. It is my view that it would not be "reasonably practicable" to provide record 2 in a different format because it would require the creation of a new record and the employee to review her notes, recall what she wrote some time ago and, in some cases, to alter the notes in the original record to make them comprehensible in the new record. Accordingly, I find that section 37(3) of the *Act* does not require the board to provide the appellant with access to a comprehensible form of record 2 (except for page 9, as addressed below).

[60] However, with respect to page 9 of record 2, the difficulty in reading this page may be due to the quality of the photocopy of this page from a notebook. I find that it would be "reasonably practicable" to provide the appellant with a clearer photocopy of page 9 of record 2 (maintaining the two redactions found to be unresponsive to the request), which uses a darker contrast and ensures that the photocopy captures all of the notes on this page.[23] Accordingly, I will order the board to do this, however, I am not ordering the board to provide the appellant with a transcript of the handwritten notes on this page, as requested by the appellant, for the same reasons outlined

[22] See note 7 above.
[23] It also appears that there may be some missing notes cut off from the top of page 9 of record 2 during photocopying.

above.[24]

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

[61] 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.[25] If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[62] 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.[26] To be responsive, a record must be "reasonably related" to the request.[27]

[63] 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.[28]

[64] 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.[29]

[65] 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.[30]

Representations of the parties

[66] In addition to an affidavit, the board submits that:

> [TRANSLATION] . . . reasonable searches have been made in order to find the documents identified by the access for information request. The board has namely deployed the following efforts:
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> > i. Searches have been conducted by the classroom teacher of the appellant's child and the administration of the school in question

[24] Should this not be possible, then the board must inform me and the appellant why it is unable to do so.
[25] Orders P-85, P-221 and PO-1954-I.
[26] Orders P-624 and PO-2559.
[27] Order PO-2554.
[28] Orders M-909, PO-2469 and PO-2592.
[29] Order MO-2185.
[30] Order MO-2246.

> for the school year in question (2018-2019) under the coordination of the board employee responsible for the file.
>
> ii. Searches have been completed in the electronic databases used as part of the board's normal operations and the databases of the school where the child of the appellant was enrolled.
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> iii. Searches for probable sources of physical documents, like the Ontario Student Record of the appellant's child, the notebooks from the child's classroom teacher and the administration of the school in question for the school year in question (2018-2019) and the binders, Duo-Tangs and other paper items compiled by these individuals.
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> iv. Regarding the results, no document identified has been excluded by the board.
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> . . .
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> [TRANSLATION] In this case, the question of reasonable search was raised during mediation. However, the board confirms that the appellant was not able to identify any reasonable reason and basis allowing them to support their claims that existing documents were not identified by the board.

[67] The appellant submits that additional records exist and that thorough searches were not conducted for information stored on mobile devices. He explains that emails released to him display "Envoyé de mon iPhone", meaning that mobile devices were used to send school account emails between employees. He also submits that the board's employees, knowing that their work emails were disclosable, turned to their private email accounts to discuss school situations, in order to prevent him from gathering his child's information. He points to released documents, which show an employee of the board sending an email from her work email account and then sending an email from her private email account.

[68] The appellant submits that while the board may not have control of the devices of its employees, they are in control of the email accounts and have a backdoor and/or the ability to search the folders of these work/private emails accounts on personal devices. He questions why board employees are permitted to send work emails from private devices not issued by the board, meaning that his child's information is being transmitted and stored on a private device that is not under the board's control.

[69] He submits that any reasonable person reviewing these circumstances would believe that the board's employees were communicating using private email accounts and/or devices to circumvent the *Act*, hide information and/or prevent the IPC from doing its job.

[70] The appellant submits that it is a conflict of interest for the board's employee to conduct their own search for records, especially given his concerns about this employee. He explains that it is both possible and plausible that given these circumstances, the board's employee would be tempted to omit certain information that may not place them in such a favorable light. He submits that a reasonable search is not possible in this situation because it was done by someone with bias or someone who had an interest in omitting negative information. He points to the fact that disclosure of responsive records was done in batches and that the 2018 report that was only initially disclosed in July 2020, was attached to an email from 2020, even though the 2018 report refers to a situation from two years prior and it was also sent from a private email account to a board work account. The appellant submits that this supports his position that there is more information to be disclosed, not all places were searched and the searches were not conducted by an unbiased person.

[71] In support of his belief that additional records exist, the appellant refers to a report mentioned by his child's teacher about an incident involving his child that she advised the appellant she had sent to the school's principal (the report). However, this report has not been disclosed by the board in response to the appellant's request. He submits that the board's "delay or deny" approach to his request was to persuade him to no longer pursue additional disclosure for responsive records. He claims that the board is attempting to hide information that may shed a negative light on the reasons for singling out his child, its failure to protect his child from harassment and investigate this matter.

[72] In response, the board submits that:

> [TRANSLATION] The board notes that apart from their unfounded "beliefs," the appellant did not offer any reasonable reasons or objectives that support their claims. Moreover, these were expressly denied by the board and were not supported by the facts.
>
> [TRANSLATION] In any regard, reasonable searches were undertaken by the board, including on electronic platforms, like email inboxes and texts used by the employees in question.
>
> [TRANSLATION] More specifically, regarding email exchanges on electronic devices, the board reiterates that all of the emails under their supervision and control identified during the reasonable search measures deployed—including those identified in the personal and work inboxes—were identified, documented and disclosed (when relevant) as part of the process for the access to information request.
>
> [TRANSLATION] Moreover, and contrary to the appellant's claims, the board confirms that the use of their personal email by a member of staff was a one-off and inadvertent action and not an attempt to circumvent the [*Act*]

> or share any information. The general allegations of the appellant based in their "beliefs" and "impressions" are insufficient for the Commissioner to deduce a negative inference.
>
> [TRANSLATION] The board notes that there is no reasonable basis or objective that supports the appellant's allegations that the Board had tried to circumvent or slow down the process of access to information or mediation. The fact that the board started additional research and had identified and disclosed the supplementary documentation during the mediation is not unusual and does not prove bad intentions on the part of the board. Rather, this is a normal development in the context of a mediation when the objective is to work with the appellant in order to find an amicable resolution to avoid incurring additional resources to handle the file at the arbitration stage.
>
> [TRANSLATION] The appellant's claims regarding the existence of a "report" are erroneous and constitute hearsay. The reasonable searches deployed by the board have not found such a report. Instead, any references to a report refer to instead a written exchange already shared with the appellant or a verbal report offered from one board employee to another.
>
> [TRANSLATION] The board notes that the appellant's claims regarding the existence of a conflict of interest are entirely without basis.

[73] In response, the appellant submits that the board's inability to locate the original record 2 supports his position that the board has not conducted a reasonable search. He responds that the board has not provided a detailed listing of who searched for the records, how long it took, where responsive records were located, etc.

Analysis and findings

[74] 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.[31] The *Act* does not stipulate that the search be perfect or require the institution to prove with certainty that further records do not exist. The institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[32] that is, records that are "reasonably related" to the request.[33] I must only be satisfied that sufficient evidence has been provided to establish that a reasonable search has been conducted. For the following reasons, I find that the board's search was reasonable.

[75] After reviewing the board's affidavit, it is apparent that the searches were

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[31] Orders M-909, PO-2469 and PO-2592.
[32] Orders P-624 and PO-2559.
[33] Order PO-2554.

conducted by experienced employees, who are knowledgeable either in coordinating access to information requests or in the subject matter of the request. The searches were coordinated by the board's Executive Director of the Corporate Relations Department (the executive director), who outlines the board's search efforts in response to the appellant's request, and the searches were conducted by two employees of the board, who work at the school attended by the appellant's child and who interacted directly with the appellant and his child.

[76] According to its affidavit, the board conducted multiple searches for electronic and physical documents, disclosed additional responsive records located and issued revised decisions for newly located records or disclosed further information previously withheld, with indexes of records. It also documented the attempts by the executive director to confirm or clarify information about the records provided to her by the board's employees after their searches, which is confirmed by explanatory notes on the records themselves[34]. The board has listed the individuals involved in the searches, provided a sufficient explanation of where and how they searched, and the results of the searches. Therefore, I am satisfied that experienced employees knowledgeable in the subject matter of the request conducted the searches.

[77] The appellant questions why a particular employee of the board conducted a search of her own records and how the search could be reasonable when the board's employee used her own personal electronic device and email address.

[78] I considered the appellant's concerns. While I appreciate that the appellant may be skeptical of the employee's ability to conduct a search of her own records, I have no reasonable basis to conclude that the employee has not conducted a reasonable search of her emails. From the responsive records, it is evident that this employee forwarded emails from her personal email address to either her work email address or the other employee's work email address. From the content of the records, it is also evident that this employee searched the "trash" folder of her work email account. At mediation, the board confirmed that its staff can use an email application on their electronic devices to access their school work email accounts.

[79] As a result, I do not find the board's inability to search the employee's personal email to be evidence that its search was not reasonable. In my view, it is not incumbent on the board to do so, especially where the search results demonstrate that the employee has used her personal email account and forwarded such emails to her work email account or to the school principal.

[80] The appellant claims that an additional responsive record should exist, namely, the report. Based on my review of the representations of the parties, I find that there is insufficient evidence before me to establish a reasonable basis to conclude that this further record exists in the board's record holdings, but have not yet been located

[34] See paragraph [17] above.

through its many searches. The board explains that it has not been able to locate such a report and often, reference to a report could refer to a written record already disclosed or to a verbal exchange between employees of the board. Given that the board has conducted multiple searches for records responsive to the appellant's request, I am not persuaded, based on the evidence before me, that ordering the board to conduct another search will locate this additional record that the appellant claims should exist. 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,[35] which I find that the board has done.

[81] Relying on the board's affidavit and representations, I find that experienced board employees, who are knowledgeable in the subject matter of the request, expended reasonable efforts to locate records, which are reasonably related to the appellant's request for the personal information of his child. Considering the searches undertaken and the records located, it is my view that the appellant has not provided a reasonable basis for me to conclude that additional responsive records still exist.

[82] Accordingly, I find that the board has conducted a reasonable search for responsive records.

ORDER:

1. I partly uphold the board's access decisions.

2. I uphold the board's decision to withhold portions of the records in the July 2020 disclosure package as unresponsive. I uphold the board's decision not to disclose additional portions of the records in the November 2019 disclosure package to the appellant, which I find are similarly unresponsive to the request.

3. I uphold the board's decision to not disclose the withheld email in record 8 of the July 2020 disclosure package, finding that it is excluded under section 52(3)3 of the *Act*.

4. I order the board to disclose to the appellant the information found not to be the personal information of others (excluding any information found to be unresponsive above). For the sake of clarity, I have highlighted in green the portions of the records to be disclosed in a copy of records 2, 6, and 8 of the November 2019 disclosure package that accompanies the board's copy of this order. These portions are to be disclosed to the appellant by **May 8, 2023**, but not before **May 3, 2023**.

[35] Orders P-624 and PO-2559.

5. To verify compliance with order provision 4, I reserve the right to require the board to provide me with a copy of the records disclosed to the appellant.

6. I also order the board to provide the appellant with a clearer photocopy of page 9 of record 2 (maintaining the two redactions) by **May 8, 2023**, but not before **May 3, 2023**.

7. I uphold the board's searches for responsive records as reasonable.

Original signed by: March 30, 2023

Valerie Silva
Adjudicator