



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-492

Appeal M-9400632

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 copies of records from the Board of Education for the City of Hamilton (the Board).

The part of the request which remains at issue in this appeal was for "any material that relates to my union activity, attendance of workshops, notes, requests for union time off, etc.". The Board's response to this aspect of the request indicated that "we have previously provided copies of all documents in your personnel file".

To place the request in context, it is important to note that the appellant has been an occasional teacher with the Board, and has filed a grievance in response to her dismissal from an occasional teaching position at one of the schools operated by the Board. She has also been a local official for a teachers' union.

The appellant believes that responsive records exist, and this is the basis for her appeal. Accordingly, the sole issue to be addressed is whether the Board's search for records was reasonable in the circumstances.

A Notice of Inquiry was provided to the Board and the appellant. Representations were received from both parties.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he or she is seeking and the Board indicates that additional records do not exist, it is my responsibility to ensure that the Board has made a reasonable search to identify responsive records. While the Act does not require that the Board prove to the degree of absolute certainty that such records do not exist, the search which the Board undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

With respect to the portion of the request which is at issue, the Board's representations consist of the affidavit of its Manager of Employee Relations, who is also the Board's Freedom of Information and Privacy Co-ordinator (the Co-ordinator).

The Co-ordinator's affidavit states that she has exclusive responsibility for recording time off which pertains to union activities. This affidavit also indicates that the Co-ordinator checked her files, and found no records pertaining to requests by the appellant for time off with respect to union activities.

The Co-ordinator's affidavit further states that "with respect to documents relating to union activity, the Board provided [the appellant] with copies of all records in her personnel file". These disclosures were made in response to the request which became the subject of appeal M-9400643, which was disposed of in Order M-491. The Board's decision letter also refers to this previous disclosure.

I was the decision-maker in Order M-491. I have examined the records which were at issue in that appeal, as well as the contents of the appellant's personnel file which were disclosed to her in full. These records relate to the appellant's grievance, or to other personnel matters which are totally unrelated to union activities. Thus the Board appears to take the position that records relating to the appellant's grievance would satisfy her request with respect to union activities.

I do not agree with this view. Given the wording of the request and the fact that the appellant has been a union official, I conclude that this request pertains to her general union activities, not to her grievance. This conclusion is reinforced by the fact that the appellant has submitted other requests pertaining to her grievance. Moreover, the Board's representations give no indication that records pertaining to the appellant's union activities, if they existed, would be in her personnel file. Accordingly, in my view, the Board's reliance on its previous disclosure of the personnel file is ill-founded.

The Co-ordinator's affidavit goes on to state that after the current appeal was filed, she conducted a second search and found no additional records. She also states that she has examined all sources where responsive records could reasonably be located. Unfortunately, except for the information provided about the search relating to requests for time off, referred to above, the Board's representations do not describe the parameters of the searches conducted at the request stage or during the appeals process. Nor do they indicate that any effort was made **at any time** to locate records pertaining to the appellant's general union activity.

I have also reviewed the representations submitted by the appellant. Many of them relate to allegations which are outside the mandate of this office to investigate.

After weighing and balancing all of the evidence and representations submitted to me, I find that, subject to one exception, the Board has not established that its search for records relating to the appellant's union activities was reasonable in the circumstances of this appeal. The exception is the Board's search relating to requests for time off for union activities. I find that the search for that type of record **was** reasonable in the circumstances.

ORDER:

1. I order the Board to conduct a further search for records relating to the appellant's union activities, with the exception of requests for time off pertaining to union activities, to communicate the results of this search to the appellant in writing, and to provide an access decision to the appellant with respect to any responsive records located as a result of this search, in the form contemplated by sections 19, 22 and 23 of the Act, all within thirty (30) days after the date of this order, without recourse to a time extension.
2. In order to verify compliance with Provision 1 of this order, I order the Board to provide me with a copy of the correspondence referred to in that provision within thirty-five (35) days after the date of

this order. This should be sent to my attention, c/o Information and Privacy Commissioner/Ontario,
80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
John Higgins
Inquiry Officer

_____ March 17, 1995