Information and Privacy
Commissioner/Ontario
Commissaire à l'information
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# ORDER MO-1367

## Appeal MA-990315-1 & MA-000006-1

## Ottawa-Carleton District School Board

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## NATURE OF THE APPEAL:

This order deals with two related appeals from decisions of the Ottawa-Carleton District School Board (the Board) made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The appellant in both appeals is the mother of a student in attendance at a secondary school within the Board during the academic year 1998-1999. On June 8, 1999, her son (at the time 18 years of age) was injured in an incident involving a door with a glass pane at the secondary school. The first request (which is now Appeal MA-990315-1) was initiated in September of 1999, when the appellant made a request under the *Act* for information concerning the use of Georgian Polished Wire (GPW) glass in schools within the Board, in the following terms:

> Could you please advise as to the following per year for the five (5) school years commencing in 1994 [i.e., 1994-1995, 1995-1996, 1997-1998, 1998-1999]:
>
> 1. The number of schools within the jurisdiction of the Ottawa Carleton School Board which have doors equipped with GPW glass;
> 2. The number of school doors which have panels of GPW doors;
> 3. The number of school doors for which new GPW glass was installed during the period noted above;
> 4. The number of the installations described in (2) above that were necessitated by a breakage of one or more panels of glass within each door;
> 5. The number of broken panels described in (3) above which resulted in injury to one or more human beings; and
> 6. In the instance described in (4) above, any details available as to the nature of the injury and how it occurred.

The appellant also requested a "list of the current safety requirements for doors as established by the School Board."

The Board's decision stated that there were no records directly responsive to any of the appellant's requests. However, with respect to paragraph 1 above, the Board stated that plant staff advise that all schools typically (although not necessarily) have some doors that have GPW glass. On that basis, all 158 of the schools within the Board may have at least some doors with GPW glass. With respect to the other numbered requests, the Board stated that repairs are not specifically identified by the type of glass that is broken and repaired. However, it indicated that records exist which may be indirectly responsive to the requests in paragraphs 3 and 4 above, in the form of work orders. The Board stated that identification and location of relevant work orders would require an extensive manual search and individual review of all work orders processed by the Board for the relevant time periods. The Board estimated that the search would require a minimum of 16 hours of search time. At the rate of $7.50 per fifteen minutes, the estimated total cost would be $480.00, plus photocopying at the rate of 20 cents per page. The Board requested a cheque in the amount of 50% of the estimated cost in order to proceed.

With respect to the request about safety standards, the Board referred the appellant to the local building codes.

The second appeal (MA-000006-1) arises out of a request by the appellant for copies of all accident reports prepared in relation to her son's injury. Enclosed with the appellant's request was a signed authorization from her son stating: "I authorize you to disclose to my representative [appellant's name] any and all information relating to myself, [appellant's son's name], which is, or has been, in the possession of the Ottawa-Carleton District School Board (or its predecessor)". In responding to the appellant's request for these accident reports, the Board accepted the authorization and dealt with the appellant, for the purposes of the *Act*, as the representative of her son. I find that the "appellant" in Appeal MA-000006-1 consists of the named appellant, and her son. In this decision, to simplify matters, I will refer mainly to the named appellant.

In further correspondence to the appellant, the Board provided further information about its search for records. Among other things, the Board stated that its policies require that all copies of incident reports recording student injuries be forwarded to the Ontario School Board Insurance Exchange (the OSBIE). With respect to employee injuries, the Board stated that it has conducted a search of a database recording these incidents and has not located any records which are responsive to the appellant's request.

The Board stated that these policies represent the system wide reporting requirements within the Board for accidents and injuries to employees and students. It stated that beyond this, it is possible that schools may have in their possession records which contain information about individual accidents and injuries, for example, in individual student or employee files. In order to locate the specific records the appellant is seeking, the Board states that it would have to search through *all* of its student and/or employee files. The Board has not undertaken this search, and has not indicated that it is willing to do so in response to the appellant's request.

With respect to the new request relating to reports of her son's accident, the Board provided the appellant with a copy of a Critical Incident Report signed by the Principal and a Critical Incident Review Committee Student Summary Profile dated June 16, 1999. Further, the Board identified four witness statements about the accident. Two of these statements have been disclosed, on the basis of consents received from the affected parties, and with identifying information removed. Access to the other two has been denied access on the basis of section 38(b) of the *Act*.

In these appeals, the appellant asserts that records of other accidents must exist, and that more records exist relating to her son's accident. In Appeal MA-000006-1, the appellant also appeals the refusal to provide access to the witness reports. A further issue arising from these appeals is whether records which have been forwarded to the OSBIE by the Board are nevertheless under the "control" of the Board for the purposes of the *Act*.

It should be noted that during the course of this appeal, the appellant has narrowed the scope of the request which is the subject of Appeal MA-990315-1. In correspondence from her, she states,

> "perhaps it would suit your purposes better if I simply said that I require **copies of all accident reports relating to high school students in Nepean which involve glass and doors and that occurred within the last 3-5 yrs.** This is not creating a report. This is producing reports that already exist but which the School Board refuses to disclose. It may exist under students, under building accidents, under work orders, or under health and safety reports. But it surely exists..." [bold type in original]

The records which are at issue in Appeal MA-990315-1, therefore, are limited to those which contain information about the repair or installation of GPW glass in doors in secondary schools in Nepean, or accidents involving secondary school students in Nepean and doors containing GPW glass.

During the course of this inquiry, the Board has provided its representations on the issues. The affected parties (the OSBIE and the two witnesses) were also given an opportunity to make representations, and material has been received from the OSBIE and from one of the witnesses, which will be described below. The appellant was also invited to make representations in response to those of the Board and the OSBIE, which she has, and which have been provided to the Board for further comment. The Board has declined to submit representations in response to the appellant's.

## RECORDS:

There are no records on file with respect to Appeal MA-990315-1. With respect to Appeal MA-000006-1, the Board has provided two witness statements, consisting of four pages of handwriting and a hand-drawn diagram. The statements contain the witnesses' accounts of the incident, including information as to the actions of the appellant's son, the witnesses and other persons involved.

## CONCLUSION:

I have decided that the Board has conducted a reasonable search with respect to parts of the request, but I am ordering it to conduct a further search with respect to part of the request, and to provide an interim decision with a revised fee estimate for another part of the request. I have also determined that it is unnecessary to decide whether records of OSBIE are under the "control" of the Board for the purposes of the *Act*. Finally, I am ordering disclosure of the remaining two witness statements.

## DISCUSSION:

### ADEQUACY OF DECISION/REASONABLENESS OF FEE ESTIMATE

### Appeal MA-990315-1

This issue relates to parts 3 and 4 of the appellant's request. It should be noted that the appellant has narrowed this request during the course of this appeal so that as matters currently stand parts 3 and 4 cover records pertaining only to secondary schools in Nepean. In my view, there are two issues which must be considered in relation to this issue. The first is the sufficiency of the Board's October 26, 1999 decision with respect to parts 3 and 4 of the appellant's request, which provides the fee estimate. The second issue is the reasonableness of the calculation of the fee estimate.

***Sufficiency of decision***

In Order 81, former Commissioner Sidney B. Linden introduced the notion of interim decisions under the provincial equivalent of the *Act*. In that order, Commissioner Linden set out the procedures to be followed where the records are unduly expensive for an institution to produce for review by the head for the purpose of making a decision on access to the records. As set out in that decision, the undue expense may be the result of the size of the records, the number of records or the physical location of the record within the institution. In Order 81, Commissioner Linden stated, among other things:

> In my view, the Act allows the head to provide the requester with a fees estimate pursuant to subsection 57(2) [the provincial equivalent of section 45(3)] of the Act. This estimate should be accompanied by an "interim" notice pursuant to section 26 [the provincial equivalent of section 21]. This "interim" notice should give the requester an indication of whether he or she is likely to be given access to the requested records, together with a reasonable estimate of any proposed fees. **In my view, a requester must be provided with sufficient information to make an informed decision regarding payment of fees, and it is the responsibility of the head to take whatever steps are necessary to ensure that the fees estimate is based on a reasonable understanding of the costs involved in providing access.** Anything less, in my view, would compromise and undermine the underlying principles of the Act.
>
> How can a head be satisfied that the fees estimate is reasonable without actually inspecting all of the requested records? Familiarity with the scope of the request can be achieved in either of two ways: (1) the head can seek the advice of an employee of the institution who is familiar with the type and contents of the requested records; or (2) the head can base the estimate on a representative (as opposed to a random) sample of the records. Admittedly, the institution will have to bear the costs incurred in obtaining the necessary familiarity with the records, however, this is consistent with other provisions of the Act. For example, subsection 57(1)(a) stipulates that the first two hours of manual search time required to locate a record must be absorbed by the institution and cannot be passed on to the requester.

> The head's notice to the requester should not only include a breakdown of the estimated fees, but also a clear statement as to how the estimate was calculated (i.e. on the basis of either consultations or a representative sample.) While I would encourage institutions to provide requesters with as much information as possible regarding exemptions which are being contemplated, the head must make a clear statement in the notice that a final decision respecting access has not been made. Because the head has not yet seen all of the requested records, any final decision on access would be premature, and can only properly be made once all of the records are retrieved and reviewed. However, in my view, if no indication is made at the time a fees estimate is presented that access to the record may not be granted, it is reasonable for a requester to infer that the records will be released in their entirety upon payment of the required fees.
> [emphasis added]

The approach taken in Order 81 has been confirmed in other orders under both this *Act* and the provincial legislation (see, for instance, Orders M-555, MO-1336 and P-1349), and I adopt it here.
In this case, in response to parts 3 and 4 of the appellant's request, the Board states that responsive records *may* exist in the form of work orders which provide information as to repairs to glass panes in the schools in its jurisdiction. It has not established that *any* of its work orders in fact contain information about the repair or installation of GPW glass. However, in general, it states that the identification and location of relevant work orders will require an extensive manual search and individual review of all work orders processed by the Board for the relevant time periods, which will involve a search of paper as well as possibly electronic records.

With its representations, the Board provided an affidavit from an employee responsible for the Board's electronic work order system. It is important to note that as of January 1, 1998, two school boards were amalgamated to form the present Board. The appellant's request covers the period 1994 to 1999, which includes periods of time both before and after the amalgamation. Since the appellant has narrowed her request to include electronic work orders only, it is unnecessary to review the evidence given to me about the Board's paper work order records.

Prior to amalgamation, the Carleton Board of Education used a computerized work order system, in which the chief custodian of a school inputted work order requests into the electronic system. These work orders contain information as to the school in which the work is to be done, and the trade involved. Details as to the type of glass to replaced (and, therefore, whether the work involved GPW glass) may or may not be found in the work order request. In contrast, prior to amalgamation, the Ottawa Board of Education had a system of work orders which is not capable of a computer search.

After amalgamation, the combined Board began to use the computerized work order system established by the Carleton Board of Education. In the affidavit, it is said that a computer search would be able to locate any "glazing" work done, which would assist in narrowing the scope of work orders which might be

responsive. However, once a set of work orders is located through a computer search, they would have to be manually reviewed to determine whether any of the orders contains information as to the repair or replacement of GPW glass. The Board has done a sample search to determine how many work orders might be generated for a single school as a result of a search for "glazing" work. The Board has then estimated the time required for an employee to manually review each work order located as a result of the computer search, and extrapolated from that to arrive at an estimate of the time required for all of the schools involved.

Despite the narrowing of the request by the appellant, the volume of work orders which must be searched is still very large. In my view, the location of potentially responsive records within the Board makes the application of the interim decision procedures appropriate in the case before me. It is apparent that it would have been unduly expensive for the Board to complete the retrieval of all work orders which contained information about GPW glass, before making its decision. The Board has provided what is in essence an interim decision on parts 3 and 4 of the appellant's request. It has given a fee estimate to the appellant, and, since it has not indicated otherwise, the Board appears willing to grant access to any responsive records which are located as a result of its search of work orders.

The appellant has expressed a concern that the information provided by the Board as to its fee estimate provides her with no assurance that a computer search will not result in the retrieval of information which will be of no "use" to her.

I take the appellant's concern to be that, based on the information provided, she has no way of knowing whether payment of the fee will result in the retrieval of *any* work orders which provide information as to the repair and replacement of GPW glass in the Board's schools. In my view, the appellant's concern is well-founded. The interim decision procedure contemplates a requester being given sufficient information to make an informed decision regarding payment of fees. It is the responsibility of the institution to ensure that a requester has an understanding of the costs involved in being provided access to the records sought. Here, although the Board has given an estimate of the time which would be required to manually review the work orders, both computer-generated and otherwise, it has not performed a sample manual review of these work orders in order to determine whether, or how many, responsive records are amongst them. Despite all of the information which has been provided, there is still no indication as to whether a search conducted in the manner suggested by the Board will generate any responsive records at all. Without knowing whether there will be any responsive records generated as a result of a search, the appellant does not have sufficient information to make an informed decision as to whether she wishes to pay the fees in order to have the search conducted.

In sum, in order to meet its obligations under the interim decision procedures established by Order 81, the Board must go one step further than it has to date. It has already performed a sample computer search, and determined how many work orders fall under the category of "glazing" for one school in the search period, in order to estimate how much time would be required to manually review these work orders. However, in order to meet its obligations under the *Act*, the Board must also perform a sample manual review of the

computer-generated work orders, in order to provide better information as to the number of responsive records which will likely be located. Further, as set out in Order 81, it is consistent with other provisions of the *Act* to expect the institution to bear the costs incurred in reviewing this representative sampling. Although the *Act* has been amended so that it no longer stipulates that the first two hours of manual search time required to locate a record be absorbed by the institution, it is still nonetheless consistent with the *Act* to expect that an institution will have to bear some modest costs in acquiring the information necessary for a meaningful interim decision.

There is some suggestion (albeit less than clear) in the correspondence from the Board to the appellant that it might have been willing to conduct such a sample manual review. In any event, no such review has been conducted.

I will therefore order the Board to provide the appellant with an interim decision, based on a manual sample review of the work orders generated by its computer search, providing the appellant with an estimate as to the number of responsive records which may be located through a complete manual review of the work orders generated for secondary schools in Nepean. This interim decision is also to include a revised fee estimate (see my discussion in the next section below).

Finally, this appeal also raises an issue as to the sufficiency of the Board's decision in relation to information which may be located in student files, which will be dealt with below, in the section "Other Records".

### *Calculation of the fees*

A separate issue is whether the Board's calculation of the time required for the manual review of the computer-generated work orders is reasonable. Section 45 of the *Act*, relating to the charging of fees, states, in part:

> (1) A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,
>
> (a) the costs of every hour of manual search required to locate a record;
>
> (b) the costs of preparing the record for disclosure;
>
> (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
>
> (d) shipping costs; and
>
> (e) any other costs incurred in responding to a request for access to a record.

> (3) The head of an institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over $25.
>
> ...
>
> (5) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the amount of the fee or the head's decision not to waive the fee.
>
> (6) The fees provided in this section shall be paid and distributed in the manner and at the times prescribed in the regulations.

Section 6 of Regulation 823 states:

> The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act for access to a record:
>
> 1. For photocopies and computer printouts, 20 cents per page.
>
> 2. For floppy disks, $10 for each disk.
>
> 3. For manually searching a record, $7.50 for each 15 minutes spent by any person.
>
> 4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each 15 minutes spent by any person.
>
> 5. For developing a computer program or other method of producing a record from machine readable record, $15 for each 15 minutes spent by any person.
>
> 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

Based on the request as originally framed, which covered both electronic and paper work orders, the Board estimated that the search would require a minimum of 16 hours of time. At the prescribed rate of $7.50 per fifteen minutes, it estimated the total cost to be $480.00, plus costs of photocopying at the prescribed rate of 20 cents per page. Based on the narrowing of the appellant's request to electronically-maintained work

orders only, the Board estimated a total fee of $240 to review the work orders located through a computer search according to "glazing", in addition to computer input time of $15.00 to $30.00.

As has been stated elsewhere, the *Act* does not require that records be maintained by an institution in a particular manner or in a manner most advantageous to a requester (Order MO-1336). I accept that in order to locate records which are responsive to the appellant's request, the Board must manually search through a large number of records, even after it has narrowed its search through computerized queries. Given the Board's estimate as to the number of work orders which may be generated as a result of the computer search, and the time which will be required to review these work orders manually, I find the Board's fee estimates to be reasonable, based on the requests before it at the time. It appears, however, that the fee estimate will have to be further adjusted so that it covers only secondary schools in Nepean. I therefore accept the Board's basis for the calculation of fees, but will order that it provide a revised fee estimate to reflect the narrowing of the request to cover only secondary schools in Nepean.

## REASONABLENESS OF SEARCH

### Appeals MA-990315-1 and MA-000006-1

In appeals involving a claim that further responsive records exist, as is the case in this appeal, the issue to be decided is whether the Board has conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the Board will be upheld. If I am not satisfied, further searches may be ordered.

Where a requester provides sufficient detail about the records which she is seeking and the Board indicates that further 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 further 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.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in the Board's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

I will deal with the issue of whether the Board has conducted a reasonable search in the context of the appellant's narrowed request. The appellant states that more records must exist, and further, that the Board must have copies of incident reports prepared for the purposes of reporting accidents to the OSBIE, including the incident report concerning her son. In this section, I am concerned only with the allegation that the Board has more records *in its possession*. Issues involving records which may be in the possession of the OSBIE are addressed below.

*Incident Reports*

The Board has submitted an affidavit from its Freedom of Information Coordinator (the FOIC) detailing the steps taken to search for records responsive to the appellant's request. Among other things, the FOIC states that the Board has a contractual obligation to report accidents to the OSBIE. The FOIC describes contacts with the OSBIE with respect to the availability of incident reports submitted by the Board. The response received from the OSBIE was that original incident reports are destroyed, and that the data bank into which the information from the report is entered does not identify incidents according to whether they involve glass.

As to whether the Board keeps its own copies of incident reports which have been forwarded to the OSBIE, the Board states that it has a "zero retention policy" for incident reports submitted to the OSBIE. In correspondence to the appellant on this issue, dated November 18, 1999, the Board also refers to Board Procedure PR.553.FIN Student Accidents - Insurance and Reporting, which it states "specifically requires that all copies of incident reports recording student injuries are forwarded to the Ontario School Board Insurance Exchange (OSBIE)".

The appellant refers to material provided by the OSBIE in this appeal, specifically, a "Risk Management Advisory" created presumably for the purpose of advising members school boards. This document provides, among other things:

> From OSBIE's perspective, it is not necessary for boards to retain copies of the Incident Reports, once they are sent to OSBIE. The information from the report is retained in the OSBIE data bank and will be available to the board, if required.
>
> However, when we asked the Freedom of Information and Privacy Secretariat [Management Board Secretariat] about retention of the Incident Report Forms, they advised that the minimum statutory requirement for retention is 1 year, UNLESS the Board passes a resolution to reduce this period....
>
> The commission suggests that if boards do not wish to retain the Incident Report Forms, a resolution should be passed to have a zero retention period for completed Incident Report Forms that have been sent to OSBIE. If a resolution is not passed, the retention period will default to the minimum of one (1) year.

The Advisory recommends that school boards pass resolutions to reduce the retention period to zero.

In support of her contention that the Board must have copies of incident reports, regardless of whether they have also been sent to the OSBIE, the appellant submits that it is "incredible" that the Board does not retain copies of accident reports. Further, the appellant states that since she has not seen a copy of any Board resolution which confirms the zero retention policy, it must not exist.

Upon receipt of the appellant's representations, I sent a letter to the Board asking for its reply representations, if any, in response to certain matters raised by the appellant. Among other things, I asked for its response to the "appellant's suggestion that as the Board has not provided a copy of any resolution which dealt with the zero retention policy recommended by OSBIE, such a resolution may be presumed not to exist."

As I have indicated, no reply representations have been received from the Board.

I have reviewed Board Procedure PR.553.FIN. In article 3.2, Student Accident Procedure and Reporting, it states, among other things:

> 3.2.2 It is important that the board safeguard itself against litigation on the grounds of liability. Ontario School Boards' Insurance Exchange (OSBIE) Student Incident Reports (Form OCDSB658) form an important part of the protective measures. It is essential that principals complete these reports stating only the facts. Matters of opinion must not be included.
>
> 3.2.3 All accidental injuries to students (for example, as a result of a slip or fall, sports injury or assault) must be reported to the parent(s) guardians [sic] of the student, and must be reported within 24 hours to the Superintendent of School Services by means of the OSBIE Incident Report Form, OCDSB658. The Superintendent of School Services must immediately review and initial the Incident Report Form and forward **all copies** to the Superintendent of Business/Treasurer or designate within 24 hours. [emphasis in original]

There are other matters covered by this Procedure, but nowhere in the document does it state that all copies of incident reports must be forwarded to the OSBIE, as asserted by the Board.

After considering all of the material before me, the Board has not satisfied me that it has conducted a reasonable search for the records. The Board has relied on what it states to be its policies, yet I am not convinced that these policies have adequately been substantiated. As I have indicated, the Board has asserted that it has a zero retention policy yet, when specifically given the opportunity to provide the Board resolution confirming this policy, has not provided it. Further, even if such a resolution has been passed, it may be relevant to know when it came into effect, in order to determine whether there may be responsive records still in existence from prior to the resolution. Further, the Board relied on Board Procedure

PR.553.FIN in support of its assertion that all incident reports are required to be forwarded to the OSBIE, yet the language of this procedure does not bear this out. Indeed, in my view, the requirement in that procedure that all copies of all incident reports be forwarded to the Superintendent of Business/Treasurer suggests that it is in this office that a search or an inquiry should have been conducted, to determine whether there were any responsive records.

In my view, enough doubt has been raised as to whether the Board may have in its possession incident reports which are responsive to the appellant's request, that a further search is warranted.

I will, accordingly, order the Board to conduct a further search for incident reports relating to accidents involving high school students in Nepean and GPW glass doors, to locate any copies of such reports still in its possession, which search should include the office of the Superintendent of Business/Treasurer. To be clear, this direction includes but is not limited to incident reports which pertain to the appellant's son.

*Other Records*

The affidavit submitted by the Board, its representations and correspondence to the appellant describe the general steps taken to search for other records which might be responsive to the appellant's request. In the affidavit, the FOIC describes, for instance, a search conducted of the Board's workplace safety and insurance accident reports, in which no incidents involving GPW glass were identified, as well as consultations with Board officials who may have knowledge of responsive records.

The Board's conclusion as a result of its searches is that there are no responsive records, with the possible exception of records in individual student or employee files, in the possession of its schools. As I have indicated above, the Board has stated that in order to locate the type of records the appellant is seeking, it would have to search through *all* of these files. It has not undertaken this search, and has not indicated that it is willing to do so.

The appellant states that, "no effort was made to determine if other records exist which would provide the information I am seeking." Further, she submits simply that "the OCDSB does keep some records relating to accidents in order that it may ensure it functions in a safe manner" and that the information "surely exists".

On my review of the representations and the material before me, I am satisfied that, with the exception of the records addressed in the previous section, the Board has made a reasonable effort to identify the records which may be responsive to the appellant's request.

In my view, however, the Board has not met all if its obligations under the *Act* with respect to the search of student records. It is important to note that the Board has identified its student files as a possible location of

responsive records. It has at no point stated that *no* responsive records exist in these files. Yet, having positively identified these student records as a possible location of responsive records, it has neither searched these records, nor provided an interim decision with a fee estimate in relation to these records. Above, I have referred to Order 81 in which former Commissioner Sidney B. Linden established the procedure for interim decisions under the *Act*, applicable where records are too expensive for an institution to produce in their entirety, for the purposes of making an access decision. It is important to note that Order 81 does not contemplate the option of an institution *refusing* to provide access, on the basis that retrieval of records is too expensive or onerous. Rather, an institution's obligation is to provide an appellant with enough information to know the cost of retrieving responsive records, and the likelihood that she willbe permitted access.

In a case such as this, where the Board has indicated that there is a possibility, but not a certainty, that these records exist, it is also reasonable for the Board to provide better information as to the likelihood that responsive records will be retrieved as a result of a complete search. This can be done, as suggested above, by conducting a sample search. The conclusion of such a search should be that the Board is able to provide information to the appellant as to: the likely number of responsive records which may be found in a complete search, the likelihood of access to the records being granted, and an estimate of the fee for the complete search. It may be at the end of the day that the Board will inform the appellant that there will likely only be a very few responsive records, but that the cost of retrieving the records is relatively high. At that point, it will be up to the appellant to decide whether she wishes to bear that cost.

There is also a possibility that a sample search will lead the Board to conclude that there are likely *no* responsive records amongst the student files. But the Board has not taken this position thus far, and if it does, then the appellant is free to challenge that assertion when a further decision is made by the Board.

On the basis, therefore, that the Board has indicated that responsive records may exist, but has not provided an interim decision with respect to these records, I will order the Board to provide such a decision, in accordance with the procedure outlined in Order 81.

## RECORDS IN THE POSSESSION OF THE OSBIE

### Appeals MA-990315-1 and MA-000006-1

In the Notice of Inquiry, I asked the parties for their representations as to whether accident reports or portions of accident reports which may be in the possession of the OSBIE, are nevertheless under the control of the Board for the purposes of section 4(a) of the *Act*.

After reviewing the representations and materials before me, including the representations and materials provided by the OSBIE, I am of the view that it is unnecessary to decide this issue for the purposes of this appeal.

The appellant has sought access to any accident reports sent by the Board to the OSBIE which relate to accidents involving students in secondary schools in Nepean (including her son) and doors containing GPW glass, regardless of whether these reports are in the physical custody of the Board or of the OSBIE. I will assume for the purposes of this discussion that included in this request are both the reports in their original form as sent by the Board, and the record of information extracted from these reports and entered into the OSBIE's electronic data bank.

The OSBIE has stated that once it has extracted information from the reports sent by school boards, it destroys the original. It states that it does not therefore have the original Incident Report relating to the appellant's son. The OSBIE has sent the appellant a computer printout containing the information in its data bank on her son's accident. In the category "Injury/Damage", it states "arm cut". In the category "How/Where Incident Occurred", it states "at fire door located near the courtyard at the back of the school - hurt r hand/ar". Although the OSBIE's representations do not directly address this, the affidavit from the Board includes reference to a statement from the OSBIE that their data bank does not "sort incidents by glass thus I can not provide info [on] that".

Based on the above, I am satisfied that whether or not original Incident Report Forms sent by the Board to the OSBIE might be considered to be under the control of the Board for the purposes of the *Act*, there are no such records in existence at this time which would be responsive to the appellant's request. Further, I am also satisfied, based on the above, that it is unlikely that the OSBIE's electronic data bank contains any records responsive to the appellant's request, beyond the record about her son's accident which has been provided. It is clear that the information about accidents in the OSBIE's data banks is very limited. The record relating to the appellant's son does not refer to GPW glass, or even glass. I accept the position of the Board and of OSBIE that the OSBIE's data bank does not contain responsive records.

Since there are no responsive records in the possession of the OSBIE, which have not already been disclosed, there is no practical purpose to be served by considering the issue of "custody or control" within the meaning of section 4(1) of the *Act*.

**WITNESS STATEMENTS**

**Appeal MA-000006-1**

***PERSONAL INFORMATION/INVASION OF PRIVACY***

As indicated above, the appellant has sought access to the statements of four witnesses to her son's accident. The Board released two of these statements, and denied access to two others. In response to the Notice of Inquiry, the Board sent representations in which it stated, among other things, that it is willing to release the remaining witness statements in a form which does not reveal the signatures, date of birth, home

address and home telephone number of the witnesses. In the appellant's representations, she makes it clear that she is content to have these statements with all "personal identifying materials" removed. Further, the witnesses were also given the opportunity to make representations on the issue. One has not responded, and the other has given consent to the release of the statement, as long as address, phone number and date of birth are not disclosed.

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by a government body. Under section 38(b) of the *Act*, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information, or to grant access nonetheless.

"Personal information" is defined in the *Act* under section 2(1) as "recorded information about an identifiable individual". The *Act* goes on to list information which is included in the definition.
On my review of the two statements remaining at issue, once personal identifying information of the witnesses is removed, one of the statements no longer contains the personal information of the witness since the witness is no longer "identifiable". The other witness statement may still contain the personal information of the witness since, even with personal identifying information removed, the witness may be identifiable from the narrative. This witness has, however, provided consent to the release of the statement, as described above.

The statements both contain the personal information of the appellant's son.

Section 36(1) of the *Act* entitles the appellant's son to have access to recorded information about himself. I am satisfied that access to both witness statements is governed by this provision, either because the statement no longer contains the personal information of the witness, or because the witness has given consent to the release of the statement (s.14(1)(a)). In view of these circumstances, there are no applicable exemptions to this general right of access. The Board has indicated that it is willing to provide the statements to the appellant in a form which does not identify the witnesses, and to which she has agreed, and I will accordingly order disclosure of these statements in that form.

## ORDER:

**APPEAL MA-990315-1:**

1. I order the Board to provide the appellant with an interim decision within 30 days of this order. Although I uphold the Board's basis for the calculation of fees, this decision is to include a revised fee estimate for a computer search plus manual review for work orders containing information about the repair and replacement of GPW glass doors limited to secondary schools in Nepean.

2. I also order the Board to provide, in this interim decision, and based on a manual sample review of work orders generated by a computer search, information as to the number of responsive records which may be located through a complete manual review.

**APPEALS MA-990315-1 AND MA-000006-1**

3. I order the Board to conduct a further search for incident reports relating to accidents involving high school students in Nepean and GPW glass doors, to locate any copies of such reports still in its possession, which search should include the office of the Superintendent of Business/Treasurer. To be clear, this direction includes but is not limited to incident reports which pertain to the appellant's son. The Board is to communicate the results of this search to the appellant by sending her a letter summarizing the search results within 30 days of this order. If additional responsive records are located, I order the Board to issue an access decision concerning those records in accordance with section 19 of the *Act*, treating the date of this order as the date of the request.

4. I find the Board's search for other responsive records reasonable, and I dismiss this part of the appeal.

**APPEAL MA-000006-1**

5. I order the Board to disclose the remaining two witness statements, with identifying information removed. For greater certainty, I have provided highlighted copies of the witness statements for the Board indicating those portions which shall not be disclosed. These statements are to be provided to the appellant by December 29, 2000, but not before December 18, 2000.

**GENERAL**

6. In order to verify compliance with part 5 of this order, I reserve the right to require the Board to provide me with a copy of the material sent to the appellant.

7. I remain seized of any issues regarding compliance with this order, or any outstanding issues under the *Act* arising out of this order.

Original signed by: November 27, 2000
Sherry Liang

Adjudicator