

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER MO-3676

Appeal MA17-569

Halton District School Board

October 22, 2018

**Summary:** The Halton District School Board (the board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for electronic records relating to the board's removal of a high school from a list cited in a report. The board did not locate any responsive records. The appellant claimed responsive records should exist. This order upholds the board's search for responsive records as reasonable and dismisses the appeal.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17.

### BACKGROUND:

[1] The Halton District School Board (the board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following:

All electronic communication, including but not limited to, email communication, text messages, and [Blackberry Messenger messages], sent by and received by [named individual], Director of Education regarding the removal of Burlington Central High School from the list of Schools to be closed as cited in Report 17075: Executive Summary - Burlington Secondary Program and Accommodation Review (20 April 2017).

[2] The board issued a decision, asserting it “does not retain text messages or BBM messaging; however no records exist specifically responsive” to the request.

[3] The requestor, now the appellant, appealed the board’s decision to this office.

[4] During mediation, the appellant indicated he continues to believe records exist and confirmed he would like to move the file to adjudication on the sole issue of reasonable search. As further mediation was not possible, this appeal proceeded to adjudication, where an adjudicator conducts an inquiry under the *Act*.

[5] Representations were sought and received from the board, initially. A copy of the board’s representations was provided to the appellant, along with a Notice of Inquiry, setting out the facts and issues in the appeal. Representations were then sought from the appellant, but there were no representations submitted in response to the Notice of Inquiry provided to him.

[6] In this order, I uphold the board’s search as reasonable and dismiss the appeal.

## **DISCUSSION:**

### **Did the board conduct a reasonable search for records?**

[7] Where a requester claims additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.<sup>1</sup> If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the institution’s decision. If I am not satisfied, I may order further searches.

[8] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.<sup>2</sup> A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.<sup>3</sup>

[9] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.<sup>4</sup>

[10] Representations signed by the Coordinator of Freedom of Information and Protection of Individual Privacy, and the Superintendent of Education (Information

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

<sup>2</sup> Orders P-624 and PO-2559.

<sup>3</sup> Orders M-909, PO-2469 and PO-2592.

<sup>4</sup> Order MO-2246.

Technology) were submitted by the board.

[11] In response to the request, the board submits that a search was conducted of the Director of Education's email records using the following search parameters: "Burlington Central", "BCHS", "closure", "options", and "removal". While email records were discovered using these terms, none of them were responsive to the request.

[12] The board noted that the Superintendent of Education (with responsibility for Information Technology) conducted a physical search of the Director of Education's phone and found no BBM/text messages responsive to the request. Additionally, the Superintendent provided the following statement with respect to BBM/text messages:

The Halton District School Board views text messaging/BBM as a transitory method of communication, and has no provision to capture, retain or archive these types of messaging. Additionally, the Board's contract with its telecommunications provider does not include provision for retrieval, retention or archiving of BBM/text messaging. There is no reasonable expectation that BBM/text messages would exist in response to this request, based on the Board's current business practices.

[13] Furthermore, the board stated that its contract with its telecommunications provider does not contain a provision for the retention/retrieval of BBM/text messages.

[14] As noted above, the appellant made no representations in response to the Notice of Inquiry to substantiate his position that the board did not conduct a reasonable search for responsive records.

### **Analysis and findings**

[15] As noted above, while a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist. In the absence of representations from the appellant, I am not satisfied there is a reasonable basis for his belief that responsive records exist.

[16] The board has provided an explanation of the steps it has taken to locate responsive records for the period relevant to the request. Based on the information it has provided, and in the absence of any evidence to the contrary, I am satisfied that the board's search for these records was reasonable.

[17] For these reasons, I find the board conducted a reasonable search for records in satisfaction of its obligations under the *Act*. I dismiss the appeal.

### **ORDER:**

I uphold the board's search as reasonable and dismiss the appeal.

Original signed by \_\_\_\_\_

Anna Truong  
Adjudicator

October 22, 2018 \_\_\_\_\_