



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-512

Appeal M-9400636

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 Board of Education for the City of Hamilton (the Board) received a request for all machine readable, computer based information files, data, memos, e-mails, etc. concerning the requester as a "teacher - occasional teacher" and as a union representative. The requester asked for access to be given on 3 1/2 inch diskette, in a MacIntosh compatible program.

The requester has been involved in grievance proceedings with the Board and had filed a previous access request for information in her personnel file and other files relating to her and to her grievance. Inquiry Officer John Higgins addressed the issues raised in the subsequent appeal of this request in Order M-491.

In responding to the present request, the Board indicated that it had previously provided access to all documents not exempted under the Act with respect to the requester's position as an occasional supply teacher with the Board. The Board advised that no further records exist.

The appellant appealed this decision on the basis that information previously disclosed to her from her personnel file was incomplete, and that the Board continues to refuse to provide her with other records, and in particular, those pertaining to her grievance. These issues have been addressed by Inquiry Officer Higgins in Order M-491, and I will not address them in this order.

For the purposes of this appeal, the sole issue is whether the Board's search for machine readable, computer based information files concerning the appellant was reasonable in the circumstances.

A Notice of Inquiry was provided to the Board and the appellant. Representations were received from both parties. The appellant's representations dealt primarily with her concerns regarding disclosure of her personal information to other individuals. These concerns have no specific bearing on this appeal, and they have been forwarded to the Compliance Department of the Commissioner's office for further investigation.

DISCUSSION:

REASONABLENESS OF SEARCH

In her representations, the appellant outlines her belief that specific files should exist on computer disk.

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.

The Board has provided affidavits sworn by the Manager of Employee Relations (who is also the Board's Freedom of Information and Privacy Co-ordinator), and its Record Analyst. The Records Analyst states that she conducted the search for records responsive to the request, except for records concerning the appellant's role as a union representative, as a search for records responsive to this part of the request was to be conducted by the Manager of Employee Relations.

The two affidavits provided by the Board describe the efforts made to locate responsive records, including the review of computer diskettes. The affidavit of the Records Analyst also indicates that she contacted the Teaching Staffing Co-ordinator (the Co-ordinator), who is responsible for maintaining occasional teacher's files, to determine whether any e-mails pertaining to the appellant might exist. The affidavit indicates that any e-mails concerning occasional teacher placements and interview results would be sent to the Co-ordinator. No e-mails were located pertaining to the appellant.

The affidavits state that, apart from the records which were compiled and forwarded to the appellant in response to her previous access request, no other records could be located. I note that the Board's decision letter in the appeal which resulted in Order M-491 was sent to the appellant on September 23, 1994. The request in the present appeal was submitted to the Board on September 29, 1994. Because of the proximity in time of the two requests, I am of the view that the Board's dealings with records responsive to the previous request are relevant to the issues in the present appeal.

In the circumstances of this appeal, and after considering the representations of both parties, I am satisfied that the Board made extensive and appropriate efforts to locate additional responsive records to those which form the subject matter of the appellant's previous request. Accordingly, I find that the Board's search for responsive records was reasonable in the circumstances.

ORDER:

I uphold the Board's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ April 25, 1995