



Information and Privacy
Commissioner/Ontario

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

ORDER M-591

Appeal M_9500286

Fort Frances_Rainy River 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 requester asked the Fort Frances-Rainy River Board of Education (the Board) for five listed categories of information about transportation costs incurred in 1993.

The Board responded with a fee estimate in the amount of \$225. The requester wrote to the Board, enclosing a deposit of \$112.50. In this same letter, the requester advised the Board that he would be appealing the amount of the fee.

Shortly afterwards, the requester (now the appellant) did, in fact, file an appeal of the fee estimate with the Commissioner's office. After the appeal was filed, the Board completed its search for the requested records and wrote to the appellant, indicating that its fee in connection with the request would be \$540. Having already received the sum of \$112.50, the Board indicated that it would require a certified cheque for the balance of this fee (\$427.50) before providing the records to the appellant.

The sole issue for me to determine is whether the Board's revised fee of \$540 is in accordance with the applicable provisions of the Act and Regulation 823 (the Regulation).

The Commissioner's office sent a Notice of Inquiry to the Board and the appellant. Both parties submitted representations.

DISCUSSION:

THE CALCULATION OF FEES

In its letter advising the appellant of the revised fee, the Board indicated that "the actual number of hours to do the research was over 20 ...". The Board deducted the two free hours of search time referred to in section 45(1)(a) of the Act. This left 18 hours, to which the Board applied the rate of \$7.50 for each 15 minutes (or \$30 per hour), for a total fee of \$540.

Subsequently, the Board wrote to the appellant to explain how the fees were calculated. Enclosed with this letter was a summary of time spent on the request. This is broken down into two components, namely (1) "Secretarial Time - Search and Preparation" (a total of 18 hours) and (2) "Administration Time - Research and Preparation" (a total of 4.5 hours). No further breakdown was provided, and no explanation was given as to which sections of the Act and Regulation authorize fees for these items.

In its representations, the Board makes the following submission regarding item (1) in the preceding paragraph: "[t]he cost includes the actual number of hours worked to collect the information (18 hours minus the basic two hours)". With respect to item (2), above, the Board goes on to state that "[t]he costs include a conservative approximate 2 hours of administration time to review and establish the parameters of the information sought, although well over 4.5

hours were used." Thus the total time charged is 18 hours, which is consistent with the calculation of the revised fee.

The Board's submission about hours spent "to collect information" appears to be a reference to search time as contemplated by section 45(1)(a) of the Act, and item 3 in section 6 of the Regulation. However, the Board has not explained where the requested information was stored or what steps were required to locate it.

With respect to the "administration time", the Board has not stated what provision in the Act or Regulation authorizes a charge of this nature, nor am I able to determine this from the information which the Board has supplied.

In making my decision in this appeal, I have considered the wording of section 45(1) of the Act and section 6 of the Regulation (which set out the fees a government organization is entitled to charge for providing access to records), and the representations of the parties. My conclusions are as follows:

- (1) The Board's representations contain the bare assertion that 18 hours, less two free hours (which amounts to 16 hours) was the actual amount of time required to locate the information. By contrast, the explanation which the Board sent to the appellant indicated that this time also included "preparation" (an apparent reference to item 4 in section 6 of the Regulation). The Board has not explained this discrepancy, nor has it provided any information about what was included in "preparation time" in this regard. Nor has the Board provided any explanation of the way in which the requested information is stored, or the steps required to locate it. In my view, I have not been provided with sufficient information to permit me to find that the fees charged in this regard are reasonable in the circumstances. Therefore, I do not uphold any charges with respect to the 16 hours (18 hours less two free hours) referred to by the Board.
- (2) I have not been provided with any information about the nature of the two hours of "administration time" to substantiate that this is an activity for which the Act or Regulation authorizes fees to be charged. For this reason, I am unable to uphold this part of the fee.
- (3) The Board has not charged for photocopies. However, in accordance with item 1 in section 6 of the Regulation, the Board is permitted to charge \$0.20 for each photocopy given to the appellant.

ORDER:

1. I do not uphold any of the fees charged by the Board in its fee calculations.
2. I uphold a fee of \$0.20 for each photocopy provided to the appellant by the Board in responding to this request.
3. I order the Board to provide the appellant with access to the records, within fifteen (15) days after the date of this order.

- 4, I order the Board to refund to the appellant the balance of the deposit paid, after charges for photocopies are deducted, within fifteen (15) days after the date of this order.
5. To verify compliance with the terms of this order, I order the Board to provide me with a copy of its covering letter to the appellant in connection with Provisions 3 and 4 within twenty (20) days after the date of this order. This should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
John Higgins
Inquiry Officer

_____ September 5, 1995