

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4572

Appeal MA21-00751

Greater Essex County District School Board

September 26, 2024

Summary: An individual asked a school board for correspondence to or from a specified group of individuals relating to him found in emails and Microsoft Teams chat logs. The school board granted full access to the emails it found but stated that it could not search Microsoft Teams messages. The school board later found a way to search Microsoft Teams and provided the individual with access to the messages that it located from this search. The individual believes more records should exist. In this order, the adjudicator finds that the school board's search for records was reasonable, and she 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.

OVERVIEW:

[1] The appellant is an employee of the Greater Essex County District School Board (the board). He made a request to the board under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for correspondence records relating to him. He asked to be provided with correspondence (physical and digital) sent within a specified time frame that contained:

- Discussions between staff members relating to the appellant, his employment status, disciplinary actions, scheduling, or various union-related matters (collective bargaining, work to rule, and grievances); and

- The appellant's name (including specified permutations) or employee number within the subject line or body of the correspondence.

[2] The appellant stated that this correspondence was to include, but not be limited to, "emails, text messages, iMessages, and Microsoft Teams Chat logs".

[3] The board issued a decision in response, stating that the request for any documents containing his name or employee number would require a search broader than the board's system could perform. The board also stated that it could not search for text messages, iMessages, or Microsoft Teams (Teams) logs "as this information is encrypted".

[4] The appellant appealed the board's decision to the Information and Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore a possible resolution between the parties. During mediation, the board suggested that the appellant provide more specific information on the records he was seeking, so that the board could conduct a narrowed search for that information. The appellant then narrowed his request to communications between IT management and non-bargaining unit staff found in emails and Teams chat logs.

[5] After conducting a search based on the narrowed request, the board issued a revised decision, providing the appellant with full access to the records identified as responsive to the request. Following his review of the records provided, the appellant noted areas where he believes additional records should exist.

[6] Later in mediation, the board indicated that they had found a way to search Teams chat logs. The board conducted a further search and identified several hundred pages of additional records, which they provided full access to. The appellant reviewed these additional records and stated that he continues to believe that additional records responsive to the request should exist.

[7] Further mediation was not possible, so the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. I sought and received representations from both parties on the reasonableness of the board's search.

[8] For the reasons that follow, I find that the board conducted a reasonable search for responsive records and dismiss the appeal.

DISCUSSION:

[9] The sole issue to be decided in this appeal is whether the board's search for responsive records was reasonable.

[10] If a requester claims that additional records exist beyond those found by the

institution, the sole issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.¹ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the board's decision. Otherwise, I may order the board to conduct another search for records.

[11] The *Act* does not require the board to prove with certainty that further records do not exist. However, the board must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records.²

[12] 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.³

[13] 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.⁴

Representations

[14] The board provided an affidavit sworn by the board employee responsible for coordinating searches for records in response to requests submitted under the *Act* (the coordinating employee). In that affidavit, she outlined the searches that were conducted after the appellant narrowed his request.

[15] The coordinating employee stated that for the first round of searches made following the narrowing of the request, she asked IT management and Human Resources staff members to search their email and Teams logs for the appellant's name and employee number. She also asked the board's Information Security Analyst to do his own search of the relevant board emails and Teams chat logs. Regarding the Information Security Analyst's search, the coordinating employee specified that he was to search for the appellant's full name and employee number, and that the search was to include:

... the Requester as the sender or recipient of an email and the Requester as the subject of an email, either in the subject field, the body of the email, or attachments.

[16] The coordinating employee's affidavit included an email from board's Information Security Analyst, in which he attached the results of his search and confirmed the parameters that he searched under. The email indicates that for the specified time frame the Information Security Analyst searched for the appellant as the sender or recipient of an email, and for the appellant's first name, last name, or employee number within the

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Orders M-909, PO-2469 and PO-2592.

⁴ Order MO-2246.

subject field, body of the email, or attachments. The Information Security Analyst stated that he did not find any Teams messages that met the criteria provided.

[17] The affidavit states that the coordinating employee also received responses from the designated staff members. Four staff members located records, while another four staff members conducted searches but did not locate any records. The board then provided the appellant with a fee estimate, and later with an access decision, in which it provided access in full to the responsive records that it located.

[18] The coordinating employee's affidavit also states that several months after these searches, the board's Information Security Analyst learned of a feature in Office 365 called "Content Search" that could be used to conduct searches of emails and Teams chat logs. The board then searched for the appellant's name and employee number using this feature and located 755 pages of additional responsive records. The board issued a revised decision letter, providing access in full to the newly located records, with the payment of the applicable fee.

[19] In its representations, the board states that the coordinating employee communicated with staff to coordinate a thorough search for records. This included clarifying the search terms to be used and the platforms to be searched. The board states that the Information Security Analyst who was responsible for the searches is knowledgeable in information technology and experienced in Office 365. The board states that it has satisfied itself that all responsive records have been located, and that the appellant has not provided any basis to suggest that further responsive records exist. The board also notes that the appellant did not indicate what kind of additional records he believes exist, or why he believes they exist.

[20] The appellant provided representations in response. He sought to keep some of these representations confidential.

[21] The appellant notes that the board could have conducted the relevant searches earlier in the process, as his initial request included Microsoft documentation on how to search its services.

[22] The appellant also states that the timeframe covered by his request included the lead up to an averted strike. Because of this, he believes that the school board should have located additional responsive records regarding workloads, projects, and tasks, and how these could shift in the event of a strike.

Decision and Analysis

[23] The school board has described distinct searches that it conducted in response to the appellant's narrowed request. These included searches conducted by identified employees of their own emails, the initial search by the Information Security Analyst, and the subsequent search by the Information Security Analyst that utilized Microsoft 365's content search feature. From the descriptions provided, all of these searches applied the

timeframe and search criteria specified by the appellant.

[24] The appellant notes that he advised the school board of the relevant Microsoft search features in his request. The information in the affidavit conveys that the Information Security Analyst was provided with the parameters of the request, but not whether he was provided with the other informational material from the appellant, such as the reference to the search features. Regardless, the board eventually utilized the content search tool and located several hundred pages of additional records by doing so.

[25] The determination of whether an institution has conducted a reasonable search evaluates the totality of its search efforts. In this case, it appears that the first round of searches was not adequate, given the board's apparent failure to effectively search Teams chat logs. However, that inadequacy was addressed by the later content search. The coordinating employee's affidavit states that the school board ultimately searched both emails and Teams logs according to the parameters set out by the appellant in his request. It also states who conducted the searches, and specifies that this included the Information Security Analyst, whom the board described as knowledgeable in information security.

[26] As previously noted, 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.⁵ I am satisfied that the school board has provided sufficient evidence to establish this.

[27] I have reviewed the appellant's representations, including his confidential representations, and I am not persuaded that he has established a reasonable basis for concluding that further responsive records exist. A requester will rarely be in to indicate precisely which records the institution has not identified, but still must provide a reasonable basis for concluding such records exist.⁶ In this case, the appellant has outlined why he believes some general records relating to shifting workloads may have been created in advance of a potential work stoppage. However, the request at issue relates to records particular to the appellant, where he is mentioned within a message or has sent or received the message. The appellant has not established a reasonable basis for why additional records meeting that criteria should exist.

[28] For the reasons stated above, I find that the school board conducted a reasonable search for responsive records.

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2246.

ORDER:

I uphold the reasonableness of the board's search for responsive records and dismiss the appeal.

Original Signed by: _____
Jennifer Olijnyk
Adjudicator

September 26, 2024 _____