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

ORDER MO-2528

Appeal MA08-346

Conseil des écoles catholiques de langue française du Centre-Est

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NATURE OF THE APPEAL:

The appellant submitted an access request to the Conseil des écoles catholiques de langue française du Centre-Est (the Board) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for "all information" in the Board's "possession and control" relating to himself and his two children, including the following:

> Correspondence, letters, emails, internal memos (draft and final versions) and notes, which exist in paper, electronic, digital, cassette or other format relating to:
>
> - [Appellant's] work as a volunteer and lunch monitor at [specified elementary school] between September 2000 to April 2005;
>
> - Two complaints against [appellant] from [three named parents] at the school;
>
> - [Appellant's] suspension from his volunteer and lunch monitor duties on April 13, 2005 by [first named Board official]
>
> - [First named Board official's] police report filled in on or about April 14, 2005 and complaint to Children's Aid Society;
>
> - The investigation subsequent to the above complaints conducted by [first and second named Board officials] or any other superintendents, trustees or employees of the School Board;
>
> - A letter dated August 26, 2005 by [third named individual] to [appellant] and any and all related correspondence by the School Board;
>
> - [Appellant's] ban and limitations of the premises of [specified elementary school] by [first named Board official], subsequent principals and superintendents of the School Board;
>
> - [Appellant's son's] 2006-2007 school year;
>
> - Any and all communications between [first named Board official] and the School Board regarding the above complaints and investigation;
>
> - Any and all correspondence between the School Board and [specified elementary school] and the Ottawa Police Service regarding [appellant];

> - Any and all communication between the School Board and [specified elementary school] regarding field trips that [appellant] was prevented or allowed to attend;
>
> - Any and all internal communications within the School Board and [specified elementary school] with respect to [appellant] and his family;
>
> Additionally, please note that we request continuous access to the record pursuant to section 17(3) of the *Act*.

Section 45(1) requires an institution to charge fees, as prescribed in the regulations, for requests under the *Act*. Moreover, section 45(3) requires an institution to give the requester a reasonable estimate of any amount that will be required to be paid that is over $25. Section 7(1) of Regulation 823 allows an institution to require a requester to pay a 50% fee deposit before it takes any further steps to respond to the request.

The Board sent a decision letter to the appellant that provided a fee estimate of $4,605 for providing access to the requested records. In addition, it included a chart setting out a breakdown of this fee and how it was calculated. The letter further informed him that he would be required to pay a fee deposit of $2,302.50 before the Board would take any further steps to respond to his request.

Subsequently, the Board sent a revised decision letter to the appellant, stating that it had underestimated the time needed for searching, copying and sorting the records. It provided a revised fee estimate of $7,305 for providing access to the requested records. The letter further stated that the appellant would be required to pay a fee deposit of $3,652.50 before the Board would take any further steps to respond to his request.

The appellant appealed the Board's fee decision to this office.

Section 45(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. In addition, section 8 of Regulation 823 sets out additional matters for an institution to consider in deciding whether to waive a fee.

During the intake stage of the appeal process, the appellant sent a letter to the Board, asking that the fee be waived. The Board sent a decision letter to the appellant, stating that it was denying his request for a fee waiver. Consequently, whether the fee should be waived was added as an issue to this appeal.

This appeal was then moved to the mediation stage of the appeal process, and the parties agreed to participate in a teleconference with the mediator. During this teleconference, the appellant agreed to narrow the scope of his request. In particular, he withdrew his request for the specific records listed in bullets 2, 4 and 6 of his request letter, but emphasized that he was still seeking any documentation held by the Board relating to those records. In addition, he agreed that all correspondence sent between him and the Board was no longer part of his request.

The appellant also specified that he was not seeking any communications between the Board and its lawyers that would qualify for exemption under section 12 (solicitor-client privilege) of the *Act*. Moreover, the appellant stated that except for bullet 1, which extends from September 2000 to April 2005, the time frame for his request should be from April 2005 to the present. Finally, the appellant also stated that the reason he is seeking a fee waiver is because payment would cause a financial hardship for him.

The Board then sent a revised decision letter to the appellant, dated December 17, 2008, that was based on his narrowed request. It stated that approximately 45% of the 1350 records that it identified as responsive to his initial request could be removed from the scope of the appeal, which would leave about 750 responsive records (2750 pages in total). The letter also provided a revised fee estimate of $3,425 for providing access to the requested records. The letter further informed him that he was required to pay a fee deposit of $1712.50 before the Board would take any further steps to respond to his request.

The revised decision letter also noted that the appellant had not provided any documentation to the Board to support his request for a fee waiver, particularly with respect to his financial situation. The letter further stated that the Board was not aware of any valid reason that would justify waiving the fees in this particular case.

This appeal was not resolved in mediation and was transferred to the adjudication stage of the appeal process for an inquiry. I invited both the Board and the appellant to provide me with representations on the issues. I received representations from both parties, including reply representations from the Board.

DISCUSSION:

FEE ESTIMATE

Should the Board's fee estimate be upheld?

Introduction

As noted above, after the appellant agreed to narrow his request, the Board sent him a revised decision letter, dated December 17, 2008, that provided a new fee estimate of $3,425 for accessing the 750 responsive records. This $3,425 fee estimate is the one that is at issue in this appeal, and I will determine whether it should be upheld, either in whole or in part.

Section 45(1) requires an institution to charge fees for requests under the *Act*. That section reads:

> 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.

More specific provisions regarding fees are found in sections 6, 6.1, 7 and 9 of Regulation 823. Those sections read:

> 6. 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 records provided on CD-ROMs, $10 for each CD-ROM.
>
> 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.
>
> 6.1 The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act for access to personal information about the individual making the request for access:
>
> 1. For photocopies and computer printouts, 20 cents per page.
>
> 2. For records provided on CD-ROMs, $10 for each CD-ROM.

> 3. 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.
>
> 4. 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.
>
> 7. (1) If a head gives a person an estimate of an amount payable under the Act and the estimate is $100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request.
>
> (2) A head shall refund any amount paid under subsection (1) that is subsequently waived.
>
> 9. If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record.

As noted above, section 6.1 of Regulation 823 sets out the fees that an institution must charge when providing access to personal information "about the individual making the request for access." However, in the circumstances of this appeal, the appellant is seeking access to information relating not just to himself but to his two children as well.

Under section 54(c), any right or power conferred on an individual by the *Act* may be exercised if the individual is less than 16 years of age, by a person who has lawful custody of the individual. If the requester meets the requirements of section 54(c), he is entitled to have the same access to the personal information of the individual as the individual would have. The request for access to the personal information of the individual will be treated as though the request came from the individual himself (Order MO-1535).

The appellant has lawful custody of his two children, who are both less than 16 years of age. In these circumstances, any request by the appellant for the personal information of his two children must be treated as though the request came from the children themselves. Consequently, the fees set out in section 6.1 of Regulation 823 apply to any personal information in the records relating to both the appellant and his two children.

Where the fee exceeds $25, an institution must provide the requester with a fee estimate [section 45(3)].

This office may review an institution's fee or fee estimate to determine whether it complies with the fee provisions in the *Act* and Regulation 823.

Approach

In Order M-514, Senior Adjudicator John Higgins found that institutions must employ a record-by-record approach in determining whether a requester should be charged fees. In that appeal, which also involved a broad request from an appellant for information relating to himself, the Durham Regional Police Services Board (the Police) had examined the pages of each record in determining whether to charge fees. Senior Adjudicator Higgins found that this approach was inconsistent with the legislature's intention. He stated, in part:

> With regard to records responsive to part 3 … I believe that the method of analysis is an issue, because of the nature of the records requested. Some pages in a responsive record could contain the appellant's personal information, while other pages in that same record, equally responsive to part 3 of the request, may not contain the appellant's personal information. For example, where the Police have determined that a four-page letter containing information about the appellant's matter is responsive to part 3, and only pages 1, 2 and 3 of that letter contain the appellant's personal information, the analysis conducted by the Police would mean that fees may be charged in connection with page 4, but not for pages 1, 2 and 3. If, on the other hand, the record-by-record approach is employed, no fees could be charged in connection with this record.
>
> In my view, the approach taken by the Police is inconsistent with the legislature's intention in enacting section 45(2). The aim of that section is to enhance the rights of individuals to obtain access to their own personal information. An approach which applies this exemption from payment only to those pages of a record which contain an individual's personal information would frustrate this legislative intention. I believe that, on the contrary, it was the legislature's intention to apply this exception to payment of fees to records, not pages of records, which contain the requester's own personal information.
>
> In my view, the approach advocated by the Police would be an undue restriction on the ability of individuals to obtain access to records containing their own personal information. Moreover, if adopted, this approach would engender considerable confusion with relation to charges for search time. It is unclear whether it would be possible to charge a fee for locating a record in which some pages contain the requester's personal information and some do not, or whether a fractional assessment would have to be made with regard to each record in that category. Accordingly, in my view, this approach could not be applied to search time, and its adoption for other types of fees would lead to an unduly complex assessment of fees in cases where parts of records do contain the requester's personal information and others do not.
>
> The record-by-record approach to this question, by contrast, is relatively straightforward, can apply to all types of fees, and is, in my opinion, consistent with the legislature's intention. Accordingly, in my view, it is the approach which should be applied.

….

> For all these reasons, I have determined that the best way to implement the legislature's intention that individuals should not pay fees for access to their own personal information is to interpret section 45(2) as applying to **records** which contain the requester's personal information. [Emphasis in original.]

In 1996, section 45(2) of the *Act*, which prohibited an institution from requiring an individual to pay a fee for access to his personal information, was repealed and section 6.1 was added to Regulation 823. Section 6.1 requires an institution to charge a requester fees to cover the costs of the work specified in paragraphs 1 to 4 when providing that individual with access to his personal information. However, it does **not** allow an institution to charge a fee for manually searching for a requester's personal information or for preparing it for disclosure.

Notwithstanding these amendments, the record-by-record approach continues to be the one that must be applied by institutions in determining whether a requester should be charged fees for both general records and records containing a requester's personal information. In the circumstances of the appeal before me, if a record contains the personal information of the appellant or his children, the Board must only charge the fees stipulated in section 6.1 of Regulation 823.

Analysis and findings

Breakdown

In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated (Orders P-81 and MO-1614). The Board's revised decision letter of December 17, 2008 broke down its fee estimate of $3,425 as follows:

Tâche/frais engagé	**Estimation**	**Droits prescrits**	**Montant payable ($)**
Ouverture du dossier	n/a	5,00 $	5,00 $
Rechercher, repérer, copier, trier et répertorier	150 heures – 50 % = 75 heures	30,00 $/heure	2 250,00 $
Traiter pour fins de divulgation	60 heures – 50% = 30 heures	30,00 $/heure	900,00 $
Photocopies	1 350 pages	0,20 $/page	270,00 $
Total			3 425,00 $

I will now determine whether the Board's fee estimate of $3,425, as broken down in this chart, complies with the fee provisions in the *Act* and Regulation 823.

Request fee

The Board's fee estimate of $3,425 includes a $5 request fee.

Section 17(1)(c) of the *Act* states that a person seeking access to a record shall, at the time of making the request, pay the fee prescribed by the regulations for that purpose. Similarly, section 37(1)(c) stipulates that an individual seeking access to personal information about the individual shall pay a fee. Under section 5.2 of Regulation 823, the fee that shall be charged for the purposes of clause 17(1)(c) or 37(1)(c) of the *Act* is $5.

In his representations, the appellant does not dispute that this specific fee must be paid. Consequently, I uphold the $5 request fee.

Search and preparation

As noted above, section 6 of Regulation 823 sets out the fees that an institution must charge for providing a requester with access to general records and requires an institution to charge fees for manually searching for such records and preparing them for disclosure.

Section 6.1 of the Regulation 823 sets out the fees that an institution must charge for providing a requester with access to his personal information. It does **not** allow an institution to charge a fee for manually searching for records containing a requester's personal information or for preparing such records for disclosure.

In accordance with Order M-514, the Board must apply a record-by-record approach in determining whether fees must be charged. If a record contains the personal information of the appellant or his children, the Board cannot charge the appellant a fee for manually searching for this record or preparing it for disclosure.

The Board states that its fee estimate of $3,425 includes a $2,250 fee to manually search for 50% of the responsive records, and a $900 fee for preparing these records for disclosure. It submits that approximately 50% of the responsive records do **not** contain the personal information of the appellant or his two children and section 6 of Regulation 823 requires it to charge the appellant for manually searching for these general records and preparing them for disclosure.

The appellant submits that the Board's $2,250 search fee and $900 preparation fee should not be upheld. He disputes the Board's submission that the responsive records contain both personal information and non-personal information relating to himself and his two children.

The appellant states that his request to the Board indicates that he is requesting access to his "personal information," as stated in the letter's object. Moreover, he submits that his access request specified that he was seeking information that pertains to himself and his two children, and that it is evident that he is not seeking general records. He then cites the definition of "personal information" in section 2(1) of the *Act*, and submits that his request for "personal information" falls exclusively within the purview of this definition.

The appellant further submits that this office's jurisprudence has found that in cases of uncertainty, the requested information should be deemed to be the "personal information" of the appellant and not subject to a search or preparation fee. In particular, he cites Order MO-1285, in which Adjudicator Laurel Cropley did not uphold the institution's search fee and stated that

"[w]here there is doubt as to how the fees should be applied, in my view, the balance must weigh in favour of the appellant."

Consequently, in assessing whether the Board's search and preparation fee estimates should be upheld, the key issue that must be resolved is whether it is reasonable for the Board to claim that approximately 50% of the responsive records do not contain the personal information of the appellant or his children. The Board does not appear to be arguing that 50% of the responsive records do not contain any information relating to the appellant or his children. Instead, it appears to be arguing that the information relating to these individuals in 50% of the records does not qualify as "personal information," as that term is defined in section 2(1) of the *Act*.

For the reasons that follow, I find that the Board's claim that approximately 50% of the responsive records do not contain the personal information of the appellant or his children, is not reasonable. Consequently, I have decided not to uphold the Board's $2,250 fee estimate to manually search for 50% of the responsive records, and its $900 fee estimate to prepare these records for disclosure.

In my view, the Board's submissions, which are summarized and addressed below, are based on a narrow interpretation of "personal information" that is not in accordance with the expansive definition of this term in section 2(1) of the *Act* and related jurisprudence that interprets this definition. "Personal information" is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature,

> and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information (Order 11).

Sections 2(2), (2.1) and (2.2) exclude certain information from the definition of "personal information." These sections state:

> (2) Personal information does not include information about an individual who has been dead for more than thirty years.
>
> (2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (2.2) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

This office has found that to qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual (Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225). Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual (Orders P-1409, R-980015, PO-2225 and MO-2344).

In addition, the courts have found that the definition of "personal information" in federal and provincial access and privacy legislation is expansive. For example, in *Dagg* v. *Canada (Minister of Finance)*,[1] Justice LaForest discussed the meaning of "personal information" in the federal *Privacy Act*, which contains the same definition of "personal information" as in Ontario's freedom of information and protection of privacy legislation. He stated the following:

[1] [1997] 2 S.C.R. 403.

> On a plain reading, this definition is undeniably expansive. Notably, it expressly states that the list of specific examples that follows the general definition is not intended to limit the scope of the former. *As this Court has recently held, this phraseology indicates that the general opening words are intended to be the primary source of interpretation.* The subsequent enumeration merely identifies examples of the type of subject matter encompassed by the general definition.[2] [Emphasis added.]

The opening words of the definition in section 2(1) of the *Act*, which are intended to be the primary source of interpretation, state that "personal information" means "recorded information about an identifiable individual." Given the expansive nature of the definition in section 2(1) of the *Act*, the information in the Board's records that refer to the appellant or his children should, on its face, be "recorded information about an identifiable individual" and hence constitute their personal information, unless it falls within the exclusions to "personal information" in sections 2(2), (2.1) or (2.2) or the jurisprudence of this office that addresses whether information is about the individual in a personal capacity.

The Board asserts that over the years, the appellant has been involved in disputes with both the Board and certain third parties. It submits that given the broad nature of the appellant's request, [translation] "It is therefore likely that not all of the records concerning the appellant will qualify as the appellant's or his children's personal information." In addition, it cites the following passage from Order M-514 to support its position:

> As summarized in the clarification quoted on page 1 of this order, this part of the request is essentially seeking "... all information relating to [the appellant] and [the appellant's] matter in its most general form".
>
> Having reviewed the request and the clarifications submitted on behalf of the appellant, I agree with the Police that this part of the request should be interpreted broadly. Moreover, given that other individuals were investigated and, in some instances, charged in connection with the appellant's matter, it is possible that some responsive records would not contain the appellant's personal information and, for that reason, could be subject to fees under the *Act*.

In my view, the nature of the appellant's request and the responsive records in this appeal are distinguishable from Order M-514. The appellant in the appeal before me is only seeking records containing his or his children's personal information. If a record does not contain such information, it is not responsive to his request. In contrast, it is evident from the above passage that the scope of the appellant's request in Order M-514 was broad enough to encompass records containing no references to him. The appellant in the appeal before me is not seeking such records. Consequently, I find that the above passage from Order M-514 has no relevance in the current appeal.

The Board further submits that although certain responsive records refer to the appellant, they constitute the personal information of third parties. It asserts that this is particularly the case

[2] *Ibid*., at para. 68.

with confidential communications from third parties that include their concerns and personal points of view.

I do not find the Board's submissions persuasive, because a record can contain the personal information of more than one individual. If a third party has sent correspondence to the Board that is implicitly or explicitly of a private or confidential nature, this correspondence would fall within paragraph (f) of the definition in section 2(1) and constitute the "personal information" of that individual. However, if such correspondence also contains the third party's views and opinions of the appellant or his children, this information would constitute the latter individuals' "personal information," as stipulated in paragraphs (e) and (g) of the definition in section 2(1). In other words, such correspondence would contain the personal information of both the third party and the appellant or his children, and it would therefore constitute a record containing mixed personal information.

The Board also points to paragraph (h) of the definition in section 2(1) and submits that an individual's name alone in a record does not constitute that individual's "personal information":

> [Translation]
> An administrative record that contains only the appellant's name and no other personal information about him does not qualify as the appellant's personal information. The same holds true for a record from a third party that mentions the appellant's name, but contains the third party's personal information. In her affidavit … [the Board's access-to-information coordinator] stated that she saw records corresponding to the aforementioned types of records. There is no ambiguity in this regard; the ambiguity lies in the precise number of records in each of the categories identified.

In paragraph 16 of her affidavit, the Board's access-to-information coordinator provides a general description of the responsive records and states that they can be grouped into the following categories:

> [Translation]
> a. records that contain only the appellant's and/or his children's personal information (e.g., the appellant's schedule of volunteer hours, his children's report cards, absence notes, doctor's notes);
>
> b. records that contain none of the appellant's or his children's personal information except a reference to his own or his children's names (or initials) (e.g., instructions by internal e-mail for the filing of correspondence relating to the appellant, planning notes for meetings with the appellant, general information records accompanying a complaint by the appellant);
>
> c. records from third parties concerning the appellant and/or his children (e.g., confidential communications from third parties concerning their own concerns, opinions of third parties about the appellant);

d. records that contain personal information of both the appellant and/or his children and that of third parties (e.g., notes about incidents in the playground involving one of the appellant's children and one or more other students, notes on meetings with multiple individuals).

In short, the Board's position, as reflected in its representations and the accompanying affidavit, is that some of the responsive records do not contain the appellant or his children's personal information because such records only contain their names and no other personal information relating to them. The Board relies on paragraph (h) of the definition of "personal information" in section 2(1) of the *Act* to support this submission.

In my view, the Board's submissions are based on a partial application of the test set out in paragraph (h). Paragraph (h) of the definition states that "personal information" includes an individual's name where:

- it appears with other personal information relating to the individual, **or**

- where the disclosure of the name would reveal other personal information about the individual.

If either of these two conditions is satisfied, an individual's name qualifies as "personal information." This office has found that a name alone cannot be considered "recorded information about an identifiable individual" and this interpretation is supported by the wording of paragraph (h) of the definition in section 2(1) (Order P-27). However, such a situation would be exceptional. In the vast majority of records, the individual's name would either appear with other personal information relating to the individual (condition 1) or, more commonly, the disclosure of the name would reveal other personal information about him (condition 2).

In its representations, however, the Board only relies on the absence of the first condition with respect to certain administrative records and records received from third parties containing the names of the appellant or his children. It submits that their names do not appear with other personal information relating to them and hence do not qualify as "personal information." However, the Board does not address whether disclosure of their names would reveal other personal information about them, which is the second condition in paragraph (h) that would bring an individual's name within the definition of "personal information."

As noted above, in paragraph 16 of her affidavit, the Board's access-to-information coordinator provides examples of records that contain the names of the appellant and his children but allegedly no other personal information relating to them. In my view, given the nature of the records, even if these individuals' names do not appear with other personal information relating to them, their disclosure would clearly reveal other personal information about them, which meets the second condition in paragraph (h) of the definition of "personal information" in section 2(1).

For example, disclosing the appellant's name, as it appears in many such records, would reveal the simple fact that he is the parent of students who attend one of the Board's schools. Under

paragraph (a) of the definition in section 2(1), "personal information" includes information relating to the "family status" of the individual. Similarly, disclosing the appellant's name, as it appears in other records, would reveal that he is in a dispute with the Board or third parties, or his conduct is being questioned, which also constitutes his personal information.

I find, therefore, that disclosing the names of the appellant and his children in such records, whether they are administrative in nature or received from third parties, would reveal other personal information about them, which satisfies the second condition in paragraph (h) of the definition in section 2(1). In such circumstances, these individuals' names would be "recorded information about an identifiable individual" and therefore qualify as their "personal information." Given that such information qualifies as "personal information" under section 2(1) of the *Act*, I find that the Board cannot charge the appellant any fee for manually searching for such records or preparing them for disclosure.

The Board also submits that the records that it has prepared in its [translation] "official communications" with the appellant do not contain his personal information. It cites this office's jurisprudence, which has found that information associated with an individual in a professional, official or business capacity does not qualify as "personal information" unless it reveals something of a personal nature about the individual. It submits that the records that it has prepared in its [translation] "official communications" with the appellant do not reveal something of a personal nature about him:

> [Translation]
> That is true of records collected in the context of research which were prepared for internal administrative purposes, such as e-mails requesting the filing of correspondence in the appellant's file, requests for information searches to respond to the appellant, internal memoranda forwarding correspondence from the appellant, etc.

I am not persuaded by the Board's submissions on this point. The jurisprudence cited by the Board relates to whether the *individual* to whom the information relates is acting in a professional, official or business capacity, not whether the institution is acting in an official capacity when dealing with that individual. An institution is always acting in an official capacity when dealing with citizens. The key issue, therefore, is whether the information in a record is associated with that individual in his personal capacity or his professional, official or business capacity.

Section 2(2.2) of the *Act* states that personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity. In addition, as noted above, this office has found in numerous orders that information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual, unless it reveals something of a personal nature about him.

The appellant's request refers to his work as a volunteer and lunch monitor at his children's school and his suspension from those positions. There is no suggestion in the Board's

representations that the appellant was acting in a business, professional or official capacity in carrying out these duties. On the contrary, the Board states that the appellant [translation] "has never been an employee of the Board" which indicates that he was not acting in a business, professional or official capacity with respect to his duties as a volunteer or lunch monitor. In such circumstances, any information in the responsive records relating to his role as a volunteer and lunch monitor and his suspension from such duties constitutes his "personal information," not professional, business or official information relating to him.

Even if it could be said that the appellant was acting in a professional, business or official capacity in carrying out his duties, the fact that his conduct was being questioned reveals something of a personal nature about him and would therefore bring such information within the definition of "personal information." I find, therefore, that the Board cannot charge the appellant any fee for manually searching for such records or preparing them for disclosure.

In summary, I find that the responsive records located by the Board, as described in its representations and the affidavit of its access-to-information coordinator, contain the personal information of the appellant or his children. In my view, the Board's claim that approximately 50% of the responsive records do not contain the personal information of these individuals, is not reasonable. In accordance with section 6.1 of Regulation 823, I find that the Board cannot charge the appellant a search or preparation fee for such records. I have decided, therefore, not to uphold the Board's $2,250 fee estimate for manually searching for 50% of the responsive records and its $900 fee estimate for preparing such records for disclosure.

Photocopies

Paragraph 1 of section 6.1 of Regulation 823 requires an institution to charge 20 cents per page for photocopies when providing a requester with access to his personal information.

In its revised decision letter of December 17, 2008, the Board states that there are approximately 750 responsive records (2750 pages in total). It submits that approximately 50% of these records (1350 pages) would be disclosed to the appellant. Consequently, it has provided a photocopying fee estimate of $270 (1350 pages x $0.20 per page). It further states that the photocopying fee could increase if more than 50% of the records are disclosed to the appellant.

The appellant "strongly contests" the Board's $270 fee estimate for photocopies. He submits that he is willing to provide the Board with CDs or DVDs onto which the records containing both his and his children's personal information can be copied, which would eliminate the need to charge a photocopying fee.

In response, the Board submits that copying the records onto a CD may not be less costly for the appellant:

> [Translation]
> … At the present time, the records have all been photocopied for collecting and sorting purposes, and many of them will have to be "modified" to delete information that cannot be disclosed. The task of copying the records onto a CD

> may be entrusted to an outside resource if it is more efficient to proceed in this way. The costs of such work are currently unknown.

In some circumstances, it may be reasonable for an institution to provide an appellant with records on a CD, DVD or other portable storage media. In my view, however, it is not reasonable in the circumstances of this particular appeal to require the Board to copy the records onto a CD or DVD instead of photocopying them.

I find that the Board's photocopying fee estimate is reasonable and is required by paragraph 1 of section 6.1 of Regulation 823. Consequently, I have decided to uphold the Board's $270 fee estimate for providing the appellant with photocopies of the records containing his and his children's personal information.

FEE WAIVER

Should the Board's fee estimate be waived?

The appellant has asked that the Board's $3,425 fee estimate be waived in its entirety.

Section 45(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. Section 8 of Regulation 823 sets out additional matters for a head to consider in deciding whether to waive a fee. Those provisions state:

> 45. (4) 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 by the regulations.
>
> 8. 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.

2. If the amount of a payment would be $5 or less, whether the amount of the payment is too small to justify requiring payment.

A requester must first ask the institution for a fee waiver, and provide detailed information to support the request, before this office will consider whether a fee waiver should be granted. This office may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision (Orders M-914, P-474, P-1393, PO-1953-F).

The institution or this office may decide that only a portion of the fee should be waived (Order MO-1243).

The appellant submits that the Board should be ordered to waive the $3,425 fee estimate because paying the fee will cause financial hardship for him [section 45(4)(b)]. He has provided evidence that shows that he suffers from "post concussion syndrome" as a result of an accident, and that his only source of income is social assistance through Ontario Works. He submits that even a reduced fee would create financial hardship for him and his family.

The Board submits that it would be fair and equitable to provide the appellant with a 50% waiver of its $3,425 fee estimate:

> [Translation]
> … [T]he Board agrees to a partial waiver of the fees required on December 17, 2008, reducing the amount requested to $1,712.50. Half of this amount, or $856.25, would be payable immediately and the adjusted balance would be payable before access to the records is provided. Please note that this concession is made subject to the Board's right to review the matter of the payment of fees at the time of the annual review of the ongoing request for access. The Board submits that this is a reasonable proviso because the appellant's financial situation might improve, thereby enabling him to pay the costs of future fees without any difficulty.

The parties' representations are based on the Board's total fee estimate of $3,425. However, I have struck down a substantial portion of the Board's fee estimate, including the $2,250 for manually searching for 50% of the responsive records and the $900 for preparing such records for disclosure. The only parts of the fee estimate that I have upheld are the $5 request fee and the Board's costs for photocopying the responsive records, which is $270. In such circumstances, I find that it would not be fair and equitable to provide the appellant with a fee waiver, given that he will only be required to pay the request fee and a photocopying fee to access the records responsive to his request.

ORDER:

1. I do not uphold the Board's $3,425 fee estimate, except for the $5 request fee and the $270 photocopying fee.

2. I dismiss the appellant's appeal of the Board's decision to deny him a fee waiver.

3. I order the Board to issue an access decision to the appellant in accordance with the access procedure set out in Part I of the *Act*, treating the date of this order as the date of the request.

Original signed by: June 16, 2010
Colin Bhattacharjee
Adjudicator