Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4666

Appeal MA22-00279

Toronto District School Board

June 16, 2025

Summary: An individual made a request to the Toronto District School Board (the board) under the *Municipal Freedom of Information and Protection of Privacy Act* for records relating to investigations regarding the conduct of a board trustee and employee.

The board granted the appellant partial access to some records but denied the appellant access to two invoices claiming that they contain solicitor-client privileged information (section 12). The board also claimed that certain email records were excluded from the scope of the *Act* because they related to labour relations or employment related matters (section 52(3)3). The individual appealed the board's decision to deny access to the invoices and email records and also claimed that the board's search failed to locate all responsive records.

In this order, the adjudicator upholds the board's claim that the email records are about labour relations or employment related matters and are excluded from the scope of the *Act*. The invoice prepared by a law firm is found exempt as the adjudicator finds that it contains solicitor-client privilege information. However, the adjudicator orders the board to disclose to the appellant the invoice the Integrity Commissioner prepared as she determines it is not subject to solicitor-client privilege. The adjudicator upholds the board's search for responsive records.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 12, 17, and 52(3)3.

Orders and Investigation Reports Considered: Orders P-1252, PO-1714, MO-4354 and MO-4447.

Cases Considered: *Ontario (Ministry of the Attorney General) v. Ontario (Assistant Information and Privacy Commissioner), 2005 CanLII 6045* and *Teper v. Information and Privacy Commissioner of Ontario,* 2025 ONSC 1717 (Div. Ct.).

OVERVIEW:

[1] In 2021, the Integrity Commissioner of the Toronto District School Board (the board) issued a final report in relation to two complaints regarding allegations pertaining to a trustee's conduct.[1] The complaints alleged that the trustee's posting on Twitter contravened the board's code of conduct. It was alleged that her social media post mischaracterized the actions of a board employee as having distributed antisemitic materials in an email mailout. The Integrity Commissioner (IC) retained an Independent Investigator to assist her investigation into the matter. The IC issued a final report. The IC's report did not identify the employee who sent the mailout by name but included excerpts of the mailouts in the appendices of the report. The IC's report also did not discuss or investigate any issues relating to the board employee's conduct.[2] The board completed its own investigation regarding the conduct of its employee.

[2] This order resolves an appeal relating to a 10-part request submitted to the board under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the IC's investigation of the complaint about a trustee, other matters relating to the IC's office in addition to records exchanged between the employee and the board within a specified time-period.

[3] The board issued a decision granting the appellant partial access to two records.[3] The board also located two invoices but withheld them entirely asserting that the solicitor-client privilege exemption applies.[4] Finally, the board said that it did not disclose certain email records that were located because they relate to labour relations or employment related matters and are excluded from the scope of the *Act* (section 52(3)).[5]

[4] The appellant appealed the board's decision to the Information and Privacy Commissioner of Ontario (IPC) and a mediator was assigned to the file to explore a

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[1] A signed copy of the report is found as part of an agenda item posted on the board's website.
[2] For more information regarding the background of the IC's investigation, see paragraphs 16 to 20 of Order MO-4447.
[3] Records 1 and 2 were identified as responsive to part 1 of the request, which sought access to contracts between the board and the Integrity Commissioner. The board claimed that disclosure of the withheld portions of these records would constitute an unjustified invasion of personal privacy under section 14(1).
[4] Records 3 and 4 responsive to parts 8 and 9 of the request, which sought access to the invoice paid to a law firm for its work as an independent investigator along with any documentation authorizing payment of the invoice.
[5] The board says that the email records are responsive to part 10 of the request, which seeks access to "all correspondence" between the board's human rights office and a named employee regarding a "mass email." The appellant specified the time period of the correspondence between the employee and human rights office and the timing of the mass email.

settlement with the parties.

[5] During mediation, the appellant advised that in addition to seeking access to the records that were not disclosed, he believes that the board's search for records responsive to parts of his request was not reasonable. The issue of reasonable search was added as an issue to the appeal. As mediation did not resolve the appeal, the file was transferred to the adjudication stage of the appeals process where an adjudicator may conduct an inquiry. During my inquiry, I invited and received representations from the board and the appellant.[6]

[6] In this order, I uphold the board's decision that the emails are excluded from the scope of the *Act* under section 52(3)3. I also uphold the board's decision to apply the solicitor-client privilege exemption under section 12 to one of the invoices. However, I order the board to disclose to the appellant the other invoice as it is not subject to solicitor-client privilege. Finally, I find that the board's search for records responsive to the request was reasonable and uphold the board's search.

RECORDS:

[7] The records at issue in this appeal consist of two invoices (records 3 and 4) and 31 pages of emails (record 5).

ISSUES:

A. Does the section 52(3)3 exclusion for records relating to labour relations or employment matters apply to the emails found at record 5?

B. Does the discretionary solicitor-client privilege exemption at section 12 of the *Act* apply to the invoices found at records 3 and 4?

C. Did the board conduct a reasonable search for records responsive to the request?

DISCUSSION:

Issue A: Does the section 52(3)3 exclusion for records relating to labour relations or employment matters apply to the emails found at record 5?

[8] Section 52(3) of the *Act* excludes certain records held by an institution that relate to labour relations or employment matters. If the exclusion applies, the record is not subject to the access scheme in the *Act*, although the institution may choose to disclose

[6] The parties' representations were shared in accordance with the IPC's *Code of Procedure.*

it outside of the *Act*'s access scheme.[7]

[9] The purpose of this exclusion is to protect some confidential aspects of labour relations and employment-related matters.[8]

[10] As noted above, the board relies on section 52(3)3, which states:

> Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> > 3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[11] If section 52(3) applies to the records and none of the exceptions found in section 52(4) applies, the records are excluded from the scope of the *Act*.

[12] If section 52(3) applied at the time the record was collected, prepared, maintained, or used, it does not stop applying at a later date.[9]

[13] The type of records excluded from the *Act* by section 52(3) are those relating to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue.[10]

[14] Section 52(3) does not exclude all records concerning the actions or inactions of an employee of the institution simply because their conduct could give rise to a civil action in which the institution could be held vicariously liable for its employees' actions.[11]

[15] For section 52(3)3 to apply to the withheld emails, the board must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;

2. this collection, preparation, maintenance or use was in relation to meetings, consultations, discussions or communications; and

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

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[7] Order PO-2639.
[8] *Ontario (Ministry of Community and Social Services) v. John Doe*, 2015 ONCA 107 (CanLII).
[9] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 509.
[10] *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.). The CanLII citation is "2008 CanLII 2603 (ON SCDC)."
[11] *Ministry of Correctional Services*, cited above.

Part 1: collected, prepared, maintained or used; and
Part 2: meetings, consultations, discussions or communications

[16] For the collection, preparation, maintenance, or use of a record to be "in relation to" one of the three subjects mentioned in this section, there must be "some connection" between them.[12]

[17] The "some connection" standard must, however, involve a connection relevant to the scheme and purpose of the *Act*, understood in their proper context. For example, given that accountability for public expenditures is a core focus of freedom of information legislation, accounting documents that detail an institution's expenditures on legal and other services in collective bargaining negotiations do not have "some connection" to labour relations.[13]

[18] The board says that the records were collected, prepared, maintained, or used by the board and that the emails comprise of discussions between board staff. The board says that "in each case the author, recipient or copied party are employees … who were communicating in the course of their employment about issues related to the Board."

[19] In the confidential portion of its representations, the board identified the specific issues discussed in the emails. The board also identified each employee by name, job title, and described their employment responsibility.

[20] In his representations, the appellant does not dispute that the board's evidence demonstrates that parts 1 and 2 of the test have been met. Having regard to the board's representations and the records themselves, I find that parts 1 and 2 of the test in section 52(3)3 has been met.

Part 3: labour relations or employment-related matters in which the institution has an interest

[21] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees as governed by collective bargaining legislation, or to similar relationships. The meaning of "labour relations" is not restricted to employer-employee relationships.[14]

[22] The term "employment of a person" refers to the relationship between an employer and an employee. The term "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and

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[12] Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).
[13] Order MO-3664, *Brockville (City) v. Information and Privacy Commissioner, Ontario*, 2020 ONSC 4413 (Div Ct.).
[14] *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.); see also Order PO-2157.

employees that do not arise out of a collective bargaining relationship.[15]

[23] The phrase "in which the institution has an interest" means more than a "mere curiosity or concern," and refers to matters involving the institution's own workforce.[16]

[24] The records are excluded **only** if the meetings, consultations, discussions, or communications are about labour relations or "employment-related" matters in which the institution has an interest. Matters related to the actions of employees, for which an institution may be responsible are not employment-related matters for the purpose of section 52(3).[17]

[25] The phrase "labour relations or employment-related matters" has been found **not** to apply in the context of an organizational or operational review.[18]

[26] The board says that all of the emails have "some connection" to a labour and employment matter and should be excluded on this basis. In support of its position, the board provided an affidavit from the board's Superintendent who held the position of Executive Superintendent, Employee Services during the relevant time-period. In the non-confidential portions of the affidavit, the board asserts that the discussions in the emails before me relate to its decision to initiate an investigation into the conduct of the employee in question to determine whether any corrective action or discipline was warranted.

[27] The appellant says that some of the emails would have been created in the context of an organizational or operational review and argues that the IPC has previously found that these types of communications do not constitute "labour relations or employment-related matters." In support of his position, the appellant states:

> The threshold question is whether the communications between the [Board's Human Rights Office] HRO and the staff member should be viewed as a single record or as multiple records. The [board] does not address this question. My submission is that the records should be bifurcated between records dealing with (a) inquiries between the staff member and the HRO for the purpose of clarifying the HRO's position as to the definition of antisemitism, and (b) records dealing with whether the employee violated TDSB policies and consequently ought to be subject to disciplinary proceedings. I further submit that the HRO Review and Assessment dated June 4, 2021 referred to in the [Integrity Commissioner's report p.49] would be covered by my information request, would fall in the category of communications made to clarify HRO policy (i.e. an operational

[15] Order PO-2157.
[16] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.
[17] *Ministry of Correctional Services,* cited above.
[18] Orders M-941 and P-1369.

> communication) rather than communications made in the context of an investigation into employee conduct.
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> …
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> Therefore, to the extent that the communications between an employee and the HRO, outside the time frame or scope of an investigation into the conduct and an employee, which dealt with clarification of, or improvement to, the HRO's understanding of what messages could, in context, be viewed as antisemitic, such communications would not be employment-related but instead be in the nature of an organizational or operational review.

[28] The appellant points to the board's affidavit evidence, along with the timeline set out in the IC's report and says that the employee had initiated discussions with the board's human rights office. The appellant says that evidence demonstrating that the employee initiated contact with the board bolsters his argument that some of the records must relate to operational matters. The board's evidence does not dispute the appellant's assertion that the employee was first to contact its human rights office.

[29] Finally, the appellant questions the board's evidence that the emails were exchanged in "strict confidence", given the publication of the IC's report, along with other information he says was reported in a blog. The appellant appears to suggest that the board should not rely on section 52(3)3 in the circumstances of this appeal given the fact that some information regarding the board's investigation into the employee's conduct is already available to the public.

Analysis and finding

[30] The appellant did not claim that any of the exceptions to section 52(3) apply and I am satisfied that none apply.[19]

[31] The appellant's main argument is that portions of the emails before me must address operational or organizational matters. In support of this position, the appellant speculates that the subject-matter of some of the emails, which respond to his request, must address collaborative discussions amongst staff to formulate responses to the employee or clarifies the board's position regarding the definition of antisemitic. The appellant asserts that these portions of the emails, if they exist, cannot be excluded from the scope of the *Act* as they do not relate to "labour or employment-related matters" and

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[19] Section 52(4) states that the *Act* applies to the following records:
1. An agreement between an institution and a trade union.
2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.
3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.
4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment.

that I should order the board to issue a decision for these portions.

[32] As noted above, the IPC previously found that the phrase "labour or employment-related matters" did *not* apply in the context of an organizational or operational review.[20] In these decisions, the IPC determined that the labour or employment-related matters referenced in the records appeared in a general way as the purpose of the record was to address broad organizational or operational issues, such as policy directives or efficiency solutions.[21]

[33] I have reviewed the emails before me and find that they do not address operational or organizational issues. Instead, the records before me address an issue between the board and its employee in which I am satisfied that the board has an interest given the allegations made against the employee. In my view, it is not relevant whether the employee or employer initiated the discussions. What is relevant is whether the content of the discussions relate to a labour relations or employment-related matters in which the institution has an interest.

[34] The appellant also argues that the accountability purposes of the *Act* should be a factor in determining whether I uphold the board's decision. I disagree given that the purpose of the 52(3)3 exclusion is to protect confidential aspects of labour relations and employment-related matters. Here, the records which respond to the appellant's request comprise of emails exchanged between the board, acting in its role as an employer responding to human resource issues related to its employee.

[35] Finally, the appellant asserts that information about the board's investigation into the conduct of the employee in question is already in the public domain. Whether the information has already been disclosed publicly is not a relevant consideration before me in the determination of whether the section 52(3) exclusion applies. In any event, the appellant's evidence does not demonstrate that the actual content of emails before me were published. Instead, the appellant's evidence suggests that a blogger may have posted information on the internet which I note was not included in the IC's public report.

[36] Having regard to the representations of the parties and the records themselves, I find that part 3 of the test in section 52(3)3 has been met. As all three parts of the test in section 52(3)3 have been met, I find that the exclusion at section 52(3)3 applies and uphold the board's decision to deny the appellant access to the emails.

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[20] See Orders M-941 and P-1369.

[21] For instance, in Order P-1369 the adjudicator found that a document setting out the policy direction for the future management of a government agency did not concern labour or employment-related matters. The adjudicator found that the document was "a broadly-based organizational review [that touched] occasionally, and in an extremely general way, on staffing and salary issues." In Order M-941, the adjudicator found that the record addressed efficiency and effectiveness issues of an operation as opposed to labour or employment-related matters.

Issue B: Does the discretionary solicitor-client privilege exemption at section 12 of the *Act* apply to the invoices at records 3 and 4?

[37] Section 12 exempts certain records from disclosure, either because they are subject to solicitor-client privilege or because they were prepared by or for legal counsel for an institution in relation to legal advice or litigation. It states:

> A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

[38] Section 12 contains two different exemptions, referred to in previous IPC decisions as "branches." The first branch ("subject to solicitor-client privilege") is based on common law. It includes two types of privilege: solicitor-client communication privilege and litigation privilege. The second branch ("prepared by or for counsel employed or retained by an institution…") is a statutory privilege created by the *Act*. The institution must establish that at least one branch applies.

[39] Here, the board takes the position that the invoices identified as records 3 and 4 are subject to solicitor-client communication privilege at common law, under branch 1. Record 3 is an itemized invoice prepared by the law firm and addressed to the IC. Record 4 is an invoice prepared by the IC and addressed to the board.

Branch 1: Common law solicitor-client communication privilege

[40] The rationale for the common law solicitor-client communication privilege is to ensure that a client may freely confide in their lawyer on a legal matter.[22] This privilege protects direct communications of a confidential nature between lawyer and client, or their agents or employees, made for the purpose of obtaining or giving legal advice. [23]The privilege covers not only the legal advice itself and the request for advice, but also communications between the lawyer and client aimed at keeping both informed so that advice can be sought and given.[24]

[41] Legal billing information is presumed to be privileged unless the information is "neutral" and does not directly or indirectly reveal privileged communications.[25] The privilege may also apply to the lawyer's working papers directly related to seeking,

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[22] Orders PO-2441, MO-2166 and MO-1925.
[23] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).
[24] *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.); *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.
[25] *Maranda v. Richer*, [2003] 3 S.C.R. 193; Order PO-2484, upheld on judicial review in *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 2769, 2007 CanLII 65615 (ONSCDC); see also *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 941 (C.A.) [*Ontario 2005*].

formulating, or giving legal advice.[26]

[42] Confidentiality is an essential component of solicitor-client communication privilege. The institution must demonstrate that the communication was made in confidence, either expressly or by implication.[27] The privilege does not cover communications between a lawyer and a party on the other side of a transaction.[28]

Representations of the parties

[43] The board says that the invoices identified as records 3 and 4 are presumed to be subject to solicitor-client privilege as disclosure would directly or indirectly reveal privileged communications between the IC and the law firm she retained.

[44] The board provided the following description of the invoices in its representations:

> Record #4 is an invoice from the Integrity Commissioner seeking [reimbursement] for services performed by a third party law firm retained by the Commissioner to investigate an alleged breach of the Board's [member Code of Conduct] to prepare a report arising from the investigation. The record contains a detailed summary of the services provided by the law firm as part of the retainer. Record #3 is a copy of the actual invoice submitted by the law firm to the Integrity Commissioner in support of the invoice that forms Record #4.

[45] The board says "[i]n this instance, the services provided by the law firm were provided to the institution's agent, specifically the Integrity Commissioner." The board provided excerpts of its By-Law dated October 26, 2022, as evidence that while the IC is afforded independence in the conduct of her duties "it is clear from the by-law that the Integrity Commissioner is providing such services on behalf of the Board."[29] The board also states in its representations "… that the Integrity Commissioner was acting on behalf

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[26] *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.
[27] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.
[28] *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.)
[29] The board in its representations cites By-law sections 6.3.1, 6.3.2 and 6.3.12(b) and (c).

> Section 6.3.1 states that "[t]he Board will appoint an Integrity Commissioner to provide accountability services and advice pursuant to the Board Member Code of Conduct (P075) and the *Education Act.*"
> Section 6.3.2 states that "[t]he Integrity Commissioner carries out in an independent manner the duties and responsibilities of their office as set out in the TDSB's Bylaws, the Board Member Code of Conduct (P075) and the Complaint Protocol (PR708)."
> Sections 6.3.12(a) and (b) state that the Integrity Commissioner will:
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> > (a) Provide advice on the application of the Board Member Code of Conduct, TDSB policies, procedures and the Complaint Protocol and general information with respect to a member's obligations under the *Municipal Conflict of Interest Act;*
> > (b) Make inquiries as directed by the Board and in accordance with the Complaint Protocol into whether a member of the Board has contravened the Board Member Code of Conduct;

of the Board in retaining a law firm to conduct the investigation" and provided an affidavit from the IC. In the non-confidential portions of the IC's affidavit, she confirms that her accounts, along with any invoices for services provided to her office related to the subject-matter of this request, were sent to the board's accounting department for payment. The IC also confirms that she retained a law firm "to conduct an independent human rights investigation, provide legal advice [and] to prepare a report for [her] review."

[46] The appellant does not dispute that a contractual relationship between the board and the IC exists which authorized her to investigate matters on behalf of the board or be paid by the board. Instead, the appellant advanced the following three arguments as to why the solicitor-client privilege exemption does not apply to the invoices in the circumstances of this appeal:

- The board cannot rely on the solicitor-client privilege exemption because the IC, not the board, is the client. The appellant asserts that no solicitor-client relationship between the board and the law firm exist. In addition, the board cannot argue that the IC was its agent as the contract between the board and the IC expressly prohibits the IC from holding herself out "as an agent, partner, or employee" of the board.[30] Furthermore, the appellant says that the custody and control findings in Orders MO-2381 and MO-4447 support his position that the IC was not acting as the board's agent when she retained the law firm.[31]

- the appellant says that if I find that the IC is the board's agent, then any privilege attaches only to the portions of the records that contain legal work. The appellant says that the law firm provided fact-finding or investigative services to the IC. The appellant says that the law firm provided "… a mix of services, some of which were legal advice some of which were not."[32] and

- the appellant says that any privilege was waived.

Analysis and finding

What is the relationship between the board and the IC? Who is the client?

[47] The appellant says that the IC acted independently from the board and is contractually required to conduct her work at an arms-length. In support of his position,

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[30] The appellant says that the board disclosed a copy of its contract with the IC in response to a prior request. The appellant says that section 9.1 of contract states "… that nothing in the agreement shall have the effect of "creating an employment, partnership, or agency relationship" between the board and the IC…"

[31] The appellant also points out that the board took an opposite position in Order MO-4447 when it claimed that any services provided by a law firm to the IC was independent of the board.

[32] In support of this position, the appellant says that the IC describes the law firm as a "Human Rights Independent Investigator." The appellant also says that the board in its representations could said that the law firm was retained to provide legal advice, but it did not.

the appellant refers to Order MO-4447[33] which addressed his request to the board for a copy the retainer agreement between the IC and the law firm in addition to other records relating to the IC's investigation of the same trustee. The appellant says that in this appeal, the board is arguing the opposite it asserted in Order MO-4447.

[48] The adjudicator in Order MO-4447 stated that the board said that the contract between itself and the IC "was specifically formulated so as to ensure the IC's independence from the board so that investigations can be conducted impartially.[34]" The adjudicator also noted that in Order MO-2381, the board took a similar position relying on section 6(a) of the IC's 2016 contract which states: "The [IC] is an independent contractor and not an employee of the [the board]."[35] In both orders, the issue before the IPC was whether the IC's records were under the custody or control of the board. The adjudicators found that the IC functioned independently from the board. As a result, the records requested in Orders MO-4447 and MO-2381 were found not subject to the *Act* and the requesters did not have a right to request access under section 4(1).[36]

[49] In this appeal, the board does not take the position that the invoices are not in its custody or control. Accordingly, I need not consider whether the appellant has a right to request access under section 4(1). However, I find the reasoning in Order MO-4447 instructive in determining the nature of the relationship between the board and IC and adopt it for the purposes of this appeal.

[50] I have considered the representations of the parties and note that there is no dispute between the parties that the IC sent copies of the invoices to the board for payment. In addition, the parties agree that the IC provided services to the board and that the board was responsible for her monetary compensation, including the reimbursement of any expenses incurred by her.[37]

[51] Having regard to the evidence before me and the representations of the parties, I find that the IC acted independently from the board when she retained the law firm. In my view, the by-law provisions establish that the IC is neither an employee nor agent of

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[33] Order MO-4447 was upheld recently in *Teper v. Information and Privacy Commissioner of Ontario,* 2025 ONSC 1717 (Div. Ct.).

[34] See paragraph 29 of Order MO-4447.

[35] See paragraph 36 of Order MO-4447.

[36] Section 4(1) establishes the right of access under the *Act*. That section reads, in part:

> 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...

This section makes it clear that the *Act* applies only to records that are in the custody or under the control of an institution. A record will be subject to the *Act* if it is in the custody or under the control of an institution; it need not be both. (Order P-239 and Ontario (Attorney General) v. Ontario (Information & Privacy Commissioner), 2011 ONSC 172 (Div. Ct.)).

[37] The IC confirms in the non-confidential portions of her affidavit that her accounts along with any invoices for services provided to her office were sent to the board's accounting department for payment. The IC also confirms that she retained a law firm "to conduct an independent human rights investigation, provide legal advice [and] to prepare a report for [her] review."

the board. Instead, the work she performs is to be at an arms-length of the board's influence. For instance, section 6.3.2 of the board's by-law in force at the time of the IC's appointment says that the IC's work carries out "… in an independent manner the duties and responsibilities of their office..."[38] In addition, section 6.3.11 of the by-law states that:

> Serving the Board of Trustees, the Integrity Commissioner will provide advice and offer an independent, transparent and accountable process for conducting inquiries and complaint resolution.[39]

[52] Having regard to the above, I disagree with the board's assertion that the IC acted as its agent when she retained the law firm. I also find that there is insufficient evidence to conclude that the IC acted as the board's employee. In addition, based on the evidence before me I find that no solicitor-client relationship exists between the board and the IC.

[53] In the circumstances of this appeal, the IC, not the board is the law firm's client. The IC sent the invoices to the board to request reimbursement of the law firm's fees. The appellant says that the board should not be allowed to rely on the solicitor-client privilege exemption to withhold the invoices where no solicitor-client relationship exist between itself and the law firm.

[54] In my view, there is no barrier to the board raising the solicitor-client privilege exemption. The exemption does not require the board to be the client. It is sufficient that the board has physical possession of the record. The issue is whether the IC waived any privilege attached to the invoices when she provided copies to the board. Under the common law, a client may waive solicitor-client privilege.

[55] Later in this decision I will determine whether the IC waived any privilege that may attach to the invoices when she provided copies to the board. In doing so, I will also consider the appellant's assertion that the IC waived privilege by including certain information about the investigation in her report. However, I must first determine what portions of the invoices contain information subject to the solicitor-client communication privilege.

The information contained in only one invoice is subject to the solicitor-client communication privilege

[56] For the common law solicitor-client communication privilege to apply, the invoices must contain direct communications of a confidential nature made for the purpose of

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[38] Board by-laws, dated October 26, 2022.

[39] In addition, section 6.3.12 of the board by-laws, in part, states:

> (b) Make inquiries as directed by the Board and in accordance with the Complaint Protocol into whether a member of the Board has contravened the Board Member Code of Conduct;
> (c) Provide opinions on policy matters and make other reports to the Board as requested on issues of ethics and integrity;

obtaining or giving legal advice.

[57] The appellant says that "[t]he fact that the services were provided by a lawyer does not automatically cause the services to be privileged." The appellant says that the board's representations and the IC's report demonstrates that the law firm provided fact-finding or investigative services. The appellant describes these services as "nonlegal investigatory services."

[58] There is no dispute that the IC retained the law firm to assist with her investigation of the trustee. The board and IC do not dispute that the law firm provided investigative or fact-finding services. Instead, they maintain that the law firm also provided the IC legal services.

[59] However, evidence that the law firm provided other services in addition to traditional legal work does not on its own demonstrate that the law firm's work was not connected to the giving of legal advice. In fact, the IPC has consistently found that it can be difficult to parse between legal advice and inter-related activities performed by lawyers.[40] For example, in Order PO-1714, the adjudicator cited a federal court decision upholding the IPC:

> In the case at bar, though the appellant contends that the information which he seeks relates only to acts of counsel and therefore should not be privileged, I am satisfied that the narrative portions of the bills of account are indeed communications. This is not analogous to a situation where a lawyer sells a piece of property for the client or otherwise acts on the client's behalf. The research of a subject or the writing of an opinion or any other matter of that type is directly related to the giving of advice. Despite the fact that the appellant is content to have the specific topic of research remain privileged, those other portions of the bills of account still constitute communications for the purpose of obtaining legal advice. In those circumstances the lawyer is not merely a witness to an objective state of affairs, but is in the process of forming a legal opinion. This is true whether the lawyer is conducting research (either academic or empirical), interviewing witnesses or other third parties, drafting letters or memoranda, or any of the other myriad tasks that a lawyer performs in the course of his or her job. It is true that interviewing a witness is an act of counsel, and that a statement to that effect on a bill of account is a statement of fact, but these are all acts and statements of fact that relate directly to the seeking, formulating or giving of legal advice. And when these facts or acts are communicated to the client they are privileged. This is so whether they

[40] See for example Orders MO-1339 and MO-1371.

> are communicated verbally, by written correspondence, or by statement of account.[41]

[60] Here, there is no dispute that the law firm completed work that could have been completed by non-lawyers, such as interviewing witnesses and compiling evidence in furtherance of a human rights investigation. The appellant asserts that this type of work does not relate to the legal advice sought or given. Accordingly, I must consider whether all of the law firm's work was related to direct communications of a confidential nature it made to the IC for the purpose of obtaining or giving legal advice.

[61] The information at issue before me is contained in invoices. Legal billing information is presumed to be privileged unless the information is "neutral" and does not directly or indirectly reveal privileged communications.[42] The IPC has in previous matters dealing with legal billing information consider the following questions:

1. Is there any reasonable possibility that disclosure of the amount of the fees paid will directly or indirectly reveal any communication protected by the privilege?

2. Could an "assiduous inquirer" (someone taking a very methodical and persistent approach), aware of background information, use the information requested to deduce or otherwise acquire privileged communications?[43]

The law firm's invoice (Record 3) is presumptively privileged

[62] The board says that the invoices contain a detailed summary of the services the law firm provided to the IC. I have reviewed the invoice[44] and am satisfied that most of the information contained in record 3 is not neutral and is presumptively privileged. This information contains the law firm's narrative description of services it provided the IC. Based on my review of the narrative, I am satisfied that any legal work completed by the law firm is interconnected to its work activities directly related to exchanging direct communications of a confidential nature with the IC for the purpose of giving legal advice. In my view, it is reasonable to expect that disclosure of this information would directly or indirectly reveal privileged communications exchanged between the IC and law firm.

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[41] *Stevens v. Canada (Prime Minister)* (C.A.), 1998 CanLII 9075 (FCA), para 49.
[42] *Maranda v. Richer*, [2003] 3 S.C.R. 193; Order PO-2484, upheld on judicial review in *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 2769, 2007 CanLII 65615 (ONSCDC); see also *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 941 (C.A.).
[43] See Order PO-2484, cited above; see also *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 941 (C.A.).
[44] Record 3 has minor redactions in the copy provided to the IPC. The information redacted in the copy I examined are the portions of the invoice which would identify individuals the law firm was in contact with. The IC is identified as "client" in the record and is not redacted from the copy of record 3 provided to the IPC. Despite these portions of record 3 being redacted in the copy examined by me, I am satisfied that the remaining portions of the record contain sufficient information for me to adjudicate the issues relating to whether the board's decision to withhold this record should be upheld.

Accordingly, subject to my finding about waiver, I find that the solicitor-client communication privilege applies to information detailing the work performed by the law firm. In my view, it is not practicable to sever this information from other information found in record 3 such as address information. Accordingly, if I find that the IC has not waived privilege to this record, the solicitor-client exemption under section 12 applies to the whole record.

The presumption does not apply to the IC's invoice (record 4)

[63] I reach a different conclusion for record 4. The rebuttable presumption that legal billing information is privileged arises with communications between legal counsel and their clients.[45] The author of the invoice found at record 4 is not the law firm but the IC. The IC created the invoice to facilitate reimbursement of fees invoiced to her. Accordingly, the presumption of privilege attaching to lawyers' bills of account cannot be relied upon the board to deny disclosure of record 4.

[64] Nonetheless, I must consider the board's arguments that that record 4 qualifies for exemption under section 19 because it contains solicitor-client communication privileged information. I do not agree with the board's assertion that record 3 summarizes the "long detailed description of the communications between [counsel and client]" found in the invoice prepared by the law firm (record 3). I have compared the IC's description with the itemized services set out in record 3 and confirm that the IC's description does not identify or include any items contained in the law firm's invoice.

[65] Record 4 contains:

- the total amount of fees invoiced to the IC,
- the total hours billed, and
- the IC's description of the services the law firm provided her.

[66] The board did not argue that disclosure of the total amount of fees paid would directly or indirectly reveal communication protected by privilege. Previous IPC orders have ordered the disclosure of the total or aggregate amount of money an institution has paid for legal fees where there is no "reasonable possibility" that disclosure would result directly or indirectly revealing solicitor-client privileged communications.[46] I find that it is appropriate to adopt this approach to the circumstances of this appeal given the absence of evidence before me establishing that disclosure of record 4 would directly or indirectly reveal solicitor-client privileged communications.

[67] The board also did not argue that disclosure of the total amount of hours billed would directly or indirectly reveal communication protected by privilege. However, I note

[45] Order PO-4510, para 108.
[46] See for example, Orders PO-4531, PO-2484 and PO-2548.

that the Court of Appeal of Ontario acknowledged that it is *possible* in some circumstances, an assiduous reader could deduce privileged communication between solicitor and client from the total of number of hours spent by legal counsel on a matter.[47] However, I find that such circumstances do not exist in the present appeal. Adopting the approach in Order PO-4285[48], I must first consider whether there is a reasonable possibility that disclosure of the total amount of hours could *directly* reveal privileged communications. The answer here is no. The single number reflected in record 4 contains no information about any particular communications between the IC and the law firm.

[68] The second question I must consider is whether there is a reasonable possibility that disclosure of the total amount of hours could *indirectly* reveal privileged communications. Answering this question requires me to take the position of an assiduous inquirer, someone who is knowledgeable about the underlying matter, who takes a persistent approach and is methodical.[49] The board's representations did not specifically address this issue. Taking into account, the circumstances of this appeal, including the board's publication of the IC's report, I am unable to identify any conclusion that could be possibly drawn by an assiduous insider, including the appellant, about any privileged communications between the IC and the law firm if the total amount of hours identified in record 4 is disclosed.

[69] Finally, I find that someone, taking a very methodical and persistent approach, would not be able to use the IC's description of the services provided to her in record 4 to reveal privileged communications. As noted above, the IC's description does not in any way summarize the information I found presumptively privileged in the invoice prepared by the law firm (record 3). In my view, the descriptive information the IC decided to include in record 4 does not amount to confidential communications between legal counsel and client for the purpose of giving or receiving legal advice. In addition, I find that there is no reasonable possibility that disclosure of this information would directly or indirectly reveal any communication protected by the solicitor-client communication privilege.

[70] For the reasons set out above, I find that there is no "reasonable possibility" that disclosure of record 4 would directly or indirectly reveal solicitor-client privileged communications. As the parties opposing disclosure have not claimed that any other exemption under the *Act* applies to record 4, I will order the board to disclose the full record to the appellant.

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[47] *Ontario 2007*, supra notes 25, 42 and 43. In *Ontario 2007* the Court of Appeal upheld the adjudicator's finding in PO-2484 commenting that there was "no realistic possibility" that disclosure of the amount of hours spent by the lawyers could reveal anything about the communications between the client and his lawyers.

[48] Order PO-4285.

[49] Order PO-4285, para 90.

There is insufficient evidence that the IC waived privilege in record 3

[71] Under the common law, a client may waive solicitor-client privilege. An express waiver of privilege happens where the client knows of the existence of the privilege and voluntarily demonstrates an intention to waive the privilege.[50] Here, the appellant says that the privilege was waived with the board's publication of the IC's report. In support of his position, the appellant cites Orders MO-4339, MO-3582, and MO-2945-I. The appellant says that in these orders, the adjudicators found that no waiver had taken place given that only information representing an "executive summary", "bottom line", or "crux" of a legal opinion provided to an institution was disclosed.

[72] The appellant went on to highlight portions of the IC's report which he says describe the:

> … investigation methods, facts gathered, and analysis of [the law firm, which] goes significantly beyond the "bottom line" or minimal disclosure of a legal opinion received by a public body in the interests of transparency. Moreover, this disclosure is not in a separate "executive summary" but integrated into the fabric of the [IC report] ….
>
> In the circumstances, I submit that the TDSB effectively waived any solicitor/client privilege relating to the work product of [the law firm] by choosing to publish extensive extracts of it on its website. If privilege was waived regarding the work product itself, it logically follows that privilege was also waived with respect to the [invoices.] Fairness and consistency demand that the public be able to corroborate the record of interviews and materials considered by [the law firm], as described in the [IC report], with the record of activities performed by [the law firm], as described in its invoice.

[73] The appellant does not allege that the IC expressly waived privilege in the circumstances of the appeal. Instead, it appears that the appellant takes the position that the IC's decision to include certain information in her report, along with the board's publication of the report, demonstrates her intention to waive privilege.

[74] There may also be an implied waiver of solicitor-client privilege where fairness requires it, and where some form of voluntary conduct by the client supports a finding of an implied or objective intention to waive it.[51] However, the IC, not the board, is the holder of the privilege. Accordingly, only the IC can waive privilege in the circumstance of this appeal.[52]

[75] I have considered the parties' representations and I find that the details the IC

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[50] *S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (S.C.).
[51] *R. v. Youvarajah*, 2011 ONCA 654 (CanLII) and Order MO-2945-I.
[52] See Order P-1342.

included in her report which describes the work performed by the law firm does not amount to an implied waiver of solicitor-client privilege. The information the IC chose to include in her report does not reveal direct communication of a confidential nature between herself and the law firm. Accordingly, I am satisfied that the report does not reveal communications between the law firm and IC exchanged aimed at keeping both informed so that legal advice can be sought and given. Instead, the report is the IC's narrative of her investigation, including any fact-finding work completed on her behalf by the law firm and her investigatory conclusions.

[76] I will now consider whether the IC waived privilege when she provided a copy of the law firm's invoice to the board. Generally, disclosure to outsiders of privileged information is a waiver of privilege.[53] However, waiver may not apply where the record is disclosed to another party that has a common interest with the disclosing party.[54]

[77] Though the board's representations did not specifically address this issue, I am satisfied that the IC and the board share a common interest in the information I found subject to the solicitor-client communication privilege in record 3. As noted above, there is no dispute between the parties that the IC provided a copy of the invoice to the board to seek reimbursement of the law firm's fee. This is the sole reason the IC provided a copy of record 3 to the board. The common interest arises with the contractual arrangement between the IC and the board which stipulates that the IC is to be reimbursed for the services she provides to the board. Accordingly, the IC's disclosure of the invoice to the board did not constitute a waiver of the privilege I found to exist in the record.

[78] Having regard to the above, I find that privilege was not waived. As a result, I find that record 3 is subject to common law solicitor-client communication privilege and qualifies for exemption under branch 1 of section 12. This finding is subject to my determination that the board properly exercised its discretion.

The board properly exercised its discretion in withholding record 3

[79] The section 12 exemption is discretionary (the institution "may" refuse to disclose), meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[80] In addition, the IPC may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;

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[53] J. Sopinka et al., *The Law of Evidence in Canada* at p. 669; Order P-1342, upheld on judicial review in *Ontario (Attorney General) v. Big Canoe*, [1997] O.J. No. 4495 (Div. Ct.).
[54] See Order MO-3253-I for a through discussion of the IPC's treatment of common interest.

- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[81] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.[55] The IPC cannot, however, substitute its own discretion for that of the institution.[56]

[82] In his representations, the appellant alleges that the board's decision to rely on the discretionary solicitor-client privilege exemption was influenced by its decision to "shield" itself and the IC from public scrutiny regarding the law firm's role in the investigation. The appellant says that there has been public concern about a potential conflict of interest and the appropriateness of the law firm's involvement in the investigation.

[83] The board says in its representations that the information being sought by the appellant is not personal to him and he has not demonstrated any sympathetic or compelling need to obtain access to the invoice. The board says that it considered the principle that information should be available to the public but concluded in this case that the sensitivity of the information at issue required that it exercise its discretion to withhold disclosure.

[84] I have considered the representations of the parties and am satisfied that the board properly exercised its discretion in the circumstances of this appeal to claim the solicitor-client privilege exemption. I am satisfied that the board balanced the principle that information should be available to the public against the purposes of the solicitor-client privilege exemption, including the importance of solicitor-client privilege as recognized by the courts. I also am satisfied that the board took in consideration relevant factors and did not consider irrelevant factors or exercise its discretion in bad faith or for an improper purpose.

[85] Accordingly, I find that the board properly exercised its discretion in withholding record 3 under the solicitor-client privilege exemption at section 12 and I uphold its decision to do so.

Issue C: Did the board conduct a reasonable search for records responsive to the request?

[86] 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*.[57] If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision.

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[55] Order MO-1573.
[56] Section 43(2).
[57] Orders P-85, P-221 and PO-1954-I.

Otherwise, it may order the institution to conduct another search for records.

[87] 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.[58]

[88] The *Act* does not require the institution to prove with certainty that further records do not exist.[59] However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[60] that is, records that are "reasonably related" to the request.[61]

[89] 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.[62] 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.[63]

[90] The board's representations on the search it conducted were accompanied by an affidavit prepared by its Acting Freedom of Information and Privacy Administrator (administrator). The administrator said that she contacted the board's Governance & Board Services (governance staff) as it is the department within the board that deals with the IC. In his representations, the appellant raised a number of questions regarding the accuracy of information set out in the administrator's affidavit. In response to the appellant's questions, the board provided a follow-up affidavit prepared by the board's Senior Legal Counsel (counsel) who stated that she made inquiries with governance staff and confirmed that no records responsive to the appellant's freedom of information request are in the possession, custody, or control of the board.

[91] The appellant takes the position that the board failed to conduct a reasonable search for records responsive to parts 2 to 7 of his request for the following reasons:

- the board failed to demonstrate that it consulted with employees familiar with the board's office assignment, email system, telephone system and procedures for accessing board graphics and producing documents formatted according to board standards, and

- the inaccuracies reported in the initial affidavit demonstrate that a reasonable search did not occur.

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[58] Order MO-2246.
[59] *Youbi-Misaac* v. *Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9, on the analogous requirement in the provincial equivalent of the *Act*.
[60] Orders P-624 and PO-2559.
[61] Order PO-2554.
[62] Orders M-909, PO-2469 and PO-2592.
[63] Order MO-2185.

[92] For the reasons that follow, I find that the board has established that it conducted a reasonable search for records responsive to parts 2 to 7 of the appellant's request.

Part 2 of the request

[93] In part 2 of the request, the appellant sought access to documentation regarding the assignment of a board email address and/or telephone number to the IC during her term.

[94] The board says in its initial affidavit that the IC was not assigned a board email address or telephone number. The appellant in his representations provided screenshots of two board email addresses and a board telephone number used by the IC and appearing in her annual report. Counsel confirmed in the follow-up affidavit that two board email addresses and phone numbers were assigned to the IC while taking the position that no records responsive to the request are in the possession, custody, or control of the board.

[95] I have considered the appellant's evidence regarding the inaccuracies in the board's initial affidavit but, I am satisfied that the additional search coordinated by counsel addressed the deficiencies in the board's first search. I also considered the appellant's evidence questioning the expertise and knowledge of the individuals involved in the board's searches. The appellant suggests that a reasonable search would ensure that that individuals familiar with the board's email and telephone system would be involved in the search.

[96] Based on the evidence of the parties, I am satisfied that the board's searches were coordinated by an experienced employee knowledgeable in the subject matter of the request. I am also satisfied that the board's decision to consult the board's governance staff demonstrates that it has made a reasonable effort to identify and locate responsive records within its custody or control relating to the assignment of a board email and/or telephone number to the IC. As noted above, a reasonable search does not require the board to prove with certainty that further records do not exist.

Part 3 of the request

[97] In part 3 of the request, the appellant sought access to documentation regarding the assignment of physical office space to the IC or any member of her staff at any facility operated by the board at any time during her term of office.

[98] In its initial affidavit, the board said that the IC was not assigned office space at any facility it operated. The appellant questioned the board's response given that the IC's annual report refers to the board's main office. Counsel confirmed in the follow-up affidavit that the IC was not assigned office space and that there are no responsive records.

[99] I have reviewed the evidence of the parties and find that the additional search

effort coordinated by counsel to locate records responsive to part 3 is reasonable. While I find that inclusion of the board's address in her annual report does give rise to a reasonable basis to believe that records regarding her office assignment exist, I am satisfied that the board's decision to consult governance staff demonstrates that it made a reasonable effort to locate responsive records in its custody or control that relate to the assignment of physical office space to the IC or any member of her staff.

Parts 4 and 5 of the appellant's request

[100] In part 4 of the request, the appellant sought access to documentation relating to the IC or her staff having access to board administrative or printing services, or to board printers or photocopiers. In part 5 of the request the appellant sought access to documentation that authorized the IC to use the board's "graphics and wordmarks in her presentations and reports."

[101] The board's initial affidavit stated that it "did not provide administrative or printing services (or access to printers or photocopiers) to the [IC]." The board also says that it did not generate or receive any records relating to the use of graphics or wordmarks in the IC's report or presentations.

[102] The appellant questioned the board's response given the placement of the board's logo in the IC's reports. The appellant also questioned the expertise of individuals consulted during the board's initial search. Counsel confirmed in the follow-up affidavit that no documents exist regarding providing general administrative or printing services to the IC (including access to the board's printers or photocopiers). Counsel also states in her affidavit that governance staff confirmed that it has "no recollection of a formal arrangement or documentation for the [IC] to use TDSB's graphics or logos in her reports or presentations."

[103] I have reviewed the evidence of the parties and find that the board's searches to locate records responsive to parts 4 and 5 was reasonable. I am satisfied that the affidavits filed by the board demonstrate that the board made a reasonable effort to identify and locate responsive records relating to administrative or printing service provided to the IC and to her use of the board's graphics or logos. I am satisfied its searches were coordinated by experienced individuals knowledgeable in the subject matter of the request. Again, I am satisfied that the board's decision to consult staff in its governance department demonstrates that it has made a reasonable effort to identify and locate responsive records within its custody or control.

Parts 6 and 7 of the appellant's request

[104] In part 6 of the request, the appellant sought access to documentation between the board and the IC "regarding the creation, management, and retention of files or records created by her in the course of her duties." In part 7 of the request, the appellant sought access to any "internal documentation" regarding "procedures for the

management of files or records of the IC."

[105] The board says in the initial affidavit that no records were located and that it did not create or receive documentation relating to the creation, management, or file retention of the IC's records. The appellant's representations did not raise specific questions regarding the board's initial affidavit evidence regarding parts 6 and 7 of the request.

[106] Counsel asserts in her affidavit that no records responsive to this part of the request are in the possession, custody or control of the board. The evidence before me demonstrates that governance staff were directed on two separate occasions to conduct a search for records that would respond to parts 6 and 7 of the request. The board asserts that as result of these searches no responsive records within its custody or control were located. I am satisfied that the board has adduced sufficient evidence to demonstrate that reasonable efforts were expended to identify and locate records responsive to parts 6 and 7 of the request.

Finding on search

[107] As indicated above, 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. Having regard to the above, I find that the board has conducted a reasonable search for records responsive to parts 2 to 7 of the request.

ORDER:

1. I order the board to disclose record 4 to the appellant by **July 22, 2025**, but not before **July 15, 2025.**
2. I uphold the board's claim that the exclusion at 52(3)3 applies to record 5.
3. I uphold the board's decision to withhold record 3 pursuant to section 12.
4. I find that the board's search for records responsive to parts 2 to 7 of the request reasonable.
5. In order to verify compliance with Order Provision 1, I reserve the right to require the board to provide me with a copy of the record disclosed to the appellant.

Original Signed by: June 16, 2025

Jennifer James
Adjudicator