



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1642

Appeal MA-020354-1

Trillium Lakelands District School Board



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NATURE OF THE APPEAL:

The Trillium Lakelands District School Board (the Board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to the requester's daughter, specifically:

1. her registration form for the 2002-2003 school year containing her current contact information;
2. her attendance records from September 2000 to the present;
3. her disciplinary records from September 2000 to the present;
4. records from the files of a [named guidance teacher] from September 2001 to the present;
5. justification for community service hours and term marks provided by a [named teacher] from January 2001 to June 2002.

In response, the Board advised the requester that the daughter's Ontario Student Record (OSR) contained much of the requested information, and the requester subsequently amended his request to include his daughter's complete OSR. The Board then granted access to all records in the OSR.

After reviewing the various records, the requester (now the appellant) appealed the Board's decision on the basis that more responsive records should exist.

During mediation, the Board issued a revised decision letter dealing directly with the five specific categories of records identified in the appellant's request. The Board advised the appellant that:

1. access to the daughter's registration form was denied on the basis of section 14 (invasion of privacy) of the *Act*;
2. all attendance records had been released to the appellant;
3. no records relating to discipline issues exist;
4. no records relating to the appellant's daughter exist in the files of the named guidance teacher;
5. no additional records relating to community service provided by the named teacher exist.

The Board subsequently provided the appellant with additional attendance records.

Finally, the Board issued a revised decision regarding part 1 of the request, advising the appellant that:

... registration forms are created only for the registration of new students registering in 2002-2003. [The appellant's daughter's] current address, current telephone number, and current emergency contact names have not been recorded in school records, therefore, no records exist.

At the completion of mediation, the appellant accepted the Board explanation regarding parts 2 and 3 of his request, but continued to maintain that additional records relating to parts 1, 4 and 5 should exist.

The file was then transferred to the adjudication stage. I sent a Notice of Inquiry to the Board on the issue of the adequacy of its search for responsive records, and received representations in response. In these representations, the Board identified a new record dealing with the daughter's community service, but took the position that it fell outside the scope of the appellant's request and would not be disclosed for that reason. I added responsiveness of this new record as an issue in my inquiry, and sent a copy of the Notice and non-confidential portions of the Board's representations to the appellant. The appellant, in turn, submitted representations on the search and responsiveness issues.

DISCUSSION:

REASONABLE SEARCH

Introduction

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 institution has conducted a reasonable search for records, as required by section 24 of the *Act*. In order to properly discharge its obligations in the case, the Board must provide sufficient evidence to show that it has made a reasonable effort to identify and locate records. If I am satisfied that the search carried out was reasonable, I will uphold the Board's decision; if not, I will order further searches.

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.

Representations

The Board provided written representations as well as an affidavit sworn by the school principal outlining the various steps taken in responding to the appellant's request.

Regarding part 1, the Board and principal state that student registration forms are only created when a new student registers at one of the Board's schools, and not on an annual basis. The principal swears that he conducted a search of the school's computerized student information database, which houses information obtained from student registration forms, and found only

outdated contact information and no entry for the daughter's current home address, telephone number and contact information. The Board's representations include an explanation for this apparent gap in information, which was not shared with the appellant due to confidentiality considerations.

With respect to the records from the files of the named guidance teacher (part 4 of the request), the Board explains:

[F]or confidentiality reasons, most records and notes created by a guidance teacher in his/her dealings with students are destroyed on a regular basis. Consistent with the OSR Guideline 2000, it is school procedure that any records or notes created by guidance teachers regarding a student that are not destroyed but retained are placed in the particular student's OSR's documentation file.

In his affidavit, the principal states that the appellant's daughter's OSR was retrieved from a filing cabinet in the school's guidance office and copies of all documents were made and provided to the appellant. The principal swears that he also spoke to the named guidance teacher and was told that she did not have any additional records pertaining to the appellant's daughter in her possession.

As far as part 5 of the request is concerned, the principal states that he reviewed the daughter's file containing "Completion of Community Involvement Activities" forms located in the school's guidance office. He located two community service cards totalling 21 hours, and provided copies to the appellant. The Board subsequently located another form referring to 50 community service hours in June 2002, but it takes the position that this record falls outside the scope of the appellant's request (see discussion below). The principal swears in his affidavit that he spoke with the daughter's teacher who advised that there are no other records relating to community service during the time period of the appellant's request.

The appellant's representations do not address part 4. With the exception of the new record identified by the Board, the appellant's representations also do not deal with the possible existence of other records responsive to part 5 of his request.

As far as part 1 is concerned, the appellant does not accept the Board's position that current address, telephone and emergency contact information does not exist. He argues:

If [the information does not exist] there would have been no basis for the Board's original access denial, because it would have only contained the appellant's own home address and contact information. The existence of school registration information is clearly shown in [certain paragraphs] of the Board's submission. It is noted that [another paragraph] has been sanitized, further indicating the existence of the information.

The appellant also points out that his daughter attended at the school in August 2002 and provided the necessary registration information for the 2002-03 school year.

Findings

Based on the representations provided by the Board, I find that it has conducted a reasonable search for records responsive to parts 4 and 5 of the appellant's request. In addition to the daughter's OSR, which has been provided to the appellant, the Board and its principal have searched all other potential locations for records and contracted the appropriate staff members involved with the appellant's daughter's education during the timeframe of the request. With the exception of the new record identified during the course of my inquiry, the appellant has been provided with all responsive records, and I find that the Board has properly discharged its responsibilities under section 24 of the *Act*.

I have reached the same conclusion regarding part 1 of the request. I can understand the appellant's reluctance to accept that a record containing his daughter's current address, telephone number and emergency contact information, normally included in a student's OCR, does not exist for his daughter. As noted earlier, I did not share certain portions of the Board's representations with the appellant because they raise confidentiality issues unique to this appeal. However, I can confirm that the withheld portions do not indicate the existence of records, as suggested by the appellant, but rather offer a reasonable explanation for why a record containing information responsive to part 1 does not exist.

Accordingly, I conclude that the Board has conducted a reasonable search for responsive records, and I dismiss this part of the appeal.

I will now determine whether the newly identified record is responsive to part 5 of the appellant's request.

RESPONSIVENESS OF RECORDS

Introduction

Previous orders of this office have established that in order to be responsive, a record must be "reasonably related" to the request.

In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to a request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness". I believe that the term describes anything that is reasonably related to the request.

[Order P-880]

In its representations, the Board confirms that the principal located a new record while searching for records responsive to part 5 of the request. It reflects 50 hours of community service undertaken by the appellant's daughter for June 2002, and is signed and dated by the daughter and her teacher.

In deciding that this record is not responsive, the Board submits:

[The appellant] specifically requested records relating to the "justification" for Community Service hours earned by [his daughter]. The institution interpreted "justification" to mean documented support for credited community service hours to [the daughter].

On or about October 10, 2002, [the daughter] requested [the principal] to allow her to forfeit 50 community service hours credited to her. As the 50 hours referenced on the June 2002 form were forfeited, these hours were not credited to [the daughter]. There is no justification for the inclusion of these hours for community service credit.

The appellant disagrees. He states that he clearly identified the information he was seeking regarding community service hours by indicating the name of the teacher who approved those hours. The appellant argues that by including the specific name of the teacher the scope of the search was broadened beyond the phrase "justification of Community Service hours" to include any forms identified by the Board as "Completion of Community Involvement Activities" approved by the named teacher. He submits that the Board's interpretation of the term "justification":

... is simply a play on words to block his access The Board had no difficulty in interpreting "justification" as a request for a copy of 21 Community Service hours ..., yet it takes the stance of a completely different interpretation in terms of the 50 Community Service hours. The appellant believes that the allegedly newly discovered document pertaining to item #5 is responsive to the original request, and this information should be released to him as part of that request.

I accept the appellant's position on this issue, and find that the "Completion of Community Involvement Activities" form is "reasonably related" to his request for "justification for Community Service hours and term marks provided by [a named teacher], covering the period of January 2001 to June 2002." The record outlines 50 hours of community service performed by the appellant's daughter within the specified time period and is approved by the named teacher. While the daughter's request that the 50 hours of community service be forfeited may be relevant in terms of meeting student community service requirements imposed by the Board, in my view, it is not relevant to my determination of whether the record reflecting this forfeited service is responsive to the appellant's request. Applying the approach from Order P-880, the information contained on this newly identified record is relevant to and reasonably related to the request, and therefore responsive for the purposes of this appeal.

ORDER:

1. I find that the Board's search for responsive records was reasonable and I dismiss that part of the appeal.
2. I order the Board to issue a decision to the appellant with respect to the newly identified "Completion of Community Involvement Activities" form for 50 hours, in accordance with sections 19, 21 and 22 of the *Act*, treating the date of this order as the date of the request and without recourse to a time extension. I further order the Ministry to provide me with copies of any correspondence sent to the appellant.

Original signed by:
Tom Mitchinson
Assistant Commissioner

May 2, 2003