



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

ORDER M-549

Appeal M-9400579

North York Board of Education



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The North York Board of Education (the Board) received a two-part request for access to the following information:

- (1) a breakdown of all expenses incurred by each trustee, including those submitted directly or paid by the Board on behalf of the trustee, during the period of January 1, 1992 to July 31, 1994. The requester indicated that this information was to include the aggregate totals as well as the supporting documentation, including copies of the actual expense claim forms, invoices, receipts, credit card vouchers, credit card statements or any other attachments submitted by the trustees to the Board; and
- (2) a copy of the Board's alpha cheque register for the period of January 1, 1991 until June 30, 1994.

The Board responded by providing a fee estimate in the amount of \$1,800 for part one of the request and \$8,160 for part two of the request. The Board provided a breakdown of the costs and requested a deposit of half the total amounts. It did not provide a decision on access.

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 upon payment of the fees, the appellant "... will have full access to the records requested ...". As the Board has now made a final access decision in this matter, the issue addressed in the submissions of Management Board, that of the circumstances in which an interim, as opposed to a final access decision may be issued, 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:

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,

[IPC Order M-549/June 12,1995]

- (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
- ...

Section 6(1) of Regulation 823, 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:

- 1. For photocopies and computer printouts, 20 cents per page.
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- 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.
- 5. For developing a computer program or other method of producing a record from machine readable record, \$15 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.

In its decision letter and submissions, the Board broke down its fee estimate of \$9,960 and provided an explanation as to how the fee for each part of the request was calculated.

I will address each part in turn.

Part One (Trustee Expenses)

The Board indicates that there are 14 trustees whose expenses would have to be collated.

With respect to its calculation of the fee estimate to respond to this part of the request, the Board merely stated that:

This project will require individuals to go through different sources of data including microfiched data, compile, analyze and report data as needed.

Minimum 60 hours X \$30/hour = \$1,800

As is apparent from this statement, the Board has provided no information as to what work must be undertaken to respond to the request. It has offered no description of the steps required to accomplish the various tasks involved in identifying, searching and retrieving the responsive records for disclosure, time estimates for each of the steps and the volume of records to be retrieved.

Furthermore, the Board's submissions do not relate the \$30 per hour to any chargeable items in section 45(1) of the Act. The Board has stated that, upon payment of the fees, it will grant full access to the records. Since preparation time usually relates to severing records in connection with exemptions, I am unable to conclude that this figure represents preparation time pursuant to clause 4 of section 6(1) of the Regulation. Given the above description of the nature of the "project", I cannot conclude that it represents "manual" search time. Nor is any allowance made for the two non-chargeable hours of search time as set out in clause 3 of the Regulation.

I find that the Board has not provided me with sufficient information as to how it calculated its fee estimate to respond to part one of the request. Accordingly, I disallow the \$1,800 charged.

Part Two (Alpha Cheque Register)

The Board indicates that its cheque registers are maintained in numeric order and not alphabetical order (as requested by the appellant).

In its submissions, the Board explains that the cheque registers for the period of January 1, 1991 - December 31, 1992 have been microfiched in numeric order. The Board states that an employee will have to review the microfiches and print them in a paper format. The Board estimates that this task will require four hours of work for each of the 24 months and result in at least 300 pages of copy for each month.

The Board advises that the cheque register data for the period of January 1, 1993 - June 30, 1994 can be downloaded on to a PC spreadsheet and put into alphabetical order. The Board estimates that this task will require 20 hours of work in addition to the cost of the pages that will be photocopied and the employee time expended to make the copies.

The Board thus summarizes its fee estimate for part two of the request as follows:

January 1, 1991 - December 31, 1992

Photocopying 4 hrs/month X 24 months	=	96 hrs X \$30/hr	=	\$2,880
# pages 300/month X 24 months	=	7,200 pages X \$0.20	=	1,440

January 1, 1993 - June 30, 1994

Download on PC spreadsheet	=	20 hrs X \$30 hr	=	600
Photocopying 4 hrs/month X 18 months	=	72 hrs X \$30/hr	=	2,160
# of pages 300/month X 18 months	=	5,400 pages X \$0.20	=	1,080

Estimated Total Cost	=	<u>\$8,160</u>
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For each time period, the Board has charged both for the number of photocopies as well as for the employee time to photocopy the necessary documents. It has charged \$30 per hour for this "photocopying" time. As is the case with its submissions of the fee estimate with respect to the trustee expenses, the Board has not indicated to what item or task enumerated in the Regulation this expense relates.

The maximum allowable amount for photocopying pursuant to clause 1 of the Regulation is \$0.20 per page. This includes "feeding the machine" (Order 184). In addition, the time required to actually photocopy records may not be included in preparation time. Therefore, I do not uphold the Board's \$5,040 photocopying charges.

The Board may charge \$0.20 for copying each page of the cheque register which is disclosed. Since there are 12,600 pages of documents, this translates into a total cost of \$2,520 for the photocopies which are provided to the appellant.

The last item the Board has charged for is downloading the January 1, 1993 - June 30, 1994 data onto a PC spreadsheet and putting it into alphabetical order. The Board states that this must be done in order to produce the data, and thereby prepare the record, in the form requested by the appellant, in alpha cheque register format. However, other than advising me that this task will take 20 hours to perform, the Board has

provided no other explanation as to why this process takes so long.

In an attempt to clarify this matter, I contacted the Board's Freedom of Information and Privacy Co-ordinator. However, I was unable to determine if the 20 hours relates to programming time, computer running time, employee time or some combination of the above. Without such information, I find that the Board has not established the reasonableness of this element of the fee estimate. Accordingly, I disallow the \$600 for the downloading time.

To summarize, I find that the Board is only entitled to charge a fee of \$2,520 for the photocopies which are provided to the appellant.

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 with no fees.

I would first note that, as a result of this order, the fees which the Board may charge have been substantially reduced. The Board may only charge \$2,520 for the cheque register and nothing at all to provide the trustee expenses. 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, 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.

If, as it appears, the appellant objects to the paying of **any** fees for this information, he could have applied for a fee waiver. In its decision letter, the Board advised the appellant of this option. He has chosen not to do so.

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 now indicated that it will provide the appellant with complete access to the records. In my view, the public accountability will thus be satisfied.

ORDER:

1. I uphold the Board's decision to charge \$0.20 per page for copies of each page of the cheque register that it provides to the appellant.
2. I do not uphold the Board's decision to charge the following fees:
 - (a) \$1,800 for 60 hours to respond to that part of the request dealing with the expenses of the trustees;
 - (b) \$5,040 for 168 hours of photocopying time for the cheque registers; and
 - (c) \$600 for preparation costs to download the January 1, 1993 - June 30, 1994 data on a PC spreadsheet.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ June 12, 1995

POSTSCRIPT

In this case, most of the fees charged by the Board are related to activities involving the conversion of its numerically ordered cheque register into the alpha cheque register requested by the appellant. In my view, upon receipt of the request, it would have been prudent for the Board to contact the appellant and to advise him of the additional charges which would be levied in order to provide the records to him organized as per his request. This is the approach adopted by several of the other school boards to which the appellant

submitted the same request for the alpha cheque register. In this way, the appellant would have had the option of receiving the cheques in numerical order at a lower cost. He then could have proceeded to organize them in whatever manner he desired.