



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-546**

**Appeal M-9400698**

**Metropolitan Toronto School Board**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Metropolitan Toronto School Board (the Board) received a request for access to a copy of the Board's alpha cheque register for the period of January 1, 1991 until June 30, 1994.

The Board does not maintain its records in the format of an alpha cheque register. Accordingly, it contacted the requester to assist him in reformulating the request. The Board advised him that it does maintain an Accounts Payable Cheque Register (the Register) in which cheques issued by the Board are listed in numerical order. Each page of the Register could be printed out in this manner.

The Board also explained that commencing in 1994, the Register exists in an electronic form which made it possible to print the listing for the January 1, 1994-June 30, 1994 period in alphabetical order by name of the payee. Thus, the Board asked the requester to indicate in which form he wished to receive the information covering these six months.

The requester indicated that he preferred to receive the information for the January 1, 1992-June 30, 1994 period in the numerical order format. He thus appeared to have abandoned the access request for the year 1991.

The Board then issued a decision providing a fee estimate in the amount of \$398 and requesting a deposit of 50% of the estimate. This letter did not provide a decision on access to the records. The requester appealed the amount of the fee estimate.

This appeal is one of a series of related appeals which involve interim and final access decisions and fee estimates. One of the issues raised by these appeals is that of the circumstances in which an institution should issue an interim as opposed to a final access decision. As the disposition of this issue could have significant implication for both provincial and municipal institutions in Ontario, this office determined that Management Board Secretariat (Management Board) should be afforded an opportunity to provide submissions on the issues raised by these appeals. Accordingly, a Notice of Inquiry was sent to Management Board as well as to the Board and the appellant.

Representations were received from all three parties. In its submissions, the Board indicated that it intended to provide access to the requested records. Thus, the issue addressed in the submissions of Management Board, relating to interim access decisions, is no longer relevant to the resolution of this appeal. Accordingly, the sole matter to be determined in this order is whether the amount of the estimated fees was calculated in accordance with section 45(1) of the Act.

## **DISCUSSION:**

Section 45(1) of the Act states, in part:

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;

Section 6(1) of Regulation 823, R.R.O., 1990, made under the Act, states, in part:

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

...

- 3. For manually searching for a record after two hours have been spent searching, \$7.50 for each fifteen minutes spent by any person.
- 4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each fifteen minutes spent by any person.

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

As part of its representations, the Board has provided an affidavit prepared by the Assistant Superintendent, Finance who was involved in processing this request (the Superintendent). The Board's Freedom of Information and Privacy Co-ordinator (the Co-ordinator) also provided some additional clarification as to how the fee was calculated.

The fee estimate was comprised of two elements: (1) search charges and (2) preparation costs. I will address each of these in turn.

## **SEARCH CHARGES**

The Board has explained that all of the responsive records exist in hard copy (paper format). Those for the years 1992-1993 are located in a storage room. In order to retrieve these records, the Board indicates that its records manager will first have to review its record holdings on its computer files to determine the numbers of the boxes which contain the relevant documents. Once these boxes have been identified, they have to be physically located in the Board's storage room.

The Board has estimated that this part of the search process will take four hours and has charged \$60 for

this activity (exclusive of the initial two hours which are not chargeable).

Based on this information provided by the Board, I find that the \$60 figure is excessive. Given the description of the activities involved in the search, the Board has not established to my satisfaction that four hours are required to locate the boxes. I am prepared to accept that the Board can perform this search in two hours. When the two hours of free search time is considered, the Board is precluded from charging any fee for this element of the search time in this appeal.

The Board has also explained that there are other activities it must undertake to retrieve the cheque register information.

Within each box are a number of ledger-size binders, containing numerous pages of computer sheets. These sheets do not solely relate to the Register. Rather, they contain listings of a number of financial reports for the relevant time period. The Board has explained that each page will have to be reviewed in order to determine if it contains any responsive information.

The Board has not specifically indicated whether this process of selecting the binder pages containing the relevant information is to be charged as search or preparation time. However, in my view, this activity is more properly considered to be search time as it involves locating and identifying the information which is responsive to the request. Therefore, I will consider these charges in my review of allowable search time.

For the records for January-July, 1992, the Board has calculated two hours of search time to "determine appropriate data". For the remainder of 1992, it has charged for two hours for "time required to locate cheque register", which, based on the information provided, appears to be the same exercise. The Board has advised that each month consists of approximately 40-50 pages of documentation. This means that the Board has estimated that it will take approximately 30 seconds to review each page. No such charges have been applied to the 1993 and 1994 records.

Based on the information provided, I am prepared to allow the Board four hours of search time to locate the Register references in the 1992 financial reports.

The result is that the Board can charge for four hours of search time for a total of \$120.

## **PREPARATION COSTS**

In order to prepare the records for disclosure, the Board indicates that it will have to split the computer-size paper in the January-July, 1992 binders. The Board will also be required, for each month, to disassemble the binders to remove the appropriate pages for photocopying, and then put the binders back together once the photocopying has been completed.

The Board has calculated that it will take 15 minutes to prepare each month of the January-July, 1992 records, and 10 minutes for each of the remaining months (23 months). This works out to be a total of 5.5

hours.

I accept that the Board may charge for the time required to disassemble the binders for photocopying purposes and that this estimate for preparation of the records is reasonable in the circumstances. Thus, the Board may charge \$165 for this process.

In addition, the Board has charged for what the Co-ordinator has explained as "interruption" time. This appears to be the time that the individuals who are processing this request will require to attend to other matters. The Board has calculated 30 minutes of interruption time for each of the January-July, 1992, 1993 and the 1994 records period. It has charged for 10 minutes of interruption time for the August-December, 1992 period. Therefore, the Board has charged for a total of 100 minutes of interruption time. I find that, as this time will not be spent in processing this request, the Board is not entitled to charge for this time.

Thus, I find that the Board may charge for only 5.5 hours of preparation time for a total of \$165. In combination with the allowable fees for search time (\$120), I find that the Board may charge a total of \$285.

The appellant has submitted that, in response to a prior request for expense account information of the Directors of Education, the Board eventually disclosed the requested information without charging a fee. He also indicates that he should not in effect be "penalized" by excessive fee estimates because of the inefficiency of the Board in its record keeping practices. He also states that the disclosure of their expenses is desirable for subjecting the activities of trustees to public scrutiny and should be provided at no charge.

I would first note that, as a result of this order, the fees which the Board may charge have been reduced. The intention of the Legislature to include a "user pay" principle is clear from section 45(1) of the Act. Thus the fact that the Board has not previously charged for similar information does not have a bearing on its decision to charge fees in this case. While the manner in which the Board files such records may not be the most efficient, (and in this case it appears to be an extremely cumbersome process to retrieve them), in my view, the Act does not require an institution to keep records in such a way as to accommodate the various ways in which a request for information might be framed.

However, I believe that the comments of Assistant Commissioner Irwin Glasberg in Order M-372 are equally applicable to this appeal. When commenting on the records management system of another school board, he stated:

... the Board should be aware that government organizations across the province are now regularly receiving access requests regarding the expense accounts of senior officials. This is part of a trend where members of the public are seeking to hold institutions of all types more accountable for the expenditure of tax dollars. That being the case, I would strongly encourage the Board to reassess the manner in which it maintains its expenditure related

records so that these documents can be retrieved more easily and at minimal cost to requesters.

I agree with the appellant that disclosure of trustee expenses is necessary to ensure public accountability of these individuals. In this case, the Board has indicated that it will provide the appellant with complete access to the records. In my view, the public accountability will thus be satisfied.

**ORDER:**

I allow the Board to charge \$120 for search time and \$165 for preparation time for a total of \$285.

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

\_\_\_\_\_ June 8, 1995