



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

ORDER MO-1243

Appeal MA-990108-1

Trillium Lakelands District School Board



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NATURE OF THE APPEAL:

The Trillium Lakelands District School Board (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to information described as follows (I have numbered the paragraphs for ease of reference):

1. All records, documents, minutes, memos, information which mention, name or discuss the transportation policy and/or walking policy including in camera and phone conferences from 1989 to 1999 inclusive.
2. All information, documents, memos, phone conferences and minutes pertaining to school bus routes and school bus stops from 1989 to 1999 inclusive.
3. All information, documents, memos, phone conferences and minutes pertaining to organization/reorganization of school bus routes from 1989 to 1999 inclusive.
4. All documents, memos, minutes, phone conference records and information pertaining to transportation and expenditures including receipts, contract/arrangements, etc., for 1996, 1997, 1998 and 1999.
5. All documents, memos, minutes, reports, insurance reports and or claims, Police Reports and Ministry of Transportation Reports pertaining to accidents and injuries involving a school bus, school bus stop or route. This includes personal injury and/or property damage and is understood to include any accidents due to weather or road conditions.
6. This will include any injuries/accidents which occurred during the operation of a school bus while students were riding on or disembarking from or were within close vicinity of a school bus and documentation states as such for the last ten years (1989-1999 inclusive)
7. All documents, records, requests, memos, etc. pertaining to safety including complaints, concerns, investigations and discussions and policies regarding safety in the last ten years 1989-1999 inclusive.
8. It is understood that all documents requested will be pre and post amalgamation and any data which involves school boards which now fall under Trillium Lakelands Mandate.
9. It is understood that all requested information and documents will be provided in full including detailed minutes and in camera sessions as well as closed meetings.
10. All data, documents, memos, minutes, phone conferences, legal consultations, insurance consultations of legal and/or written complaints and discussions file against any of the school boards within the present school

board district and mandate for the last ten years (1989-1999 inclusive).

The requester also asked the Board to waive the fees associated with providing access, on the basis of section 45(4)(c) of the Act. The requester indicated that she believed disclosure of the requested information would benefit public health and safety.

The Board responded to the request, indicating that fees would apply. The Board stated that fees would include staff time, travel expenses and photocopy charges at 20 cents per page, although the Board did not provide a breakdown of these fees. The Board also stated that responding to the request would involve extensive searches through minute books, files, financial records, contact with third parties and severance of certain documents at all three offices of the Board. The Board informed the appellant that additional staff may be needed to process the request.

The Board also stated:

Your request asks for copies of police reports and Ministry of Transportation reports pertaining to accidents. As these reports are in the custody and control of the above named, please direct your request for these reports directly to the parties concerned. We will supply records in the control and custody of the Board relating to accidents.

The Board estimated the fees for access at \$1,970.00 and requested a deposit of \$900.00 and a written acceptance of the fees within 30 days.

The Board informed the appellant that due to the amalgamation of three Boards, the various retention schedules of the three boards may have an impact on the availability of information.

Regarding the fee waiver request, the Board advised the requester that it was denied, and asked the requester to consider reducing the scope of her request.

The requester, now the appellant, appealed the Board's decision in respect of both the fee estimate and the denial of a fee waiver to this office.

I sent a Notice of Inquiry to the appellant and the Board seeking representations on the issues in this appeal. I received representations from both parties.

ISSUES:

FEE WAIVER

Section 45(4)(c) of the Act reads:

A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,

- (c) whether dissemination of the record will benefit public health or safety;

The Board states that it considered the appellant's fee waiver request and, although "safety is mentioned several times in the request", the Board did not feel that the request fell within the terms of section 45(4)(c). The Board states that it asked the appellant to provide a detailed explanation of her waiver request but "[t]o date, no explanation has been received." The Board submits that it also determined that the requested information did not fall under "reveals [a] grave environmental, health or safety hazard to the public", a reference to the obligation on a head to disclose such records under section 5(1) of the Act. Further, with reference to section 5(1), the Board states that the term "public interest" in that provision "includes the interests of the local community in general and not of any particular individual or group of individuals. The request is made by [the appellant] as an individual and not as part of a group of concerned parents or citizens." The Board concludes its representations on this point by stating that "the fee should not be waived in this case."

The appellant submits that in 1998, the Board, citing financial concerns, implemented a new school bus policy which required children within designated "walking zones" to walk to designated bus stops, rather than be picked up directly at home. The appellant states that the new policy raised a number of serious concerns within the community for the safety of children required to walk to bus stops under the policy. In support of this submission, the appellant states that the Board received over 1,500 calls expressing safety concerns with the policy, and that several individual parents and parent groups have appealed to the Board to revise or rescind the policy. The appellant also provides material in support of her submissions, including copies of newspaper clippings (articles, editorials and letters to the editor), a letter from the Director of Physical Services of the Town of Huntsville, a letter from Family, Youth and Child Services of Muskoka, an Ontario Provincial Police road report, a letter from the Minister of Education and Training, a transportation policy of the former Muskoka Board of Education, and the Board's policy in question.

In my view, the appellant has made a strong case for a fee waiver under section 45(4)(c). I am satisfied that disclosure of records relevant to the Board's policy will benefit public safety. Clearly, the Board's policy has raised serious safety concerns in the minds of a large number of members of the community, including parents, parent groups, journalists and other members of the public. While I am not in a position to assess the merits of these safety concerns, and ultimately these concerns may or may not be determined to be valid, I am satisfied that, at least on its face, serious safety issues have been raised by the policy. As a result, I am satisfied that disclosure of information relating directly to this issue, to the extent that it will enhance public scrutiny and debate of the Board's decision to implement the policy, will benefit public safety.

The Board takes the position that the appellant is making her request as an individual and not as part of a group of concerned parents or citizens. This argument does not advance the Board's position. Section 45(4)(c), in my view, contemplates waiver regardless of the identify of the individual requester, since disclosure of general records under the Act is considered to be disclosure to the world [see Order P-1499].

In addition, the evidence before me establishes an interest in the records beyond that of the individual

appellant. In any event, the appellant has provided evidence to indicate that in relation to the safety concerns raised by the Board's policy, she has acted both on her own behalf as an individual parent as well as on behalf of other parents.

The Board also states that, despite being asked to do so, the appellant failed to provide any submissions in support of her request for a fee waiver under section 45(4)(c). I have reviewed the appellant's response to the Board's decision not to waive fees. Although the appellant provided more material on the issue in response to the Notice of Inquiry I sent to her, I am satisfied that she provided sufficient material on which the Board could base a decision to waive or not to waive.

While I am satisfied that a fee waiver should be granted in this case, I do not believe a full waiver of all fees associated with the request is fair and equitable in the circumstances. The Board states that "although the majority of records requested are available to her, narrowing the scope of this request would be beneficial to both parties." The Board has implicitly stated that the request as it currently stands is overly broad. Although I have not had an opportunity to review the records, it appears to me that the request would cover records which may be only marginally relevant to the safety issue, or not relevant at all. In my view, it would not be fair and equitable in the circumstances to waive all fees associated with this request.

More specifically, I find that parts 4 to 9 of the request relate directly to the safety issue, and all fees related to these parts should be waived. On the other hand, parts 1 to 3 and 10 of the request relate less directly to the issue, and are overly broad in terms of time span. Requiring the Board to absorb the cost of searching for records more than four years old in the latter categories would be unreasonably onerous. I note that the appellant herself limited part 4 of the request to the last four years. As a result, I find that all fees associated with this request should be waived, with the exception of the following:

All records, documents, minutes, memos, information which mention, name or discuss the transportation policy and/or walking policy including in camera and phone conferences from 1989 to 1995 inclusive.

All information, documents, memos, phone conferences and minutes pertaining to school bus routes and school bus stops from 1989 to 1995 inclusive.

All information, documents, memos, phone conferences and minutes pertaining to organization/reorganization of school bus routes from 1989 to 1995 inclusive.

All data, documents, memos, minutes, phone conferences, legal consultations, insurance consultations of legal and/or written complaints and discussions file against any of the school boards within the present school board district and mandate for the years 1989 to 1995 inclusive.

My finding that the fees for this request should be waived in part does not preclude the Board from claiming the applicability of any of the exemptions in sections 6 to 15 of the Act to any of the responsive records. My finding also does not pre-determine the applicability of the "public interest override" in section 16 of the

Act in the event that any exemptions are found to apply. Finally, the appellant is free to continue to pursue access to responsive records for which the fee is not waived, but the Board shall require the payment of fees for these records in accordance with section 45.

FEE ESTIMATE

I found above that the fees for this request should be waived, in part. In the circumstances, the Board's fee estimate is no longer applicable and I cannot uphold it. As a result, I will order the Board to issue a revised fee estimate under section 45(3) of the Act covering only the records for which fees were not waived, without prejudice to the appellant's right to appeal the revised fee estimate under sections 39(1) and 45(5) of the Act.

As noted above, the Board did not provide a breakdown of items and charges in its fee estimate. In issuing a new fee estimate, it would be helpful if the Board provided a detailed breakdown for the benefit of the appellant, and for the benefit of all parties should the matter be appealed to this office.

ORDER:

1. I uphold the Board's decision not to waive fees associated with records responsive to the following portions of the appellant's request:

All records, documents, minutes, memos, information which mention, name or discuss the transportation policy and/or walking policy including in camera and phone conferences from 1989 to 1995 inclusive.

All information, documents, memos, phone conferences and minutes pertaining to school bus routes and school bus stops from 1989 to 1995 inclusive.

All information, documents, memos, phone conferences and minutes pertaining to organization/reorganization of school bus routes from 1989 to 1995 inclusive.

All data, documents, memos, minutes, phone conferences, legal consultations, insurance consultations of legal and/or written complaints and discussions file against any of the school boards within the present school board district and mandate for the years 1989 to 1995 inclusive.

2. I order the Board to waive the fees associated with the remaining records responsive to the appellant's request not described in provision 1 above.
3. I order the Board to issue an access decision in accordance with Part I of the Act in relation to the records described in provision 2, using the date of this order as the date of the request.

4. I do not uphold the Board's fee estimate.
5. I order the Board to issue a revised fee estimate under section 45(3) of the Act covering only the records described in provision 1 above, using the date of this order as the date of the request.

Original signed by: _____

David Goodis

Senior Adjudicator

October 19, 1999