



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

ORDER M-782

Appeal M_9600109

Northumberland Clarington Board of Education



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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Northumberland-Clarington Board of Education (the Board) received a request dated January 31, 1996 under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to expense claims submitted by three Board employees for the period December 1, 1994 to November 30, 1995. The requester is a Trustee with the Board. By letter dated February 5, 1996, the Board agreed to provide the requester with access to the requested records in person. On February 26, 1996, the requester attended at the Board's offices and examined the responsive records. The requester later asked that she be provided with copies of the records.

Under section 45(1) of the Act, the Board responded by providing the requester with a decision letter dated March 18, 1996 which included a fee estimate of \$650 and alluded to the need to sever portions of the records in order to protect the personal privacy of the individuals named in them. The fee estimate was broken down as follows:

Application Fee	..	\$ 5.00
Search Time - 6 hours @ \$30 per hour	..	180.00
Record Preparation - 14 hours @ \$30 per hour	..	420.00
Photocopying - 300 pages @ \$0.20 per page	..	60.00
Total	..	\$665.00 =====

The requester (now the appellant) appealed both the amount of the Board's fee estimate and its decision to sever information from the requested records.

A Notice of Inquiry was provided to the appellant and the Board. Representations were received from both parties. The appellant indicates that she is willing to pay \$0.20 per page for photocopying as prescribed in section 45(1) of the Act and section 6 of Regulation 823, R.R.O. 1990, but disputes the amounts claimed by the Board for search time and for the preparation of the records for disclosure.

DISCUSSION:

FEE ESTIMATE

Amendments to R.R.O. 1990 Regulation 823, section 6 became effective on January 30, 1996, the day before the appellant's original request. The request and the subsequent appeal are governed, accordingly, by the following statutory and regulatory provisions:

Section 45(1)

A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer or other costs incurred in locating, retrieving, processing and copying a record;
- (d) shipping costs and;
- (e) any other costs incurred in responding to a request for access to a record.

R.R.O. 1996, Regulation 823, Section 6, as amended by Regulation 22/96

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.
2. For floppy disks, \$10 per disk.
3. For manually searching for a record, \$7.50 for each 15 minutes spent by any person.
4. For preparing a record for disclosure, including severing a part of a record, \$7.50 for each 15 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 15 minutes spent by any person.
6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

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 Board is reasonable in the circumstances. In this regard, the burden of establishing the reasonableness of the estimate rests with the Board, who 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.

The appellant was granted access to the requested records in person on February 26, 1996. Presumably, a search was undertaken by the Board for responsive records at that time. I note that no fee was charged to the appellant for the original search. The appellant argues that she

should not be charged a fee for search time at this point as the search was completed when she was granted access in February 1996.

In my view, the fact that a search for responsive records has already been undertaken by the Board is relevant to a determination of whether a fee ought to be charged for the completion of another search for the same documents. The Board has not indicated whether the records in this appeal were segregated from its other record holdings following the appellant's inspection of them or if they were returned to the files from which they were removed. I have not been provided with any evidence to indicate the nature and extent of the search, if any, which would be required to identify the responsive records a second time. Accordingly, in the circumstances of this appeal, I find that the Board is not entitled to charge the appellant for a second search and I disallow that portion of the Board's fee estimate.

Part 4 of section 6 of Regulation 823, as amended, allows the Board to charge \$30 per hour for the preparation of a record, which includes any time required for severing. The Board submits that each of the records contain bank account, credit card and telephone numbers as well as other billing information which pertain to the three Board employees in their personal, rather than their professional, capacities.

In previous orders, this office has found that two minutes per page for preparing records for disclosure is reasonable. Accordingly, taking into account the nature of the records and the severances which will be required, I find that the Board is entitled to charge a fee to prepare the records for disclosure, depending on the actual number of pages which require severing. I am, therefore, prepared to allow the Board to charge a fee of \$1.00 per page for the preparation of the records for disclosure.

The appellant agrees to the payment of \$0.20 per page, in accordance with the provisions of Regulation 823. A fee of \$60 for photocopying is, accordingly, upheld.

In summary, I find that the Board is entitled to charge a fee for the processing of this request as follows:

Application Fee	..	\$ 5.00
Preparation of the Record	..	\$ 1.00 per page
Photocopying - 300 pages @ \$0.20 per page	..	\$60.00

ORDER:

1. I order the Board to provide the appellant with an amended fee estimate in accordance with the guidelines described above by sending it to her by **June 27, 1996**.
2. Should the appellant choose to pay the fee, I order the Board to disclose to her within twenty-one (21) days all of the information contained in the responsive records with the exception of any personal information such as bank account, credit card and telephone numbers as well as billing information which is referable to any identifiable individual.

3. Should the appellant be dissatisfied with the nature and extent of the severances made to the records which are disclosed to her pursuant to Provision 2, she may ask this office for a review of the Board's decision under section 4(1) of the Act.

Original signed by: _____

Donald Hale
Inquiry Officer

_____ June 6, 1996