



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-434

Appeal M-9400364

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 October 14, 1993, attended by the appellant, her 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's authorized representative. The Board indicated that no notes or memoranda had been kept by either of the Board representatives present at the meeting, and that, since there was no follow up requested, no correspondence was generated. Accordingly, no responsive records were identified or disclosed.

The appellant commenced an appeal of the Board's decision on the basis that responsive records should exist.

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 the appellant made a request for notes to be taken and that, given the nature of the meeting, it is not credible that no notes were made.

The Board's representations acknowledge that the appellant asked for notes to be taken at the meeting, but that the Board staff present indicated they would not be taking notes. The Board provided two affidavits as part of its representations. The first was sworn by the Board's Freedom of Information and Privacy Co-ordinator (the Co-ordinator). This affidavit indicates that the Co-ordinator was present at the meeting, and reiterates the statements in the Board's decision letter to the effect that no notes or memoranda were taken by the Board staff who were present at the meeting, and that no other notes or memoranda were generated

as a result of the meeting. The second affidavit was sworn by the other Board staff member who attended the meeting, namely the Superintendent of Human Resources. This affidavit confirms the information in the Co-ordinator's affidavit which I have just set out.

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