



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1692**

**Appeal MA-030055-2**

**Le Conseil scolaire public de district du Centre-Sud-Ouest**



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## **NATURE OF THE APPEAL:**

Le Conseil scolaire public de district du Centre-Sud-Ouest (the Conseil) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

. . . a copy of each tender result summary for each public tender called by your institution for goods, services and/or both, since December 1997 to date. The tender result summaries are expected to take the form of a checklist for each tender recording the names of bidders and prices received.

The requester subsequently clarified that his request relates only to “Public Tenders”, and that he is seeking records which would disclose:

1. The description as used on the contract or service being tendered.
2. The names of each bidder who submitted proposals on each.
3. The total prices received from each bidder.
4. The successful bidder in each case or a note of no award.

The Conseil issued a decision indicating that records responsive to points one and two would be disclosed, but that records which contained the information sought in points three and four of the amended request would be withheld under section 10 of the *Act* (third party information). The Conseil also provided the requester with a fee estimate in the amount of \$ 630.00 and requested the payment of a deposit of \$ 315 before it proceeded to process the request.

The requester, now the appellant, appealed the fee estimate decision. Accordingly, the sole issue for determination in this appeal is whether the fee estimate of \$630.00 is in accordance with the requirements of sections 37(1)(c) and 45 of the *Act* and Regulation 823. I initially requested representations from the Conseil as it bears the onus of demonstrating that the fee estimate decision was in accordance with the *Act*. The Conseil provided me with representations which were shared, in their entirety, with the appellant, along with a copy of the Notice of Inquiry. The Conseil also amended its original fee estimate to be \$300, rather than the sum of \$630 initially calculated. The appellant also provided submissions in response to the Notice.

## **DISCUSSION:**

### **Should the Conseil’s fee estimate of \$300.00 be upheld?**

The Conseil describes the searches required to locate and identify records responsive to the request. It indicates that, in most cases, the information sought would be included in a “summary of each public tender” included in separate files for each tender. It indicates that, for the 2002-2003 school year, the requested records are maintained in a filing cabinet on its premises and that the requested information for the years 1998 to 2002 is kept in two storage vaults containing 203 boxes of documents.

The Conseil indicates that it would be necessary to examine the records in the current year's filing cabinet and the 203 boxes in its storage facility in order to locate the summaries pertaining to each public tender for the years 1998 to 2002. It also states that it may be necessary to request information from consultants which it retained to assist in the tendering process in five or six occasions in order to locate the requested information pertaining to these tenders.

The Conseil estimates that it would take 10 minutes to locate each tender summary in the files relating to the 2002-2003 school year and to sever any confidential information contained in each summary. It adds that for those files that do not include a tender summary, it would take approximately 30 to 45 minutes to produce the requested summary for each tender, depending on the number of companies involved in the tendering process. In total, the Conseil estimates that it would take 2.5 hours to complete the necessary searches and prepare the 2002-2003 records for disclosure.

For the records relating to tenders for the period 1998 to 2002, the Conseil estimates that it would require 7.5 hours to complete the searches necessary to locate the requested information. It points out that this would not include the time required to prepare a tender summary for those files which do not have one.

The Conseil also submits that it may be required to make inquiries of its consultants to assist in locating all of the requested information and that this may also entail a fee, which at this point is unascertained. Similarly, it has not included a charge for photocopying as it is not clear how many responsive records would be found should the searches be conducted.

The Conseil indicates that it contacted its Purchasing Officer to assist in the preparation of the fee estimate and that this individual is familiar with its record-keeping systems, as well as the tendering process used by the Conseil.

In preparing its fee estimate, the Conseil states that it "based our assessment by sampling a few files contained in the filing cabinet where our tendering records for the 2002-2003 school year are kept."

The appellant submits that the Conseil is "intentionally inflating the estimated fee to deter me from accessing these records." He goes on to add that:

It is a necessary practice of public institutions to keep Public Tender results at hand for the purpose of justifying the fairness of public procurements to others who oversee and fund their operations. The institution generates no funds of their own and they are entirely funded by our tax dollars.

The Institutions allegedly not keeping their public tender results easily accessible and open to public access (or other agencies of government) review and scrutiny is not a possible scenario. The position taken by the Institution is therefore likely false and designed to interfere with the Information and Privacy Commissioners duty to create open and transparent governments.

Based on the submissions of the Conseil, I am satisfied that the fee estimate of \$300 provided to the appellant is reasonable in the circumstances. The Conseil has provided me with sufficient evidence of the nature and extent of the searches required to locate the requested information in both its current record-holdings and in its storage facility. In my view, the search and preparation time described by the Conseil are reasonable in light of the nature of the requested records and the manner in which the files are stored.

**ORDER:**

I uphold the Conseil's fee estimate of \$300 and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_ September 25, 2003