



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-435

Appeal M-9400425

Board of Education for the City of Hamilton



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested information from the Board of Education for the City of Hamilton (the Board). The request was for access to all records related to a meeting held on April 8, 1993, attended by the appellant's representative in these appeal proceedings, and two named Board staff members. According to the request, the purpose of the meeting was to discuss allegations that Board staff were obstructing inquiries into human rights violations, and allegations of physical abuse relating to the appellant and her children.

The Board's response to the request was sent to the appellant in care of her authorized representative. It indicated that no notes or memoranda had been kept by either of the Board representatives present at the meeting. The response also referred to one letter sent to the appellant's representative after the meeting, and stated that no other correspondence was generated as a result of the meeting.

It is not clear whether or not the letter referred to in the Board's response was ever disclosed in connection with this request. However, the appellant's representative has indicated that he does not require disclosure of this letter. Accordingly, it is not at issue in this appeal.

The sole issue in this appeal is whether the Board's search for records was reasonable in the circumstances. A Notice of Inquiry was provided to the appellant and the Board. Representations were received from the Board only.

DISCUSSION:

REASONABLENESS OF SEARCH

Where the requester provides sufficient details about the records which she is seeking and the Board indicates that such records do not exist, it is my responsibility to ensure that the Board has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Board to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Board must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

The appellant has not submitted representations. However, her letter of appeal (submitted on her behalf by her authorized representative) provides information about her reasons for believing that additional records should exist. The letter of appeal states that, given the nature of the meeting, it is not credible that no notes were made.

The Board has provided representations, including an affidavit sworn by its Freedom of Information and Privacy Co-ordinator (the Co-ordinator). The Co-ordinator's affidavit indicates that the Board staff who attended the meeting consisted of herself and the Board's former Superintendent of Human Resources. The Co-ordinator restates the information contained in the Board's decision letter, to the effect that no notes of the meeting were kept by either of the Board staff who attended. The affidavit also indicates that the Co-ordinator contacted the former Superintendent of Human Resources, who confirmed that he did not take

notes, and that no other notes or memoranda (except the letter mentioned in the Board's response and referred to above under "Nature of the Appeal") were generated in relation to the meeting.

I find that, in the circumstances of this appeal, the actions taken by the Board to locate responsive records were reasonable.

ORDER:

I uphold the decision of the Board.

Original signed by: _____
John Higgins
Inquiry Officer

_____ December 16, 1994