



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1123

Appeal M-9800023

District School Board Number 26



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NATURE OF THE APPEAL:

District School Board Number 26 (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request covered the time frame January through November 1997, and was for access to the following records maintained by the former Leeds and Grenville County Board of Education:

1. all catering and/or meal charges paid by the school board for individual meals and drinks by staff, executive council and school board members including guests; and
2. the amount paid, or to be paid, to the Royal Brock Hotel for the December meal for members of the board and executive council; and
3. how many attended the Royal Brock event and their names.

The Board responded by providing the requester with the number of people (but not their names) who attended the “Royal Brock event”, and the total cost of this event (Parts 2 and 3 of the request). With respect to Part 1, the Board advised the requester that there is no budget account for food, entertainment and related expenses and, therefore, a search would need to be conducted through the various accounts across all areas of the former Board’s operations to create a composite record. The Board estimated that it would take approximately 30 hours to produce this record, and provided the requester with a fee estimate of \$840. The Board advised the requester that the first two hours of search would be free, and asked him to provide a deposit of \$420 before conducting the search. The Board did not provide an interim decision on access.

The requester (now the appellant) appealed the amount of the Board’s fee estimate. During mediation, the appellant indicated that he no longer required the names of the people who attended the “Royal Brock Event”.

A Notice of Inquiry was sent to the Board and the appellant. Representations were received from both parties.

DISCUSSION:

Section 45(1) of the Act 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(1) of Regulation 823, made under the Act, states, in part:

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 Board's fee estimate, my responsibility under section 45(5) is to ensure that the estimated amount is reasonable in the circumstances. The burden of establishing the reasonableness of the estimate rests with the Board. To discharge this burden, the Board must provide me with detailed information as to how the fee estimate has been calculated, and produce sufficient evidence to support its claim.

In its decision letter to the appellant, the Board states that "it would take approximately 30 hours of staff time to produce [the record]". Although not required to do so, the Board deducted two free hours of search time, and based the fee calculation on \$7.50 for each 15 minutes (or \$30 per hour) to 28 hours, for a total fee estimate of \$840.

In correspondence submitted during the course of the appeal, the Board states that it processes approximately 17,500 invoices annually, which are filed in order of processing dates. According to the Board:

The request as submitted by the applicant would require a search and review of all travel claims, all conference registrations, all school (45) credit card payments and supporting receipts to segregate out the charges applicable to catering or meal expenses for all staff, executive council and school board members for the calendar year 1997. In addition, each of our schools is provided with a low value purchase account budget and we would need to examine those accounts to establish which reimbursements may have related to meal and catering costs. Furthermore, with respect to such items as facility rentals for professional development activities or meetings of various committees of board staff, we would need to separate the meal and catering costs from such things as rental facilities costs. To properly answer the requests, it would be necessary to review all cheque registers against invoices submitted and to create a record of information relevant to the request and summarize it for report purposes. In an organization comprising approximately 1500 employees at the time, it would seem ... that the estimate of 30 hours is, if anything, conservative.

As I stated above, the Board issued a fee estimate before proceeding to identify and gather records responsive to the request. This fee estimate was also not accompanied by the required "interim access decision", indicating whether responsive records are likely to be disclosed.

Order 81, issued in July 1989, established the procedure to be followed by institutions where records are unduly expensive to produce for inspection before making an access decision. This undue expense may be caused by the size of the record, the number of records, or the physical location of the records within the institution. In these circumstances, an institution has two options for determining an appropriate fee estimate: prepare a representative sample; or consult with a knowledgeable employee.

The process outlined in Order 81 (and subsequently reviewed and confirmed in Order M-555) takes into account the interests and obligations of all parties. It allows the institution to determine an estimated fee from a position of knowledge; it gives the requester a basis for assessing the fee calculation, and also a preliminary indication of whether or not access will be granted; and it puts the Commissioner in a position to review the fee estimate should the requester appeal the institution's decision.

By not complying with Order 81, none of the benefits of the process identified in that order are present in this case. The Board does not have the benefit of a representative sample of records or the expertise of a knowledgeable employee in calculating a fee estimate, and has not provided the appellant with any indication as to whether these records will be disclosed. The appellant does not have the benefit of an interim access decision. Finally, the Commissioner's office has not been provided with the type of information required in order to assess the reasonableness of the fee estimate. Although the Board has provided information relating to the amount of search activity required in order to identify responsive information, it has provided no description as to the steps required to accomplish the various tasks involved in identifying, searching and

retrieving the responsive records, nor has it provided any explanation of the way in which the information is stored. Although the Board is entitled to charge for preparation time, which normally relates to severance activity, without a proper interim access decision I cannot determine whether these charges are incorporated into the fee estimate. Further, the Board indicates that it is prepared to create a new record to respond to the request, but it is not clear whether charges for this activity are included in the fee estimate.

For these reasons, I find that the Board has not provided me with sufficient information as to how it calculated its fee estimate in responding to part one of the request, and I disallow the \$840 fee.

The Board has not identified any photocopy charges. However, in accordance with item 1 in section 6 of the Regulation, I will permit the Board to charge \$0.20 for each photocopy provided to the appellant.

In his representations, the appellant raises concerns about the public accountability of the Board regarding expenditures, as well as the fact that a requester should not be penalized by large fee estimates because of the inefficiency of the Board in its record keeping practices.

This issue has arisen in previous appeals, and I feel that comments from Orders M-372 and M-583 are relevant and applicable to the circumstances of the present appeal, and are worth repeating.

When commenting on the records management system of a different school board in Order M-372, former Assistant Commissioner Irwin Glasberg stated:

... the Board should be aware that government organizations across the province are now regularly receiving access requests regarding the expense accounts of senior officials. This is part of a trend where members of the public are seeking to hold institutions of all types more accountable for the expenditure of tax dollars. That being the case, I would strongly encourage the Board to reassess the manner in which it maintains its expenditure related records so that these documents can be retrieved more easily and at minimal cost to requesters.

In Order M-583, former Commissioner Tom Wright added to these comments by stating:

I share this view, but would take it one step further. I believe it's time for all government organizations to make expenditure-related information routinely available to the public. Such information should include the expenses incurred by senior officials for which they will be reimbursed by the organization. In my view, this "routinely available" approach has equal application to all general records held by government.

For some government organizations a move in this direction will mean rethinking the way in which they maintain expenditure and expense-related information and other general records. I see this as a positive step and one which has advantages for both government organizations and the public.

ORDER:

1. I do not uphold any of the fees charged by the Board in its fee estimate.
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 render a final decision on access to the records in accordance with the provisions of sections 19, 21 and 22 of the Act, treating the date of this order as the date of the request.
4. I order the Board to provide me with a copy of its final access decision. This should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____

Tom Mitchinson

Assistant Commissioner

_____ June 17, 1998