



**Information and Privacy
Commissioner/Ontario**

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

INTERIM ORDER MO-1772-I

Appeal MA-030220-3

Sudbury Catholic District School Board



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NATURE OF THE APPEAL:

Following an exchange of correspondence and communications over a period of several months between the Sudbury Catholic District School Board (the Board) and the appellant, the appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Board on April 11, 2003. The appellant sought access to:

- All details and contract documents about 1993 reinstatement of the appellant's wife with all benefits under Tri-Care benefit package
- Records describing all Tri-Care coverage handled by a named agent
- Dates of all changes to the benefit packages from 1988-2003 and changes made

The appellant attached a letter dated March 28, 2003 to the April 11, 2003 request, in which he requested "the complete file of documents that relate to the nursing agreement and all related issues for [the appellant's wife]. This would include:

- all correspondence between a named individual and the SDRCSS Board
- all correspondence between SCDS Board and an insurance company
- all correspondence between a company and SCDS Board
- all correspondence between a company and an insurance company
- all appeals made by appellant
- records between any OECTA (Ontario English Catholic Teachers Association) lawyers or representatives and the school Board
- all correspondence between an insurance company and any nursing companies that cared for the appellant's wife
- all correspondence from any nursing company, doctor, CCAC (Community Care Access Centre), lawyer or request made through the Board's benefit department
- all reports requesting a nursing increase 1994-2003
- name of person to deal with re: cost plus billing
- the reason for non-payment of nursing for appellant's wife from June 1993 to April 1995
- other costs incurred by the Board under the cost plus agreement other than nursing costs"

On May 21, 2003, the Board sent a letter to the appellant in which it acknowledged the appellant's request of April 11, 2003, and indicated that certain records had been sent to the OECTA. Along with this letter, the Board attached six collective agreements for the period 1987 through 2003, directed the appellant to make any inquiries related to claims directly to a named agency and inquiries relating to nursing invoices to a named insurance company.

In response to the May 21, 2003 letter, the appellant submitted a further request to the Board on May 28, 2003 in which he noted that many documents were missing from the records he had received from the Board. The appellant indicated that he was seeking access to the following specific records:

- records re: appellant's wife's second grievance and presentation by a named individual including date of presentation

- records that will show Board's lawyers and members tried to keep the benefits he was asking for from 1988-1994
- records referring to the appellant's wife's benefits grievance
- cost plus agreement
- complete legal file

The appellant did not receive a response from the Board and filed an appeal with this office on June 9, 2003. The Commissioner's office then opened Appeal Number MA-030220-1 as a "deemed refusal" appeal. This appeal was resolved when the Board provided a copy of its May 21, 2003 decision letter to the IPC.

On July 3, 2003, the Board responded to the appellant's letter of May 28, 2003. The Board granted access to a copy of a letter outlining the terms and conditions of a grievance settlement and indicated that the original OECTA letter could not be found in their files, suggesting that the appellant obtain it directly from OECTA. The Board also enclosed a copy of the 2003-2004 OECTA elementary collective agreement.

On July 8, 2003 the appellant filed a second appeal with this office, which then opened Appeal Number MA-030220-2. In this letter of appeal, the appellant listed the records he believed the Board maintained, but had not yet provided to him:

- Details of the contract and re-instatement documents
 - All details of grievance submitted on behalf of four teachers fired
 - Details of benefits under Tri-Care benefit package in place at time of reinstatement
 - Records describing all Tri-Care coverage handled by a named insurance agent
- Dates of all changes made to the benefit package by Board and a specific insurance company when this insurance company changed the plan from another company to itself
 - List all changes that differ from another insurance company 1980-1993
- All records on the nursing agreement for appellant's wife
 - Correspondence between a named individual and SDRCSS Board
 - Correspondence between SCDS Board and an insurance company
 - Correspondence between a named company and SCDS Board
 - Correspondence between a named company and an insurance company
 - Appeals made by appellant
 - Records between lawyers and Board
 - Correspondence between an insurance company and nursing companies that cared for the appellant's wife
 - Correspondence from any nursing company, doctor, CCAC, lawyer or any request made through the Board's benefit department
 - Reports requesting an increase for nursing 1993-2003
 - Correspondence produced by an individual and appellant or appellant's wife, and all this individual's correspondence to lawyers, insurance company and benefits clerk

- name of the person(s) who looks after all appellant's cost-plus issues
- reason for non-payment of nursing June 1993 – December 1993
- reason for non-payment of nursing Dec 1993 – April 1994

The mediator assigned to this file confirmed with the appellant that these were the records that he believed were in the Board's possession and obtained the appellant's permission to share his appeal letter of July 8, 2003 with the Board. The mediator sent a copy of this list of records to the Board on August 12, 2003.

On September 22, 2003 the Board released to the appellant approximately 33 pages which had been sent to the Board by Le Conseil Scolaire de District Catholique du Nouvel-Ontario. The appellant again wrote to this office on October 14, 2003 outlining records which he felt the Board still had not provided to him, including correspondence between the Board and the Union, various lawyers and insurance companies and certain CELEC (Catholic English Language Education Council) Committee records.

The Board sent a further decision letter to the appellant on October 15, 2003, specifically addressing the points raised in the appellant's appeal letter of July 8, 2003. In this decision letter, the Board denied access to records relating to the grievances filed on behalf of the appellant's wife under the exclusionary provision in section 52(3) of the *Act*. It further indicated that records relating to correspondence between the Board and its solicitors would be withheld under the solicitor-client privilege exemption in section 12 of the *Act*. Finally, the Board indicated that it does not have custody or control over records relating to claims submitted to the insurer and that no records were found relating to a request for an increase in nursing fees. The Board argued that it had previously provided records relating to the other points in the appellant's appeal letter.

Upon receipt of the October 15, 2003 decision letter, this office closed Appeal Number MA-030220-2. The appellant submitted a new appeal based on the Board's decision of October 15, 2003, and MA-030220-3 was opened.

The mediator confirmed with the appellant that the issues in this appeal were the application of section 52(3) and section 12 to the records; whether the Board maintained the required degree of custody and control over records relating to benefits paid by insurers; and whether the Board had conducted a reasonable search for responsive records generally. On November 6, 2003 the appellant sent the mediator a letter in response to the Board's October 15 decision letter in which he reiterated his position that more records exist beyond those provided to him to date by the Board. These are enumerated as follows:

- Tri-Care coverage from 1979-1993
- All details of re-instatement documents given to Union Feb 1993
- All details of total disability coverage in place 1979-August 31, 1988 for the appellant's wife
- All details of September 1, 1988 – September 1, 1991 changes backdated from 1993-1991
- All extended health changes 1995 backdated to 1992

- List all changes that differ from an insurance company 1980-1993 and who agreed to these changes and signature
- records from the CELEC committee
- contract booklets for 1985-1988

Further mediation was not possible, and the file was moved to the adjudication stage of the appeals process. On February 11, 2004, I sought the representations of the Board, asking that it respond to a Notice of Inquiry setting out the facts and issues in the appeal by March 3, 2004. On March 2, 2004, the Board granted access to portions of certain records “from the CELEC Committee” to the appellant.

Instead of providing representations in response to the Notice of Inquiry, the Board advised that it would not be submitting any representations and would not be providing the Commissioner’s office with copies of those records to which it had applied the section 12 exemption or claimed the exclusion under section 52(3).

Has the Board complied with its obligations under the Act?

Section 4(1)(a) of the *Act* states:

Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,

the record or the part of the record falls within one of the exemptions under sections 6 to 15; or

In the present appeal, the Board has declined to respond to the Notice of Inquiry provided to it and has indicated that it will not be providing this office with copies of the records which are responsive to the request. The Board relies on the application of the exclusionary provision in section 52(3) with respect to records relating to grievances brought on behalf of “four fired teachers”. It further takes the position that any records reflecting communications between the Board and its solicitors is exempt from disclosure under the discretionary exemption in section 12. In addition, the Board is of the view that it does not exercise the requisite degree of custody or control over records relating to the payment of benefits by an insurer to the appellant’s wife. The appellant continues to maintain that the Board has not addressed all of the records or categories of records described in his letter of November 6, 2003 and that further records should exist beyond those identified by the Board.

In order for me to determine whether the exception in section 52(3) and the exemption in section 12 apply to the records for which they were claimed, it is necessary for me to examine them. Before this can be completed however, the Board must first search for and identify those records which are responsive to the request.

While I recognize that these searches may require considerable time and effort on the part of the Board, it is imperative that they be undertaken in order to locate and identify those records sought by the appellant in exercising his right of access under section 4(1)(a).

I will, accordingly, order the Board to conduct the required searches for records responsive to the appellant's request and to provide him with a detailed decision letter, together with an index of those records found to be responsive, respecting access to the identified records pursuant to section 19 of the *Act*, without recourse to a time extension under section 20 of the *Act*. Specifically, the Board is ordered to conduct searches for:

1. Records respecting grievance proceedings instituted by "four fired teachers".
2. Records relating to communications between the Board and its' solicitors respecting the appellant's wife.
3. Records responsive to the items enumerated in the appellant's letter of November 6, 2003

Following the completion of these searches, the Board is ordered to provide both the appellant and this office with a copy of its decision letter respecting access to any responsive records. To assist the Board, I have attached a copy of IPC Practices #1 which sets out in detail the required information to be included in a decision letter and the supporting index of records. Should the appellant choose to appeal the Board's decision, this office will require copies of the records to which the Board is applying any exceptions or exemptions under the *Act*.

INTERIM ORDER:

1. I order the Board to undertake searches of its record-holdings for the following:
 - (a) records respecting grievance proceedings instituted on behalf of "four fired teachers";
 - (b) records relating to communications between the Board and its' solicitors respecting the appellant's wife.
 - (c) records responsive to the items enumerated in the appellant's letter of November 6, 2003
2. I further order the Board to provide the appellant and this office with a detailed decision letter and index in accordance with the format set out in the attached IPC Practices #1 respecting access to any responsive records in accordance with the requirements of section 19 by no later than **April 15, 2004** and without recourse to a time extension under section 20.

Original Signed By: _____

Donald Hale
Adjudicator

March 26, 2004