



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

ORDER M-948

Appeal M_9600361

Bruce-Grey County Roman Catholic Separate School Board



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NATURE OF THE APPEAL:

The Bruce-Grey County Roman Catholic Separate School Board (the Board) received a six-part request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the following categories of information:

1. The names, addresses and telephone numbers of all architects employed by the Board in the last 30 years or as far back as records are available.
2. The names, addresses and dollar values of all general contracts awarded by the Board in the last 30 years or as far back as records are available, with a contract price of \$1.0 million or more, as well as the name of the contractors and architects.
3. A list of all painting subcontractors used by the Board over the past 15 years, where the contracts were more than \$20,000, with the approximate dollar value of the work performed.
4. A copy of the development agreement between the City of Owen Sound and the Board for the Notre Dame School.
5. The names of all construction consultants used by the Board and/or its architects during the last 15 years.
6. The names of the Board Business Associations of which the Board's directors or representatives are members and the status of such memberships.

The Board initially advised the requester that only item #4 constituted a request for a "record" under the Act and that the appellant had previously received a copy of this document. With respect to the remaining items, the Board stated that a response would require the Board to create lists of information, i.e. "records", an obligation which the Act did not impose.

The requester (now the appellant) appealed the Board's decision.

During mediation, the appellant withdrew his request for item #4. With respect to the remaining items, the Board agreed that the information was available from its files and that it would provide the appellant with a fee estimate. The Board then issued an interim decision, including a fee estimate of \$10,420 based on a search of a representative sample of the Board's records. The Board indicated that this fee included a photocopying charge for approximately 200 pages. The Board also advised the appellant that certain exemptions under the Act might apply to the records.

In an effort to reduce the fees, the appellant requested the Board to provide a revised estimate if item #3 was eliminated from the request and items #1 and #5 were reduced to cover a five-year

period only. The Board issued a new decision letter indicating that the estimate for search time would remain the same at \$10,380 but that the photocopying charges would be reduced to between \$20-\$40.

The appellant then requested a further fee estimate based on obtaining records for 5, 10 and 15-year periods. The Board's fee estimates for these time periods were \$4,075, \$7,055 and \$8,070 respectively. The appellant still disputed the amount of the fees and eventually offered to conduct the search himself, suggesting that a fee of \$500 was reasonable. The Board rejected this offer.

A Notice of Inquiry was sent to the Board and the appellant. Representations were received from the Board only. The appellant advised this office to consider his previous correspondence as his submissions.

After the Notice of Inquiry was issued, the appellant wrote to the Board suggesting further refinements to his request, and, in particular, Board personnel who might be able to quickly respond to his request. He confirmed that the information in items #3 and #4 was no longer required. The appellant also expressed his concerns that the litigation between his client and the Board was affecting the Board's response to his request.

DISCUSSION:

FEE ESTIMATE

The charging of fee is authorized by section 45(1) of the Act, which states:

A head shall require the person who makes a request for access to a record to pay fees in 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 and 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.

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. In my view, it 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 Board maintains that it followed the principles set out in Order 81 for the preparation of an interim decision. That is, it sought the advice of the Superintendent of Business and the Supervisor of Plant Operations and Maintenance to determine all possible locations of responsive records. These individuals are Board employees who the Board states are familiar with the type and contents of the requested records. The Records Management Co-ordinator for the Board then conducted a search of a representative sample of responsive records. The fee estimate included search charges and photocopying charges. Despite the fact that the Board had advised that certain exemptions might apply to the records, it did not, however, levy any charges for preparing the records for disclosure.

The Board has indicated that the scope of the search entails a review of its "Accounting", "Purchasing", "Accounts Payable", "Capital" and "Official Board Minutes" record holdings which are, in turn, housed in its vault, on microfiche, in warehouse bankers' boxes and in the office of the Superintendent of Plant Maintenance.

The vault comprises seven units, A-F, each of which has 14 shelves. The Board states that it is not required to search Unit A as it contains receipts and enrollment registers. Units B, C and D contain accounting, purchasing and capital records for the years 1994, 1993 and 1995 respectively. Unit E contains multi-year capital and multi-subject records. Multi-year Ministry of Education (the Ministry) reports, negotiations and correspondence are found in Unit F. The Board submits that seven shelves in this unit must be searched because the Ministry approves and partially funds capital projects. The balance of the seven shelves in Unit F contain Negotiations/Personnel files which would not have to be searched. In summary, the Board states that a total of 63 shelves in the vault must be searched (Units B, C, D and E x 14 + Unit F x 7).

The Board searched 25% of one shelf to estimate the fee. This search took .5 of an hour. On this basis, the Board calculates that it would take two hours to search an entire shelf and, therefore, 126 hours (63 shelves x 2 hours/shelf) to search all the shelves in the vault.

The warehouse bankers' boxes are stored in two sections. Section one contains three boxes for 1993, two for 1994 and 15 for 1991, for a total of 20 boxes. Section two contains one box for the years 1986-1991, three boxes for 1991, 15 boxes for 1992, and 24 boxes of multi-year files, for a total of 43 boxes. The Board submits that, based on the approximate sizes of the shelves and the boxes, the search time required for each box in the warehouse is the same as that required for each shelf in the vault. On this basis, the Board calculates that it will take 126 hours (63 boxes x 2 hours/box) to search the warehouse.

The Board maintains the following categories of microfiche: employee agreements, payroll, personnel, financial (including budget, financial statements and general ledger), minutes and Ministry memoranda and school data. It states that a search of the general ledger (49 microfiche slides) and minutes and Ministry memoranda (95 microfiche slides) will be required.

The Board searched one slide and submits that this took .5 of an hour. Therefore, a search of 144 slides would take 72 hours.

The supervisor of Maintenance has, in his office, four shelves of files organized by school relating to prior projects and miscellaneous plant information. The Board states that all of these shelves will have to be searched for a total of 8 additional hours.

The Board has thus estimated the fee as follows:

Search Location			Hours
Vault	..	..	126
Microfiche	..	..	72
Warehouse	..	..	126
Office	..	..	8
Total ..			332
			=====

Section 6 of Regulation 823 (the Regulation), made under the Act, specifies that the fee required to be charged for search time is \$7.50 for each fifteen minutes spent by any person, or \$30 per hour. On this basis, the fee estimate prepared by the Board for search time is \$9,960.

The Board has estimated the photocopying charges on the basis of the requested items and has calculated them as follows:

Item	Number of Pages
1	30 (1 pg/year)
2	90 (3 pg/year)
3	15 (1 pg/year)
5	15 (1 pg/year)
6	50
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Total ..	200
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Section 6 of the Regulation provides for a charge of \$0.20 per page for photocopies and, on this basis, the Board has estimated the charge for these pages as \$40 for a total fee estimate of \$10,000. This is \$420 less than the original estimate because, as noted, the Board determined that it would only have to search seven of the 14 shelves in the vault.

In its submissions, the Board has also provided me with a detailed explanation of, and the calculations for, the estimates for 5, 10 and 15-year periods. The calculations take into account that fewer shelves, boxes and microfiches will have to be searched depending on the requested time period. These estimates have also been revised to deduct \$420 of search time and now stand at \$3,655, \$6,635 and \$7,650 respectively.

Finally, the Board submits that even if item #3 is eliminated from the request, the fee estimate for the various time periods will be the same, because the same records in the same locations will have to be searched to locate the other items requested.

With respect to the appropriateness of the fee estimate, I agree with the statement of former Commissioner Sidney B. Linden in Order 31 which I have excerpted below. While Order 31 dealt with section 57(1) of the provincial Freedom of Information and Protection of Privacy Act, section 57 of the provincial Act is very similar in wording to section 45(1) of the Municipal Freedom of Information and Protection of Privacy Act. Order 31 states the following:

In this case, the major component of the estimated fee is the costs related to locating the record for disclosure (subsection 57(1)(a)). In calculating these search costs, the institution took into account the time involved in locating files which are properly filed and/or accounted for and the number that are currently in use whether properly accounted for or not. While the institution's filing system may not be the most efficient, the Act does not mandate a requirement on the part of the institution to keep records in such a way as to be able to accommodate any of the myriad of ways in which a request for information might be framed.

In this appeal, a situation similar to that described in Order 31 exists. The Board's filing system does not lend itself to an efficient search for the information requested. In addition, because the request is for information which currently does not exist in a consolidated format, many hours of search time are required to locate what could turn out to be proportionately little information. This is reflected in the disparity between the estimated number of hours of search time and the number of responsive pages which the Board estimates will be located as set out in the photocopying charges.

I appreciate the appellant's concerns over the amount of the fee estimate but, based on the evidence provided by the Board, I find that it is reasonable in the circumstances.

I note, however, that the appellant has made several reasonable and constructive efforts in an attempt to both reduce the fee estimate and resolve this appeal through mediation. He has legitimately and appropriately continued these efforts even though the appeal had proceeded to inquiry. I would encourage the Board to continue to work with the appellant to resolve this matter and, in particular, to address the issues set out in his letter of April 25, 1997 in an attempt to provide access to at least some responsive information at a reduced cost.

ORDER:

I uphold the decision of the Board.

Original signed by: _____
Anita Fineberg
Inquiry Officer

June 9, 1997