



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-324**

**Appeal M-9300439**

**Frontenac County Board of Education**



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# ORDER

## BACKGROUND:

The Frontenac County Board of Education (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to copies of records related to the Board's Values, Influences and Peers (V.I.P.) program. The Board responded to the request by providing a fee estimate of \$44.50 to the requester and requiring a deposit of \$22.25 "prior to proceeding with the request".

The requester paid the deposit and, in response, the Board provided the requester with records responsive to part of the request. The Board subsequently sent an invoice to the requester for \$22.25, representing the balance owing for processing the request. The Board indicated that no additional records existed which were responsive to the remaining categories of the request.

The requester appealed the amount of the fee charged by the Board and the Board's claim that no additional records exist. Mediation was not successful and notice that an inquiry was being conducted to review the Board's decision was sent to the appellant and the Board. Representations were received from both parties.

## ISSUES:

- A. Whether the fee charged was calculated in accordance with section 45(1) of the Act.
- B. Whether the Board's search for responsive records was reasonable in the circumstances of this appeal.

## SUBMISSIONS/CONCLUSIONS:

**ISSUE A: Whether the fee charged was calculated in accordance with section 45(1) of the Act.**

Section 45(1) of the Act provides as follows:

- (1) If no provision is made for a charge or fee under any other Act, a head shall require the person who makes a request for access to a record to pay,
  - (a) a search charge for every hour of manual search required in excess of two hours to

locate a record;

- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record; and
- (d) shipping costs.

Section 45(6) of the Act states:

- (6) The costs provided in this section shall be paid and distributed in the manner prescribed by the regulations.

Section 6 of R.R.O. 1990, Reg. 823 provides, in part:

The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act:

- 1. For photocopies and computer printouts, 20 cents per page.
- ...
- 3. For manually searching for a record after two hours have been spent searching, \$7.50 for each fifteen minutes spent by any person.
- ...

The Board broke down the fee as follows:

For manually searching for records after two hours have been spent searching, \$7.50 for each 15 minutes spent by any person:

1 3/4 hours at \$7.50 per 15 minutes	..	\$52.50
Photocopies at 20 cents per page: 21 @ \$.20 each	..	4.20
		_____
Total	..	\$56.70
Less Deposit	..	-22.25
	..	_____

Balance of fee for processing	..	\$34.45
		=====

Since the invoice which was sent to the appellant for amounts still owing was for \$22.25, rather than \$34.45, the Board has agreed to charge the lesser amount.

In reviewing the Board's fee, my responsibility under subsection 45(5) of the Act is to ensure that the amount is reasonable in the circumstances. In this regard, the burden of establishing the reasonableness of the fee rests with the Board. In my view, the Board discharges its burden by providing me with detailed information as to how the fee charged has been calculated and by producing sufficient evidence to support its claim.

### **Photocopies**

The Board has charged \$4.20 for photocopies based on 21 copies at \$.20 per page. I am satisfied that this cost was calculated in accordance with section 45(1) of the Act.

### **Search Time**

The Board has charged a total of 1 3/4 hours of search time. I am of the view that this cost was calculated in accordance with section 45(1) of the Act.

Although the search time and photocopy charges were calculated in accordance with the Act, the Board has charged the appellant \$44.50 rather than \$52.50. Out of a total fee of \$44.50, the amount remaining to be paid is \$22.25.

### **ISSUE B: Whether the Board's search for responsive records was reasonable in the circumstances of this appeal.**

The appellant believes that additional records exist which are responsive to the request.

In its representations, the Board indicates that it has carried out a number of searches for relevant records and that no additional records exist which are responsive to the request.

In my view, the Act does not require the Board to prove with absolute certainty that the requested records do not exist. However, in order to properly discharge its obligations under the Act, the Board must provide me with sufficient evidence which shows that it has made a reasonable effort to identify and locate records responsive to the request (Order M-148).

As part of its representations, the Board provided an affidavit from the Superintendent of Education, who is

also the Freedom of Information Co-ordinator for the Board. The Superintendent of Education indicated that the following records were searched:

- Official Board minutes: 1970 to present;
- School curriculum files at Central Public School - carried out by the School Principal and Acting Principal;
- The Superintendent of Education's file on the V.I.P. Program;
- The Teacher's unit plan on the V.I.P. Program - carried out by the teacher and the Principal;
- Board personnel files;
- Board Policy Binder.

Having carefully reviewed the representations, I am satisfied that the search conducted by the Board was reasonable in the circumstances of this appeal.

**ORDER:**

1. I uphold the Board's decision to charge \$44.50 for search fees and photocopy costs.
2. I uphold the Board's decision on the existence of additional records.

Original signed by: \_\_\_\_\_  
Anita Fineberg

\_\_\_\_\_ May 26, 1994

Inquiry Officer