

**THE NOVA SCOTIA FREEDOM OF INFORMATION
AND PROTECTION OF PRIVACY ACT**

A REQUEST FOR REVIEW of a decision of the **SOUTHWEST REGIONAL SCHOOL BOARD** in response to an application for access to the applicant's personnel file.

REVIEW OFFICER: Darce Fardy

REPORT DATE: **February 25, 2004**

ISSUE: Whether an adequate search, in accordance with **Section 7(1)**, was done for the records requested.

In a Request for Review under the Nova Scotia **Freedom of Information and Protection of Privacy Act**, dated October 4, 2003, the Applicant asked that I review a deemed refusal by the Southwest Regional School Board (the Board) to provide certain records.

In an application dated September 2, 2003, the Applicant, a former employee of the Board, had asked for copies of all records containing his personal information. He also asked for copies of any records created by named faculty members related to administrative actions taken against him. In a response dated September 6, 2003, the Board invited the Applicant to view the records in his personal file which, since his retirement, was no longer active. He was told that his personal file held no records related to any of the named faculty members.

Background

The Applicant originally complained that the Board had not responded to his application in the time required by the **Act**. However, it was learned after the request for review was filed that the Applicant did in fact receive a reply from the Board which invited him to view his personal file. The Review Office's mediator advised the Applicant to look at his file. It is this Office's understanding that the Applicant took the advice but the Board contends that the Applicant had refused to view his file because he said he had already read it and realized records were missing.

The Applicant believes relevant records could be found at the Tri-County District School Board, specifically in the offices of the Board's Human Resources Director and the Director of Education.

The Applicant concluded an adequate search was not performed when, from another source, he received a record that he says should have been in his file. The Applicant provided the Review Officer with a copy of this record. The issue before the Review Office then became one of whether a "reasonable" or "adequate" search was conducted by the Board in response to the application.

In Review FI-02-50 I noted it was the Review Officer's responsibility to seek assurances that a reasonable search was conducted and that a public body must be able to provide the Review Officer with sufficient evidence to be able to conclude that a reasonable search was conducted. I also expressed the view that an applicant must be able to provide me with a reasonable basis for concluding that specific records, which he did not receive, exist. I am satisfied the Applicant has a reasonable basis for questioning the adequacy of the search.

I wrote to the Board's Chief Executive Officer to ask for evidence of a reasonable search. Several questions were put to the CEO: Who conducted the search for records? What places were searched? and, What types of files were searched?

The Board's CEO replied that he had written to the Tri-County District Board and to the two officials. The District Board said it had no records but the two officials said they found some records, reports and notes "which they believed had not been previously shared with the Applicant." The CEO said these records were given to the Board's solicitor for advice.

Conclusions:

Given the discovery of records in the two officials' offices, during a further search encouraged by the Review Office, I am satisfied that the Board did not perform a reasonable search for records related to the application. Consequently it is my view it did not live up to its obligations found in **Section 7(1)(a)** to make every reasonable effort to assist the Applicant.

Recommendations:

I recommend that the Board disclose to the Applicant the records it found in the officials' offices. If any are to be denied, or provided in severed form, the Board must give the Applicant, in writing, the reasons for the denial or severing, and cite the exemptions in the **Act** which support the decision.

This “letter of decision” should be accompanied with the advice that if the Applicant is not satisfied with the reasons given, he may ask the Review Officer to review the decision.

I also recommend that the Board continue the search until it is reasonably satisfied that all relevant records have been found.

Section 40 of the Act requires the Southwest Regional School Board to make a decision on these recommendations within 30 days of receiving them and to notify the Applicant and the Review Officer, in writing, of that decision.

Dated at Halifax, Nova Scotia this 25th day of February, 2004.

Darce Fardy, Review Officer