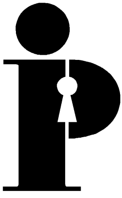

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-1336

Appeal MA-990291-1

Waterloo Region District School Board

80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The appellant submitted a request to the Waterloo Region District School Board (the Board) under the Municipal Freedom of Information and Protection of Privacy Act) (the Act) for access to all costs associated with Outcomes Based Education (OBE) with the Board and its predecessor Board, the Waterloo County Board of Education.

The Board responded with the following decision:

> Further to your request for access to records under [the Act], it has been determined that fees for staff time to search records and provide photocopies, as provided under Section 45 of the Act, will apply to your request.
>
> At this time, the estimated fees for staff search time total $52.50 for records containing summary reports of staff development activities from 1991 to 1994 which may relate to Outcomes Based Education. However, it would be necessary to review all invoices relating to these staff development activities to determine actual expense figures.
>
> Our Finance Department staff estimate that it would require approximately 20 hours of staff time to search for invoices submitted for reimbursement during the timeframe noted. The fee for staff search time in accordance with the Act is $7.50 per 15 minutes which would result in an additional charge to you of $600.00, for a total fee estimate of $652.50.

The appellant appealed the fee estimate.

During mediation, the appellant submitted a request to the Board for a fee waiver on the basis of financial hardship. The Board denied the appellant's request for a fee waiver.

I sent a Notice of Inquiry to the Board and the appellant. I requested that the Board provide representations on the calculation of the fee, and that the appellant provide representations on the issue of the fee waiver. I received representations from both parties which addressed their respective issues. I decided to move the inquiry into stage two only with respect to the calculation of the fee.

With respect to the calculation of the fees issue in the Notice of Inquiry, I asked the Board to provide representations on the fees relating to search time. I also asked the Board to confirm whether it intended to apply other fees, in particular, preparation or photocopying charges. In responding to this question, the Board indicated that it intended to apply additional fees for the processing of this request, including preparation time. The Board's initial decision did not claim the possible application of any exemptions to the records. From this response, it appeared that the Board may not have issued a final decision on access. As well, it was apparent that the fee estimate provided to the appellant did not take into account other costs which the Board ultimately intends to charge. This raised the question as to whether the Board issued a proper decision, in particular, whether the Board complied with the interim notice procedures outlined in Order 81.

I modified the Notice of Inquiry to include the Board's compliance with the interim notice procedures as an issue and asked the appellant to address it in his representations. I sent the Board's complete representations to the appellant with the modified Notice of Inquiry. The appellant submitted representations in response. I then sent these representations along with the modified Notice of Inquiry to the Board for reply. The Board submitted representations in reply.

DISCUSSION:

DID THE BOARD ISSUE A PROPER DECISION ON ACCESS AND WHAT IMPACT, IF ANY, DOES THIS HAVE ON THE APPLICATION OF FEES?

The Board did not state in its decision that the appellant would be given access to the responsive records. From this decision it may be implied that the Board intended to provide full disclosure to any responsive records that it located. However, its intentions in this regard were not clear. As a result, I asked the Board to clarify this issue. I also enclosed for the Board's reference a copy of order M-555 in which former Adjudicator John Higgins revisits and affirms former Commissioner Sidney B. Linden's decision in Order 81 dealing with the issuing of interim decisions on access.

The issue of interim decisions was first raised by former Commissioner Linden in Order 81. In that order Commissioner Linden set out the procedures to be followed where the records are unduly expensive for the institution to produce for review by the head for the purpose of making a decision on access to the records. These procedures contemplate the institution reviewing a representative sample of records, or seeking the advice of knowledgeable staff within the institution who are familiar with the type and content of the records, in order to produce an interim notice containing a fee estimate and an indication of what exemptions might apply. In this regard, former Commissioner Linden stated:

> In my view, the Act allows the head to provide the requester with a fees estimate pursuant to subsection 57(2) of the Act. This estimate should be accompanied by an "interim" notice pursuant to section 26. This "interim" notice should give the requester an indication of whether he or she is likely to be given access to the requested records, together with a reasonable estimate of any proposed fees. **In my view, a requester must be provided with sufficient information to make an informed decision regarding payment of fees, and it is the responsibility of the head to take whatever steps are necessary to ensure that the fees estimate is based on a reasonable understanding of the costs involved in providing access.** Anything less, in my view, would compromise and undermine the underlying principles of the Act.
>
> How can a head be satisfied that the fees estimate is reasonable without actually inspecting all of the requested records? Familiarity with the scope of the request can be achieved in either of two ways: (1) the head can seek the advice of an employee of the institution who is familiar with the type and contents of the requested records; or (2) the head can base the estimate on a representative (as opposed to a random) sample of the records. Admittedly, the institution will have to bear the costs incurred in obtaining the necessary familiarity with the records, however, this is consistent with other provisions of the Act. For example,

> subsection 57(1)(a) stipulates that the first two hours of manual search time required to locate a record must be absorbed by the institution and cannot be passed on to the requester.
> The head's notice to the requester should not only include a breakdown of the estimated fees, but also a clear statement as to how the estimate was calculated (i.e. on the basis of either consultations or a representative sample.) While I would encourage institutions to provide requesters with as much information as possible regarding exemptions which are being contemplated, the head must make a clear statement in the notice that a final decision respecting access has not been made. Because the head has not yet seen all of the requested records, any final decision on access would be premature, and can only properly be made once all of the records are retrieved and reviewed. However, in my view, if no indication is made at the time a fees estimate is presented that access to the record may not be granted, it is reasonable for a requester to infer that the records will be released in their entirety upon payment of the required fees. [emphasis added]

In its representations, the Board indicates that preparation and photocopying charges may be applied to the responsive records and states:

> [h]owever, at this time the number of records that are available to comply with the request is unknown until the manual search has been conducted.

The Board did not initially confirm that access was to be granted to the records or part of the records. However, the Board states in reply that it will disclose to the appellant any responsive records it locates. It states further:

> Preparation time to generate a report of the information located and photocopying charges of $0.20 per copy will be applied. It is understood that in accordance with Order M-1083 "... the Board can only charge for the amount of time spent by any person on activities required to generate the report. The Board cannot charge for the time spent by the computer to compile the data, print the information, or for the use of material and/or equipment involved in the process of generating the record".

.
In responding to this issue, the appellant expresses concern about first being charged the fee of $652.50 and then being faced with "an as yet undetermined cost for preparation and photocopying". The appellant notes that he would expect to pay the costs of photocopying but indicates that he objects to paying "labour costs".

Although it is apparent that the Board's intention was to issue a final decision on access to the records, this was not the case with respect to the fee estimate. The questions are, did the Board ensure that the fee estimate was based on a reasonable understanding of the costs involved in providing access to the records, and did it provide the appellant with sufficient information to make an informed decision regarding payment of fees in accordance with the procedures set out in Order 81? In my view, the answer to both questions is no, as explained below.

Was the estimate based on a reasonable understanding of the costs involved?

The Board indicates that its representations were prepared in consultation with its Superintendent of Financial Services and Treasurer and Financial Services staff. I can only assume that its original decision on access was similarly made in consultation with these individuals. The Board indicates that the information that would be responsive to the appellant's request is found on cheques which, given the age of the records, are now located on microfilm (I will discuss the nature and location of the records in more detail below). Further, the Board estimates that it would be required to review approximately 67,350 cheques in order to locate and retrieve the responsive records.

While the actual number of cheques to be reviewed is large, they are all found in one location. I am not convinced that it would be unduly expensive to produce them for the head to review and to identify the steps necessary to provide access, including anticipated preparation requirements and the number of pages to be photocopied. Although I am inclined to conclude that the Board should have issued a final decision on both access and the fees to be charged, in recognition of limited resources, I am prepared to accept that this may be an appropriate case for a fee estimate as contemplated by Order 81.

That being said, in my view, given the nature of the records, the nature of the information requested and the staff available to respond to the request, it is reasonable to expect that the Board should still have been able to determine whether it expected to locate responsive records, whether it would expect that any exemptions might apply to any record located and what would be required to produce the record for disclosure.

With respect to preparation costs, the need to "generate a report" is mentioned for the first time in its representations. The Board does not indicate when it came to this realization. It is not clear that the Board even turned its mind to this cost at the decision stage of the request. Whether the Board misunderstood its obligations or simply did not take the time to consider all of the costs, the result is an incomplete estimate of the costs of providing access to the records.

Further, although the Board may not be able to determine the exact number of records that would be responsive to the request, its Financial Services staff would have some idea of the nature of the cheques that are issued in a particular year and be able to provide a reasonable estimate of those that might relate to this one initiative. The Board made no attempt to estimate the number of pages it might expect to photocopy.

Accordingly, I find that the Board did not take the steps necessary to ensure that the fees estimate was based on a reasonable understanding of the costs involved in providing access.

Did the Board provide the appellant with sufficient information regarding the estimated costs?

To a large extent, the answer to the first question answers the second. In my view, the Board could have provided the appellant with some idea of what costs might be associated with his access request. Although its decision makes a vague reference to photocopying, it does not advise the appellant that he will be charged for this activity. Further, the Board's decision did not make any reference to the possibility that additional charges may be added for preparation. I find that the fee estimate rendered by the Board was deficient in that it failed to provide the appellant with a reasonable estimate of the costs associated with

producing the records such that he was placed in a position to make an informed decision regarding payment of the fees.

What impact does this have on the Board's decision?

In Order 81, the former Commissioner returned the matter to the institution for a revised fee estimate. It is noteworthy, however, that Order 81 (dated July 26, 1989) was issued in the early days of our experience with the Act and was intended as an educational tool for institutions to use in responding to requests under the Act. The principles underlying Order 81 were reaffirmed in Order M-555 (dated June 30, 1995). The approach advocated by the former Commissioner has been consistently followed to date. In my view, in responding to requests under the Act, institutions have an obligation to understand the requirements of the Act and the way it has been interpreted and applied by the Commissioner's office. Clear direction has been provided on this issue and was not followed in this case.

More recently, decisions of this office have considered the failure of an institution to comply with Order 81 as part of an overall assessment of the reasonableness of the fee estimate. In Order M-1123, a school board responded to a request for certain expenses incurred by it simply by indicating that a search would need to be conducted through the various accounts across all areas of its operations to create a composite record. The school board estimated the time it would take to produce the record, and provided the requester with a fee estimate, but did not provide an interim decision on access. Assistant Commissioner Tom Mitchinson came to the following conclusion in assessing the fees in these circumstances:

> 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.

Similarly, in Order MO-1294, former Adjudicator Holly Big Canoe did not uphold an institution's estimate for search and preparation where the institution had not complied with the requirements of Order 81 and did not provide representations on the various activities which would attract a charge.

In the current appeal, the Board has not made any representations apart from the statement referred to above regarding preparation and photocopying costs. The Board explains the calculation of the fees for search time and I will consider them below.

With respect to preparation charges, I find that failure of the Board to identify that such a cost might be applied to this request is fatal to its ability to now claim it. Further, the Board has not provided sufficient information for me to be able to understand how a fee might be calculated for this activity. Therefore, I disallow any charge for preparation.

In Order M-1123, despite the absence of a claim for photocopying, Assistant Commissioner Mitchinson was prepared to allow the institution to charge for this fee, stating:

> 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.

The intention of the Legislature to include a "user pay" principle is clear from section 45(1) of the Act. In my view, Assistant Commissioner Mitchinson's approach is consistent with the "user pay" principle. As I noted above, the appellant indicates that he expects to pay for photocopies. Accordingly, I will allow the Board to charge the appellant for the cost of making photocopies of the records.

CALCULATION OF THE 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 the 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.

Search time

The Board's position

With respect to the nature of the records sought by the appellant, the Board states that:

> The staff development summary records ... originated in the Board's Human Resources Department and are part of a tracking system to identify anticipated staff development expenses. The information listed in these documents does not specifically relate to a payment being made. It addresses amounts committed (or estimated) on behalf of the particular person. It does not detail to whom any payment would have been made and a number of possibilities exist. It could be payment to the employee who submitted the staff development request, or to the name or location of the activity, or to another source or provider of services. It is also possible that some or all of the committed funds were not spent due to a change to or cancellation of the staff development activity.

Regarding the manner in which the records which would contain responsive information are maintained by it, the Board states:

> Records in Financial Services are maintained according to payment. Since there are no general ledger codes or payment details listed on staff development summaries, items cannot be identified in that manner. Therefore, in order to locate any expenses, staff would need to review every item paid during the three-year span of the inquiry (1991 to 1994). Approximately 22,450 cheques are processed per year. Due to the age of the documents, this detail is maintained on microfilm and is no longer stored electronically on computer. To retrieve the information, a staff member would have to manually examine each microfilmed voucher for some reference to the staff development number identified in the summary. This task will be time consuming because of the lack of specifics on the staff development records.

The Board estimates that it will take, at a minimum, 20 hours to search for responsive records and that it may well take longer.

The appellant's position

The appellant takes the position that there are alternate means of locating the information he is seeking and that they are more cost effective. In particular, the appellant suggests that the Board contact individuals or organizations who might have some information relating to this issue. By doing so, the appellant believes that critical dates of major events may be narrowed down which would allow the Board to target time frames. The appellant also suggests that the Board may review other records within its holding that might shed light on significant dates. Finally, the appellant suggests that the Board employ co-op students, who are unpaid, to conduct the searches referred to above, if necessary. In this regard, the appellant states:

> There is absolutely no reason why a Co-op Student could not be assigned the task of searching financial records to find that data I am seeking. Co-op Students, generally speaking, have all the competence necessary to carry out such tasks and they cost nothing. Co-op Students are not paid for the work they do.

Findings

The Act requires that institutions charge fees for the work performed in responding to access requests. Section 45(1) and section 6 of Regulation 823 set out the activities which attract a fee and the manner in which they are to be calculated.

With respect to the use of co-op students, I note that section 3 of Regulation 823 of the Act does not require that a fee be reduced or calculated based on the salary level or status of the individual conducting the search. It simply provides that an institution shall charge for manually searching for a record, $7.50 for each 15 minutes spent by **any** person. Section 3 may be viewed in contrast to section 6 of the Regulation which provides that an institution may charge for:

> 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.** [emphasis added]

In applying this provision, the actual costs of the work done are directly applied to the fee estimate provided by the institution. Reading these two sections together, I conclude that once the Board establishes that it requires a specified length of time for an individual in its "employ", including students, to search for responsive records, pursuant to section 3 of the Regulation it may apply a fee of $7.50 for each 15 minutes regardless of who conducted the search.

Further, I do not accept the appellant's suggestions that there may be other ways of searching for the information he seeks as a basis for reducing the fees for search time. The Act does not specify that an institution is required to use the most cost effective method of search and preparation available to it, although previous orders of this office have commented on this issue (see Orders M-372 and M-555, for example). In general, however, without clear evidence to the contrary, I must assume that the Board is in the best position to know its own record holdings and operational requirements in the allocation of its resources.

In any event, the appellant's suggestions regarding other methods of identifying and/or locating responsive information may or may not be more cost effective. They may, in fact, be more time consuming and complicated than the method chosen by the Board. They may also not result in all of the responsive information being located. In the circumstances of this appeal, the method chosen by the Board appears to me to be the most comprehensive and efficient in terms of required steps and control over time and resources. Therefore, the Board will not be required to reduce its fees based on these arguments.

Rather, I must determine whether the Board has established that it requires approximately 20 hours to search for responsive records. I note that although the Board states that it estimates 20 hours, at a cost of $652.50, the actual number of hours estimated is 21 and three quarters.

The Board estimates that it must review approximately 67,350 cheques in order to determine whether any of them relates to the Outcomes Based Program. These cheques are now contained on microfilm. The appellant refers to the improvements associated with the use of "modern technology" in accounting and book keeping and appears to lament its failure in the circumstances. On this point I agree. Had the

accounting information been retained in a computerised accounting program it should have been easily retrievable through a database search. However, that is not the case here. Moreover, the Act does not require that records be maintained by an institution in a particular manner or in a manner most advantageous to a requester (Orders M-166, M-546, M-549 and M-555). By retaining the records in the format identified by the Board, it has little choice but to manually search through a large number of pages in order to locate responsive records.
Based on 22 hours for a search of approximately 67,350 cheques, an individual would have to review at least 3000 cheques per hour or over 50 per minute. In my view, given the number of cheques to be searched, the time estimated by the Board is reasonable. Therefore, I find that the Board's calculation of time required to search for responsive records in the amount of $652.50 can stand with one caveat. The Board appears not to have commenced the work involved in responding to this request. The amount charged is only an estimate. I will not allow the Board to charge more for this activity. However, if the amount is less, the Board will be required to reduce the fee accordingly.

Photocopying

As I indicated above, the Board may charge $0.20 for each photocopy provided to the appellant in accordance with item 1 in section 6 of the Regulation.

FEE WAIVER

The provisions of the Act relating to fee waiver are found in section 45(4), which states as follows:

> 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,
>
> (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
>
> (b) whether the payment will cause a financial hardship for the person requesting the record;
>
> (c) whether dissemination of the record will benefit public health or safety; and
>
> (d) any other matter prescribed in the regulations.

Section 8 of the Regulation then prescribes, in part:

> The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:

1. Whether the person requesting access to the record is given access to it.

...

In the present case, the Board has decided to disclose any responsive records it locates to the appellant.

Under section 45(5), an appellant has the right to ask the Commissioner to review an institution's decision not to waive the fee. The Commissioner may then either confirm or overturn this decision based on a consideration of the criteria set out in section 45(4) of the Act (Order P-474).

It has been established in previous orders that the person requesting a fee waiver must justify the waiver request and demonstrate that the criteria for a fee waiver are present in the circumstances (Orders M-429, M-598 and M-914). I am also mindful of the Legislature's intention to include a user pay principle in the Act, as evidenced by the provisions of section 45.

In Order P-474, former Assistant Commissioner Irwin Glasberg found that the appropriate standard of review for discussions under section 57(4) of the provincial Freedom of Information and Protection of Privacy Act (which is the equivalent of section 45(4) of the Act), is one of correctness. In that same order, former Assistant Commissioner Glasberg also found that the phrase "in the head's opinion" means only that the head of an institution has a duty to determine whether it is fair and equitable in a particular case to waive a fee, and this wording does not affect the statutory authority of the Commissioner and her delegates to review the correctness of that decision.

The appellant submits that he is entitled to a fee waiver on the basis of financial hardship and "public interest". He also states a number of other reasons why the fee should be waived in the circumstances of this appeal. In this regard, he refers to other Board expenditures and states "[i]t is clear that the [Board] is not concerned about the amount of money involved in the search for the material I am seeking". He also notes that the Board has always made exceptions or modifications concerning fees that families might be asked to pay out of area students wishing to attend schools within the Board's jurisdiction. Further, he appears to suggest that because the Board has not been inundated with access requests and that his is the first request for a fee waiver, this case should be treated as an exception to the general rule that fees should be charged.

Section 45(1) of the Act is very clear and straightforward, stating "[a] head **shall require** the person who makes a request for access to a record to pay fees in the amounts prescribed". The circumstances under which a head shall waive payment of the fee in section 45(4) are specific and limited to those matters cited above. On this basis, I find that the activities of the Board with respect to other financial matters within its jurisdiction and authority have no relation to its obligation to charge a fee for responding to an access request or to consider waiver of the fee. Nor does the fact that the Board may not deal with a high volume of access requests.

Public health or safety

The appellant submits:

> In a publicly funded organization such as the School Board, all information should be available to the public except that relating to very personal matters of students and staff. The information I am requesting is in the same order as the cost of heating schools or transporting students. When I made my request to the Board, I had assumed that there would have been a budget item for each year from the inception of OBE, showing how much had been spent. The fact that such an initiative, apparently, has not been so documented, is a matter of some concern to myself because of the immense amounts of money involved. I am sure, too, that the public might expect a different account procedure for such expenditures in the future.

The appellant explains his own personal views regarding this initiative and some of the actions he took during his employment with the Board. The appellant also expresses concern that, although he initially addressed his correspondence to the Trustees of the Board, the matter was turned over to Board personnel to deal with. He believes that some of these individuals were intimately involved in establishing the OBE program and would be embarrassed by the amount of funds expended for this initiative.

In Order P-474 referred to above, former Assistant Commissioner Glasberg found that the following factors are relevant in determining whether dissemination of a record will benefit public health or safety under section 57(4)(c) of the provincial Freedom of Information and Protection of Privacy Act, which is the equivalent of section 45(4)(c) of the Act:

1. Whether the subject matter of the records is a matter of public rather than private interest;

2. Whether the subject matter of the records relates directly to a public health or safety issue;

3. Whether the dissemination of the records would yield a public benefit by a) disclosing a public health or safety concern or b) contributing meaningfully to the development of understanding of an important public health or safety issue; and

4. The probability that the requester will disseminate the contents of the records.

I agree with former Assistant Commissioner Glasberg's interpretation and I adopt these factors for the purposes of this appeal.

The focus of section 45(4)(c) is "public health or safety". It is not sufficient that there be only a "public interest" in the records or that the public has a "right to know". There must be some connection between the public interest and a public health and safety issue. In my view, neither the OBE Program itself nor the records that are at issue in this appeal have any connection to a public "health" or "safety" issue.

Accordingly, I find that the fees should not be waived on the basis of "public health or safety".

Financial hardship

The appellant states that he is a retired teacher with a specified retirement income, which I agree is modest. He indicates further that he has a mortgage and "school age children to help support". He does not provide any other information but indicates "I can document my income if necessary".

In the Notice of Inquiry, I advised the appellant that the onus is on him to provide adequate evidence to support a claim for a fee waiver. I asked him to provide "detailed evidence regarding his financial circumstances".

It appears, from the way the appellant worded his response to this issue, that the income he refers to is his pension as a retired teacher. He does not indicate whether this amount includes other sources of personal income or family income. Even if he were to indicate that it is his sole source of income, I am not satisfied that he has established that paying the fee would cause him financial hardship. Apart from indicating that he has a modest retirement income and that he has certain obligations that would be considered "typical" for most requesters, the appellant has not provided any information relating to his expenses or how payment of the fees in this appeal would cause him financial hardship.

The appellant states that if the fee is not waived, he will not continue with his request. That is a personal choice the appellant may have to make. Admittedly, the fee is not insubstantial. The appellant must now weigh the value to himself of receiving the information requested and paying for it. This is an exercise that every requester who is charged a fee must go through but, in and of itself, it is not sufficient to establish financial hardship.

On the basis of the representations submitted by the appellant, I find that he has not established that the fees which I have allowed the Board to charge for responding to this request should be waived.

ORDER:

1. I uphold the Board's decision to charge $652.50 for search time (unless the actual amount ultimately turns out to be less, in which case the lesser amount is to be charged).

2. I disallow any costs to be charged for preparation.

3. The Board may charge the appellant for the actual cost of photocopying responsive records at $0.20 per page.

4. I uphold the Board's decision not to grant a fee waiver.

Original signed by: ______________________ ______________ September 14, 2000

Laurel Cropley
Adjudicator