

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4540

Appeal MA22-00121

Toronto District School Board

July 3, 2024

Summary: This order determines whether the Toronto District School Board (the board) conducted a reasonable search for records responsive to a request made under the *Act*. In this order, the adjudicator finds that the board conducted a reasonable search for responsive records in accordance with its obligations under section 17 and dismisses the appeal.

Statute Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56, section 17.

OVERVIEW:

[1] This order considers whether the Toronto District School Board (the board or TDSB) conducted a reasonable search for records responsive to the appellant's request, as required under section 17 of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The appellant made a request to the board under the *Act* for the following information:

... All mobile phone records, data from laptops and other portable devices retained on TDSB computer servers and data/messages retained on cell service providers' servers specific to all devices issued to: [named individuals listed].

The above are, or were, at all material times employees of the TDSB in possession of assigned mobile devices, cell phone, and laptops. The requested records are for the period of May 1, 2021 to September 23, 2021.

All files, documents, journal entries, emails pertaining to [the requester] during the period May 1 to September 23, 2021. Generated or in the possession of the following TDSB employees: [same list of individuals named above].

[3] The board identified responsive records and granted partial access to them, relying on the personal privacy exemptions at sections 14(1) and 38(b) to deny access to the portion it withheld.

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

[5] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator may conduct an inquiry under the *Act*. The only remaining issue to be addressed is whether the board conducted a reasonable search for responsive records.

[6] I decided to conduct an inquiry and representations were sought and exchanged in accordance with the IPC's *Code of Procedure*.

[7] In this order, I find that the board has conducted a reasonable search for records responsive to the appellant's request in accordance with its obligations under section 17, and I dismiss the appeal.

DISCUSSION:

[8] The sole issue to be determined in this appeal is whether the board conducted a reasonable search in response to the appellant's request.

[9] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.¹

[10] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.²

[11] The *Act* does not require the institution to prove with certainty that further records

¹ Orders P-85, P-221 and PO-1954-I.

² Order MO-2246.

do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;³ that is, records that are “reasonably related” to the request.⁴

[12] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.⁵ The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁶

The representations

[13] The board provided representations and an affidavit of its Freedom of Information and Privacy Analyst (the analyst) in support of its search efforts.

[14] The board submits that after receiving the request, a search was undertaken for responsive records from the board employees listed in the request. The board states, however, that two of those listed individuals no longer worked at the board.

[15] The analyst states that she contacted the individuals listed in the request who still worked at the board and asked each of them to conduct a search for responsive records. She says that searches were conducted, responsive records were located and then they were provided to her.

[16] The analyst also states that she asked the board’s Information Technology Services to conduct a search for responsive emails of the two individuals who no longer worked at the board. She says that they conducted a search and responsive records were located and then provided to her.

[17] The board states that access to the records located because of these searches was addressed in the board’s initial decision letter.

[18] The board states that at mediation the appellant asserted that the board had not conducted a reasonable search for access to any cellphone-stored text messages relating to matters involving her.

[19] The board submits that it then conducted a further search for cellphone-stored text messages relating to matters involving the appellant.

[20] The analyst explains that the individuals listed in the request who still worked at the board were asked if they had any text messages regarding the appellant during the time frame of the request. The analyst says that they conducted a search and that

³ Orders P-624 and PO-2559.

⁴ Order PO-2554.

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2185.

responsive records were located and provided to her.

[21] The board submits that the board's Information Technologies Services undertook a search for responsive text messages for the two individuals who no longer worked at the board, but no additional responsive records were identified. The board submits that there is a possibility that any potentially responsive records were destroyed when their board issued cellphones were reset. The board explains that it resets all cellphones once an employee returns them at the end of their employment and does not retain the text message data held on the devices.

[22] The appellant maintains that she has not been provided all the information she requested and rather than addressing the reasonableness of the board's search for responsive records, she takes issue with the conduct of the board's employees and the way the board addressed her request, alleging that it intentionally delayed the process for its own purposes.

Analysis and finding

[23] The only issue before me is the reasonableness of the board's search for records responsive to the appellant's request. In that regard, I find that the board has conducted a reasonable search for responsive records in compliance with its obligations under section 17 of the *Act*.

[24] I find that the board made a reasonable effort to conduct a reasonable search for responsive records from the board employees, current and former, that the appellant listed in her request. Based on the affidavit evidence provided by the analyst, I find that the board has demonstrated that experienced employees, knowledgeable in the subject matter of the request made reasonable efforts to locate records reasonably related to the appellant's request. I also note that the board took steps to locate records for the individuals who no longer work at the board, conducted a secondary search for records sought by the appellant and provided an explanation to the appellant for why cellphone-stored text messages were not located.

[25] As noted above, the *Act* does not require the board to prove with certainty that further records do not exist, only that it has made a reasonable effort to identify and locate records reasonably related to the request. From my review of the evidence before me, I accept that the board has done so.

[26] Additionally, in the face of the evidence provided by the board, I do not accept that the appellant has provide a reasonable basis for concluding that additional records responsive to her request exist.

[27] Based on the searches it conducted and the individuals who were tasked with conducting them, I find that the board has complied with its obligations under section 17 of the *Act* with respect to making reasonable efforts to locate responsive records.

ORDER:

I find that the board has conducted a reasonable search for responsive records and dismiss the appeal.

Original signed by: _____
Steven Faughnan
Adjudicator

July 3, 2024 _____