Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4504

Appeal MA22-00641

Hastings and Prince Edward District School Board

March 27, 2024

Summary: The appellant sought access to records from the Hastings and Prince Edward District School Board (the board) related to her child's attendance at a specific school and certain activities that took place at that school. The board located a single responsive record. The board disclosed part of the record to the appellant during the appeal process. The appellant maintained that the board did not conduct a reasonable search for responsive records and that there should be additional records responsive to her request. In this order, the adjudicator upholds the board's search for responsive records and dismisses the appeal.

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

OVERVIEW:

[1] The Hastings and Prince Edward District School Board (the board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) *for* all records relating to a student at a school on a specific topic during a set time. The board identified one responsive record and issued a decision to deny access to the requester. The requester, now the appellant, appealed the board's decision to the office of the Information and Privacy Commissioner/Ontario (the IPC).

[2] The IPC reached out to the board and the appellant to mediate the appeal. The board advised the IPC that it did not wish to participate in mediation and asked that the matter proceed to the adjudication stage of the appeals process. As no mediation was

possible, the file was transferred to the adjudication stage of the appeals process where an adjudicator may conduct a written inquiry pursuant to the *Act*.

[3] I commenced an inquiry and received representations from the board and the appellant. After reviewing the parties' submissions, I concluded that there had been a misunderstanding about the issues under appeal. After further communications with the parties, the board agreed to provide a portion of the single record at issue and the appellant confirmed she was not seeking access to the remaining portions of that record. As a result, the sole record in this appeal is no longer at issue.

[4] However, the appellant clarified that she believed additional responsive records should still exist. After reviewing her request and appeal forms, I agreed that the issue of reasonable search should have been included in the initial Notice of Inquiry and as a result, I issued a Supplemental Notice of Inquiry and invited the board to make representations on whether additional responsive records exist in response to the appellant's request.

[5] Both parties provided representations and had an opportunity to reply or make a sur-reply. In this decision, I explain why I decided not to order the board to conduct a further search for responsive records and dismiss the appeal.

DISCUSSION:

Overview

[6] The sole remaining issue in this inquiry is whether the board conducted a reasonable search for records responsive to the appellant's request.

[7] When 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*.[1] If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[8] 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.[2]

[9] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[3] that is, records that

[1] Orders P-85, P-221 and PO-1954-I.
[2] Order MO-2246.
[3] Orders P-624 and PO-2559.

are "reasonably related" to the request.[4]

[10] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.[5] The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[6]

[11] If the requester failed to respond to the institution's attempts to clarify the access request, the IPC may decide that all steps taken by the institution to respond to the request were reasonable.[7]

The parties' representations

[12] Some parts of the parties' representations are not relevant because the issue of reasonable search was not included at the start of the inquiry process. As a result, I will not outline each of the representations in the order they were received. Instead, I will explain the parties' positions, as I understand them, outline the most relevant portions of the arguments and evidence they provided, and explain why I have declined to order the board to search for any additional responsive records.

[13] Based on my review of the appellant's representations, and the supporting documentation she provided, I understand that she is seeking information related to any counselling sessions, both individual or group, that her child (the student) participated in when they attended a school within the board. The board identified a record related to one counselling session and, as discussed above, a copy of this record was provided, in part, to the appellant during this appeal.

[14] However, the appellant and the student claim that the student had multiple counselling sessions and they say that the board should have more records related to those additional sessions. To be clear, I understand that the appellant believes the student attended more counselling sessions and wants to know details about how many sessions took place, when they occurred, whether other students were also present during those sessions, and the nature of the topics that were discussed.

[15] In her initial representations and reply representations, the appellant provided various evidence to explain why she believes additional records should exist. This evidence includes:

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[4] Order PO-2554
[5] Orders M-909, PO-2469 and PO-2592.
[6] Order MO-2185.
[7] Order MO-2213.

- an affidavit signed by the student saying that they attended more than ten sessions, either privately, or in a group, and
- screenshots of text messages with another student indicating that additional counselling sessions took place.

[16] The appellant says that based on the board's policies and the student's confirmation that they attended multiple counselling sessions, additional responsive records should exist. Specifically, the appellant provided:

- copies of board policies specifying that permission forms must be signed before counselling sessions take place for students under 12 years old,
- a copy of the permission form referred to above, and
- documents indicating that the student was under 12 years of age at the time the alleged counselling sessions took place.

[17] While the appellant says that this permission form should exist, based on the policy, she confirms that she was never provided a copy to sign for the student to attend the counselling sessions.

[18] The board denies that there are any additional responsive records and submits that it has already provided the appellant with a redacted copy of the sole record that is responsive to her request.

[19] In its representations, the board provides an overview of the steps that it took after it received the appellant's request. The board says that its Communications and Privacy Manager, Communications Services (the manager) received the request from the appellant and verbally clarified it with her at the time. The board provided an affidavit from the manager who attested that she understood that the appellant was making a request for notes about the student that were prepared by a Child and Youth Worker (the CYW) at the school.

[20] The board submits that it did not request further clarification as the scope of the request was clear following the conversation between the manager and the appellant. The board maintains that there is no real dispute about the scope of the appellant's request, or the board's interpretation of it.

[21] The board says the manager then conducted a search for responsive records. The board submits that the manager was the appropriate person to conduct the search because she has been in that position since 2002, and as a result, has the necessary experience and familiarity with the operations of the board, and the school, to conduct the search. The board submits that the manager had sufficient knowledge of the nature of the request and any individuals or staff that may have created any records responsive to the request. Additionally, the board reiterates that the manager also personally clarified

the scope of the request with the appellant.

[22] The board says that there was only one child and youth worker at the school during the timeframe of the request. As a result, the board says that it was reasonable for the manager to conclude that the CYW was the only individual who would have created any responsive records.

[23] The board says that the manager also instructed the principal of the school and the CYW's supervisor to search for any records responsive to the request. The principal notified the manager that there was one responsive record, which was a handwritten note of a conversation between the CYW and the student on a specific date. The manager confirmed with the CYW that there were no other responsive records. The board submits that the CYW advised the manager that she had not taken any other notes of her interactions with the student. The board says that although the CYW may have had several interactions with the student, most of those interactions were in a group setting and records were not kept.

[24] The board submits that Child and Youth Workers are not counsellors, and that as a result, none of the CYW's interactions with the student were private counselling sessions and no notes were created for those interactions.

[25] Additionally, the board says that child and youth workers do not have a professional obligation to take notes of their general in-class interactions with students. The board submits that the CYW created the single record the board located due to the nature of the information disclosed by a student during a discussion, to fulfil her reporting obligations under the *Child, Youth and Family Services Act*.

[26] The board notes that the appellant's request seeks any notes made by a Child and Youth Worker on the student's Ontario Student Record (OSR). The board denies that notes made by a CYW are a component of a student's OSR. In support of this assertion, it refers me to section 3 of the *Ontario Student Record Guideline* (the *OSR Guideline*).[8]

[27] Furthermore, the board submits that because the student was no longer at the school at the time of the request, her OSR had been transferred to her new school, in accordance with the *OSR Guideline*. The board says that although there is no reason to believe that there would be any responsive records in the student's OSR, it was unable to search that record as it was no longer in the board's possession.

[28] The manager affirms the information in the board's representations in her affidavit and attests that she spoke with the CYW and the CYW confirmed that she created only one record about the student.

[29] In summary, the board submits it made reasonable inquiries to identify and locate all records that would be responsive to the request. The board reiterates that there is

[8] Available online at: https://www.ontario.ca/page/ontario-student-record-osr-guideline

only one record related to the request and confirms that a redacted version of that record was already provided to the appellant. As a result, the board says this appeal should be dismissed.

[30] In reply, the appellant challenges the sufficiency of the evidence provided by the board. She submits that the CYW is the only experienced employee knowledgeable on this matter and that the board should have provided an affidavit from her specifically to confirm or deny the number of sessions that took place and whether they were private or group sessions. The appellant also asserts that the CYW's affidavit should clarify whether specific content that she refers to in her reply representations was discussed during those sessions and raises questions about steps the principal of the school took in response to the events that took place during the alleged counselling sessions.

[31] The appellant questions the board's transparency and says that she requested, and was denied, an investigation. She also notes that the student received counselling, during which age-inappropriate tops were discussed, even though she did not sign the permission form. The appellant also provided evidence of a discussion she had with the school principal, who she says advised her that the CYW takes "impeccable notes."

[32] The appellant submits that the board has not demonstrated integrity or accountability in its actions or through this process and reiterates her request for an affidavit from the CYW.

Findings and analysis

[33] For the reasons that follow, I find that the board has established that it conducted a reasonable search for records that would be responsive to the appellant's request, and I decline to order any additional searches.

[34] I am satisfied that the board understood the appellant's request and tasked the appropriate person to locate any responsive records. I accept that the manager was familiar with the board's staff and its policies, and that she has the knowledge and experience to correctly identify the individuals who would be likely to have records that would be responsive to the appellant's request.

[35] I accept the board's evidence that the manager asked the CYW and the principal to search for records and I see no basis for a finding that any other individual might also have responsive records. Furthermore, I accept the board's explanation about why it located only one responsive record. For the various reasons outlined by the board, it appears that the CYW did not keep notes from any other sessions, whether group or private discussions. I accept that she made a detailed record about the one particular session because of the subject matter of the discussions and the CYW's duty to report under the *Child, Youth and Family Services Act.*

[36] I have reviewed the policies and the permission form provided by the appellant, but these materials do not persuade me that there are likely to be additional records that

have not been identified. The board has been clear that it did not consider the sessions with the CYW to be "counselling sessions" and as a result, it did not apply those policies or send home the permission form. I note that the appellant confirmed that she did not receive a permission form. In my view, whether the discussions that the student took part in were properly considered counselling sessions or not, the board did not consider them as such. It did not send home a permission form, and I accept that the CYW did not keep notes about the sessions.

[37] If, as the appellant submits, the board's actions were not compliant with its policies in this regard, the non-compliance is not within my jurisdiction to consider. My role is to determine whether there is a reasonable basis upon which to conclude that additional responsive records may exist, and if so, to order a further search for records. Based on all of the evidence before me, it appears clear that additional responsive records do not exist, either in the student's OSR or any of the board's files, and there is no reasonable basis for me to order any further search.

[38] Prior to making this decision, I considered the appellant's assertion that the CYW should provide her own affidavit. I disagree that this is necessary. As set out above, the *Act* requires that the board demonstrate that it has made a reasonable effort to identify and locate responsive records. I accept that it has done so. The manager attested that she asked the CYW and the principal to provide any responsive records to her, and that she received one record in response to this request. I find no compelling reason to believe that the CYW would not have been truthful in her response to the manager, nor do I have any basis to conclude that I would receive any different evidence if I ordered the board to provide an affidavit from the CYW about her search.

[39] The appellant has raised various concerns about the conduct of school staff and the CYW, and she has expressed frustration with the board's response to her attempts to raise these concerns and have them dealt with. These concerns, however valid they might be, are not directly relevant to the issue of whether additional responsive records may exist. That is my concern in this inquiry and for the reasons outlined above, I find that there is no reasonable basis for me to conclude that further records are likely to exist.

[40] As a result, I decline to order the board to search for any additional responsive records and dismiss the appeal.

ORDER:

The appeal is dismissed.

Original signed by: March 27, 2024

Meganne Cameron
Adjudicator