



Information and Privacy
Commissioner/Ontario

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

ORDER M-1099

Appeal M-9800016

Hamilton-Wentworth Catholic District School Board



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NATURE OF THE APPEAL:

The Hamilton-Wentworth Catholic District School Board (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to records of conversations between employees of the Board and a named official with another Board of Education which may have taken place in 1995. Following clarification of the request with the appellant, the Board determined that the appellant was seeking access to information contained in its telephone records for the year 1995 and its facsimile records for the period August 1 to November 30, 1995. The appellant's request was limited to records relating only to telephone calls or facsimile transmissions sent from the Board's offices to two telephone numbers which the appellant gave to the Board.

The Board provided the appellant with a fee estimate in the amount of \$450, representing 15 hours of search time to locate the responsive records at \$30 per hour. The Board requested payment of one-half of that amount prior to performing the necessary searches for the information.

Some months later, the appellant appealed the Board's decision on the basis that the time required to complete the search was excessive. The Commissioner's office opened file M-9700320 for this appeal, which was later closed as a result of mediation. At the request of the appellant and with the consent of the Board, the appeal was reopened as Appeal Number M-9800016 to address the issues raised in the original appeal.

A Notice of Inquiry was provided to the appellant and to the Board. Representations were received from the Board only.

DISCUSSION:

FEES

The charging of a 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.

Section 6 of Regulation 823 (as amended by O. Reg. 22/96) states:

The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act for access to a record:

1. For photocopies and computer printouts, 20 cents per page.
2. For floppy disks, \$10 for each disk.
3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
4. For preparing a record for disclosure, including severing a part of the 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 amount of 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. Although there is no burden of proof specified in the Act with regard to fees, the burden of proof in law generally is that a person who asserts a position must establish it. 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.

Search charges

The Board has provided me with an affidavit from its Freedom of Information and Privacy Protection Co-ordinator in which he describes in detail the nature and extent of the searches undertaken for records responsive to the appellant's request. Despite the fact that the requested fee deposit of \$225 was not remitted by the appellant, the Board conducted the searches necessary to locate the requested information and expended more than the estimated 15 hours to complete it.

The search for the requested telephone records was conducted off-site from the Board's premises. The Board's staff was required to review an account analysis report in order to determine which storage boxes at the off-site premises contained the requested information. Staff then located 20 storage box containers which contained the 23 files pertaining to the Board's 1995 telephone records. A review of each of the 361 single-spaced pages of records in the 23 files was conducted to identify the specific telephone numbers provided by the appellant. A further search of 11 files was undertaken by the Board's accounting staff to locate the requested information with respect to facsimile transmissions. This search required a review of 34 single-spaced pages in order to identify the requested information.

Based on my review of the information provided by the Board as to the nature and extent of the searches which it undertook to locate the responsive information, I am satisfied that the fee provided by the Board to the appellant is reasonable in the circumstances of this appeal. I find, therefore, that the Board is entitled to charge a fee of \$450, in accordance with section 45(1)(a) of the Act.

ORDER:

I uphold the Board's decision to charge a fee of \$450.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ May 5, 1998