

Information and Privacy Commissioner,  
Ontario, Canada



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

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## FINAL ORDER MO-4333-F

Appeal MA20-00035

York Region District School Board

February 22, 2023

**Summary:** In Interim Order MO-4310-I, the adjudicator found that the York Region District School Board's (the board) search was not reasonable and ordered it to provide evidence of the search it conducted by way of affidavit evidence including reference to its retention policy if records were destroyed. The board provided the affidavit and the appellants continued to be of the view that further responsive records exist. In this final order, the adjudicator finds that the board has provided sufficient evidence concerning its search and finds that its search was reasonable.

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

### OVERVIEW:

[1] The appellants<sup>1</sup> are parents of a student at one of the York Region District School Board's (the board) schools. One of the appellants, after downloading student profile pictures, attempted to inform the board of security inadequacies in the board's data management system. In turn, the board referred the matter to the police, resulting in a criminal investigation against the appellant which is now concluded. The other appellant, made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the board for information regarding the student data

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<sup>1</sup> The appellants are spouses. In this appeal, I refer to them interchangeably as both spouses were actively involved in the appeal.

management system and parental concerns over the use of that system, asking specifically for copies of notes taken at several meetings the appellant had with the board.

[2] A number of records were located and the board denied access to the records on the basis of sections 7(1) (advice or recommendation), 8(1) (law enforcement), 10(1) (third party information), 11 (economic and other interests) and 12 (solicitor-client privilege) of the *Act*. Interim Order MO-4310-I disposed of the exemption claims regarding the records at issue but found that the board's search was not reasonable. The board did not provide sufficient evidence to show that it had conducted a reasonable search for responsive records. The interim order also required the board to specifically address the existence of meeting notes referenced by the appellants.

[3] Subsequent to the issuance of Order MO-4310-I, the board provided an affidavit concerning its searches for responsive records. The affidavit was shared with the appellant who provided representations in response indicating that further records should exist.

[4] In this final order, I find that the board's search was reasonable and I dismiss the appeal.

## **DISCUSSION:**

[5] The sole issue remaining in this appeal is whether the board's search for responsive record is reasonable.

[6] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.<sup>2</sup> If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. Otherwise, I may order the institution to conduct another search for records.

[7] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.<sup>3</sup>

## **Representations**

[8] The board provided an affidavit concerning the searches it conducted for records responsive to the appellant's request. The affidavit was sworn by the board's manager of administrative and legal services and as based on the affiant's knowledge of the matter and information that she received from others concerning the search.

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<sup>2</sup> Orders P-85, P-221 and PO-19544-I.

<sup>3</sup> Order MO-2246.

[9] The affiant attests that after receiving the request, several individuals<sup>4</sup> were contacted, advising them of the request and requesting that they provide any responsive records in their possession. The affiant attests that the former records management and privacy officer wrote to the appellant regarding the request providing an index identifying responsive records that the board located and refused to disclose.

[10] The affiant attests that after the former records management and privacy officer retired, she assumed carriage of the matter and worked with the senior manager, legal and administrative services, with the assistance of the technology strategist, to review the records previously located and to search for any other responsive records.

[11] The affiant attests that physical and electronic records were searched and a further search located additional records, some of which the board agreed to disclose. The affiant attests that she conducted another search and located two pages of additional notes taken by one of the named individuals in the request which were subsequently disclosed to the appellants.

[12] The affiant attests that she conducted yet another search and did not locate any further responsive records. She attests that after numerous searches, she has not located any further responsive records than the 195 documents set out on the index of records, which was provided to the appellants.

[13] The appellants submit that the original request included specific requests for the handwritten notes from three meetings (or the digital version thereof,) and the emails or other communication between the board and its trustees regarding the board's instructions on how to respond to the appellants' emails sent to the trustees.

[14] With regard to the meeting notes, the appellants submit that a named individual took notes during all three meetings and was still employed by the board when their access request was made.<sup>5</sup> They submit that she was aware that those notes were requested but they were not identified as responsive records. The appellants question when these notes were deleted or destroyed.

[15] The appellants also submit that the board has not provided any further email communications between it and trustees except for one and submits that no emails from the board to trustees was provided.

## **Finding**

[16] The *Act* does not require the institution to prove with certainty that further records do not exist. The institution must provide enough evidence to show that it has

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<sup>4</sup> The roles of the individuals at the time they were contacted include: chief technology strategist, principal, associate director of education, director of education and the superintendent.

<sup>5</sup> It was determined during the inquiry that this individual is now retired.

made a reasonable effort to identify and locate responsive records;<sup>6</sup> that is, records that are “reasonably related” to the request.<sup>7</sup> For the following reasons, I find that the board’s search is reasonable.

[17] After reviewing the board’s affidavit, it is apparent that the search was conducted by an experienced employee knowledgeable in the subject matter of the request given that it was conducted by the board’s records management and privacy officers.

[18] According to its affidavit, the board conducted multiple searches and in its penultimate search located some digital meeting notes that it provided to the appellants. The appellants question why the actual handwritten notes were not located. It is now evident that the named individual who took the actual notes also received the FOI request and conducted the initial search. In my view, if these notes still existed they would have been located in the initial search conducted by the named individual or in the several searches conducted by the board subsequently. As a result, I do not find the board’s inability to find the actual handwritten notes to be evidence that its search was not reasonable. Further, the board located digital notes by this named individual and provided these to the appellants. In my view, it is not incumbent on the board to contact a retired employee for an explanation of what she did with her handwritten notes, especially when her notes from the meetings with the appellant that still exist were located and provided to the appellants.

[19] The appellants also suggest that further communications between the board and trustees should exist. However, the board has now confirmed that its search for these records was facilitated by its chief technology strategist and that several searches were conducted. I find that the board has located and provided the communications that could be located and there is no basis to ordering it to conduct a further search, especially since the last search resulted in locating no further responsive records.

[20] Accordingly, I find that the board’s search for responsive records is reasonable and I dismiss the appeal.

**ORDER:**

The appeal is dismissed.

Original Signed by: \_\_\_\_\_

Alec Fadel  
Adjudicator

February 22, 2023 \_\_\_\_\_

<sup>6</sup> Orders P-624 and PO-2559.

<sup>7</sup> Order PO-2554.