



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

ORDER M-872

Appeal M_9600275

Lanark County Board of Education



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BACKGROUND:

On August 8, 1995, the Lanark County Board of Education (the Board) received a request for access to information under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester sought access to information about 13 items relating to salary ranges, the Board's policies and practices on various types of expenditures, attendance and accumulated sick leave and transfer of sick leave. The requester also sought information on expenses filed by the Board's Director of Education.

The Board issued a fee estimate of \$180 pursuant to sections 45(1) and (3) of the Act. Over a period of five months, the appellant and the Board engaged in protracted written communication as to whether the fee estimate could be broken down and allocated amongst the 13 items. The requester filed an appeal of the fee estimate and Appeal Number M-9600104 was opened.

The appellant declined to pay the appeal filing fee. The Board advised this office that it was of the view that the appeal was filed outside of the mandatory 30-day period required by section 39(2) of the Act and, accordingly, I had no jurisdiction to review the Board's decision.

I addressed these two issues as preliminary matters in Interim Order M-819, issued on August 15, 1996. In that order, I found that I had the jurisdiction to proceed to review the Board's decision. I also found that since the regulation prescribing the appeal filing fee was not in effect at the time that the appeal was filed, no appeal filing fee was payable. I ordered the appellant to notify this office within two weeks of the date of the order, whether he wished to proceed with the substantive issue of the fee estimate. The appellant so notified this office and Appeal Number M-9600275 was opened. This order will therefore address the substantive issues pertaining to the fee estimate provided by the Board to the appellant.

NATURE OF THE APPEAL:

As I indicated above, the appellant made a 13-part request to the Board and received a fee estimate of \$180. The appellant asked the Board to allocate the fee estimate amongst the 13 items. The Board stated that it was not possible to do this, indicating that its financial records are not maintained on an individual employee basis nor in the categories requested.

The Board suggested however that the request could logically be broken down into two categories - (1) financial records requiring 6 hours of search time and (2) personnel records which would require 2 hours. The appellant insisted that the fee should be apportioned amongst the 13 items and that each item was a separate request and therefore entitled to two hours free search time. Therefore, the issue in this appeal is whether the fee estimate provided by the Board was reasonable.

This office provided a Notice of Inquiry to the appellant and the Board. Representations were received from both parties.

DISCUSSION:

FEES

The dispute in this appeal relates to the calculation of chargeable search time based on whether the request should be characterized as **one** request for 13 items or **13** separate requests.

The appellant's position is that his request contains 13 discrete items; each item should be treated as a separate request and, therefore, be allocated two hours of free search time. The appellant submits that items 1-4 are "simple policy statements" and should be readily available with no cost of search time. Similarly, items 5, 6, and 9 should also be readily available in one location. Alternatively, the appellant submits that the legislation refers to "a request for **a record**" [emphasis added] and on that basis, the searches for the 13 items should be regarded as searches for 13 records and each record should therefore receive two hours of free search time.

The appellant states that, in its initial decision letter, the Board itself described the information requested as "thirteen requests" and it was only later that the Board changed its characterization of the requests to one request and therefore, eligible for only two hours free search time. The appellant submits that the purpose of the Act does not include the user pay principle relied on by the Board and that the public should have access to standard policy statements without paying for what should be "public information".

The Board submits that its fee estimate of \$180 was based on a preliminary search which indicated that a total of eight hours (less two hours free search time) would be required to locate and retrieve the records requested. When the appellant requested a breakdown of the costs amongst the "13 requests", the Board explained that its financial records were not maintained on the individual employee basis or in the categories requested. The Board pointed out that its financial records were maintained on a computerized accounting system and three financial years had to be examined. The Board further explained that its preliminary search included analysis of general ledger accounts, attendance records and a review of the Board's policies and procedures. Through subsequent communication with the appellant, the Board realized that what the appellant really wanted was to have each item on the request treated as a separate request.

The Board submits that subsequent to the fee estimate, the actual search for the records was completed and the actual time taken far exceeded the eight hours estimated. The search was divided into two parts conducted by different individuals in different areas. With its representations, the Board has provided affidavits sworn by its Superintendent of Personnel (the superintendent) and its Supervisor of Finance (the supervisor).

In his affidavit, the superintendent states that he is most familiar with the information requested and that he was directly responsible for locating items 1-5 and 7-9. He states that he conducted the search for items 1 through 9 with assistance from the Board's Benefits Administrator and the search required a total of two hours. The searches were conducted in the Board Superintendent and personnel offices. The superintendent states that with respect to item 6, the computer payroll information stored on disk for 1993/1994 was downloaded and printed. The hard copy was then scanned to isolate information responsive to item 6. The superintendent states that item 6 was

located by the Benefits Administrator, the individual most familiar with the computerized payroll system. The total time taken to search for items 1-9 was two hours.

In its representations, the Board explains that items 10-13 refer to expense information related to the Board's Director of Education, specifically taxi expenses, mileage allowance, meal allowances and miscellaneous expenses. In her affidavit, the Supervisor states that in order to locate the responsive records, it was necessary to download expense information stored on disk into the Board's computer system. Expense account information for the current fiscal year is maintained in the computer database but all previous years information is stored on disk.

The Supervisor explains that this information was downloaded and a hard copy produced. The hard copy contained expense information for all of the Board's 17 trustees, the director and his secretary. These had to be scanned to isolate the responsive information. The supervisor states that because the account entries do not provide a specific breakdown of travel expenses (item 10), mileage expenses (item 11) and miscellaneous expenses (item 13), it was necessary to retrieve the actual receipts corresponding to the expense entries posted under the director's name. The supervisor states that a similar process was utilized to obtain an expense breakdown from the conferences and conventions expense account to isolate meal allowance and miscellaneous expenses other than miscellaneous travel expenses. The supervisor states that the above searches required "at least 13 hours". The supervisor goes on to say that by conducting one search for the four items, she was able to significantly reduce the amount of time spent collecting the responsive information. The supervisor states that treating each item as a separate request would have resulted in a duplication of effort and a significant increase in the overall search time required.

The Board submits that the actual time expended on the search was 15 hours, which exceeds the estimate provided to the appellant. The Board indicates that despite the fact that the actual time spent was almost double the estimate provided, it has not and does not intend to revise the initial estimate provided. The Board submits, however, that the fee estimate of \$180 provided to the appellant was reasonable.

At the time of the appellant's request, the relevant statutory and regulatory provisions of the Act read as follows:

Section 45(1)(a)

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 search charge for every hour of manual search required in excess of two hours to locate a record; [emphasis added]

Reg. 823, section 6, R.R.O. 1990

The following are the fees that **shall** be charged for the purposes of subsection 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. [emphasis added]

With respect to the appellant's submissions that the user pay principle is not prevalent in the Act, the sections laid out above clearly indicate that the head of an institution is bound by statute to charge for search time and other related costs provided for in the Act and the regulations.

In my view, the appropriate calculation of chargeable search time is based on the activity of actually searching for records, not on the wording of a particular request. It is not appropriate to require an institution to calculate free search by counting items listed separately in a request, nor to penalize a requester for listing multiple requests in one letter.

Based on the submissions of the parties and the affidavit evidence provided by the Board, I find it is reasonable to conclude that two separate searches were conducted for two distinct categories of records. In my view, conducting separate searches for each item could only lead to duplication of cost and effort and most certainly, imprudent use of the Board's resources. Items 1-9 relating to policies, procedures and positions were covered in the search conducted by the Superintendent and the Benefits Administrator while the supervisor conducted the search for items 10-13 (for expense information). I find that these two categories of items are reasonably related for the purpose of conducting a cost efficient search for responsive records and it is on this basis that the chargeable search time should be calculated. I accept the Board's position that these two searches required total time expended of two hours and 13 hours respectively.

The search for items 1-9 took a total of two hours and after applying the two hours free search time allocated to the search, no cost remains for this search. With respect to the search for items 10-13, which took 13 hours, after applying the two hours search time, the cost for this second search is $11 \times \$30 = \330.00 . In this regard, the Board has indicated that it does not wish to revise its original estimate and only wishes to recover the \$180 quoted in its fee estimate. On that basis, I find that the fee estimate of \$180 provided by the Board to the appellant is reasonable.

ORDER:

I uphold the Board's fee estimate of \$180.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

December 6, 1996