

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

---

## ORDER MO-2696

Appeal MA11-6

London District Catholic School Board

February 22, 2012

**Summary:** The appellant made a request to the London District Catholic School Board for emails of various employees pertaining to the Thames Valley Region Athletic Association. The appellant subsequently narrowed the scope of his request to one employee. The board issued a fee estimate for \$600, a portion of which was to develop a computer program and conduct quality assurance testing to locate, extract and compile the responsive records. The board's fee is upheld in part. The board's fee for developing the computer program and conducting the testing is not upheld.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 45(1); Regulation 823.

### OVERVIEW:

[1] The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the London District Catholic School Board (the board) for access to:

All emails between [the board] and the TVRAA/TVDSB<sup>1</sup> concerning secondary school athletics. To include but not limited to [four named employees]. This is for the period June 2007 until December 9, 2010.

---

<sup>1</sup> TVRAA/TVDSB – Thames Valley Region Athletic Association/Thames Valley District School Board

[2] Before processing the request, the board advised the appellant that the request "...covers a large volume of communications over a lengthy period of time and relates to a multitude of issues..." and the board suggested that the appellant narrow the scope of his request. The appellant narrowed his request to the following information:

All emails to or from [one named employee] regarding TVRAA, as residing on the email service of the [the board] within the existing 450 day window calculated at the date of search.

[3] The board then provided the appellant with an interim decision with a fee estimate for locating, retrieving and processing the records. The board outlined the fee as follows:

	<b>15 minute blocks</b>	<b>Rate per block</b>	<b>Total</b>
<b>Computer Record Production</b>	32	\$15.00	\$480.00
<b>Record Production</b>	16	\$7.50	\$120.00
<b>Copying*</b>	n/a	n/a	n/a
<b>Total</b>	48		\$600.00
<b>Deposit Required of 50%</b>			\$300.00

\*not applicable as the electronic format is to be emailed

[4] The appellant appealed the board's decision on the basis that the search costs were excessive. During mediation, the appellant requested that the board waive the fee. The board responded that the appellant had not provided sufficient evidence to meet the test for a fee waiver. During discussions with the mediator, the appellant advised that he would not be pursuing a fee waiver. Accordingly, the request for a fee waiver is not an issue in the appeal.

[5] Also during mediation, the board provided further details on the fee calculation:

Programmer (6.5 hours)

- Requirement analysis (1 hour)
- Software design
- Software coding and integration – development environment (1.5 hours)
- Software testing – developing environment (0.5 hours)
- Software integration – Production environment (0.5 hours)

Quality Assurant Testing (1.5 hours)

- Software verification and testing – development environment (1 hour)

- Software verification and testing – production environment (0.5 hours)

[6] The appellant was not satisfied with the board's additional fee breakdown and confirmed that he still wished to proceed with his appeal of the board's fee. As mediation did not resolve the appeal, the file was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[7] During my inquiry I sought and received representations from the board and the appellant. The board's representations were shared in accordance with the IPC's *Code of Procedure and Practice Direction 7*.

[8] In this decision, I uphold the board's fee estimate, in part.

## **DISCUSSION:**

### **Should the board's fee estimate be upheld?**

[9] The issue before me in this appeal is whether the board's fee estimate of \$600.00 should be upheld.

[10] Where the fee is \$100 or more, the fee estimate may be based on either

- the actual work done by the institution to respond to the request, or
- a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records [Order MO-1699].

[11] The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access [Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699]. The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees [Order MO-1520-I].

[12] 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].

[13] This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 823, as set out below.

[14] 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.

[15] 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.

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.

[16] The board's submissions indicate that it based its fee estimate on the advice of the board's Supervisor of Information, Communication & Technology (Infrastructure Systems). The board submits that this individual is responsible for the board's email system, including backup and archive system processes. The board submits the following in support of its fee estimate:

The fee estimate is based on the knowledge of email server functionality. With over 2,000 users in the system, this task would require a programmer to write a specific program to identify, locate and extract the requested information to and from [one named employee's] user email account. When doing the software creation, the board follows the Waterfall model of software development. The estimated amount of time to conduct this search would be 8 hours involving 2 ICT staff members.

The records are in an electronic format to be retrieved from, not only the current email system, but also from an archival email system. It is not known, at this time, how many records would result from completing this extensive search.

To prepare the records for disclosure would involve printing and manually reviewing each record to sever any personal information. The estimated amount of time to complete this preparation would be a minimum of 4 hours involving one staff member.

The preparation of records would involve photocopies and computer printouts.

The search would require that email boxes be restored, which no longer exist on current systems and would involve the development of a computer program and require Quality Assurance testing.

[17] The board also states that there would be additional costs for printing, photocopying and shipping the records. Finally, the board provides the following explanation of the need to conduct quality assurance testing:

...the board's email system is part of a Unified Messaging system, in that the same system is also responsible for handling all voice messaging and voice menuing for the board's enterprise VoIP phone system. If the system crashes, it also takes out the phones to all of the boards' schools and offices. The Unified message is a business critical system, that is a very important part of the safety system and processes, which are used to protect the safety of our staff and students.

[As] previously stated, when doing software development, LDCSB follows the Waterfall model of software development.

The Waterfall model of software development involves five (5) stages:

1. Requirements
2. Design
3. Implementation
4. Verification
5. Maintenance

Verification is done through Quality Assurance process. To be a true verification of quality, fitness for purpose, and accurate results of the software being developed, cannot be performed by the same person(s) who are involved in any of the previous stages of gathering requirements, designing or developing the software.

The board's unified messaging system utilizes a "Just in Time Compiler"; as a result the Software Integration and Software Verification and Testing processes would need to be performed on both the Development and Production systems. Without doing quality assurance on software developed to be run on this platform, something as simple as a missed period, or comma could crash our board's email system.

The software developer needs to test and verify the code they are developing to ensure it meets the required objectives and design needs. The Quality Assurance tester must verify that software has been developed, documented, and tested correctly, and performs as it is supposed to, and ensures that [it] works as per the requirements and design. With the critical nature of this system, quality assurance testing on any software developed to run on the system is not an option.

[18] The appellant disputes the cost of the search and specifically the cost of the computer record production. The appellant alleges that the board is using the excessive fee to avoid responding to his access request. Finally, the appellant is concerned that the boards' search does not include time for locating deleted emails.

[19] In reviewing the board's fee estimate, I must consider whether the charges by the board are reasonable, giving consideration to the content of the appellant's request, the circumstances of the appeal and the provisions set out in section 45(1) and Regulation 823. The majority of the board's fee estimate is for computer record production which includes a cost for the development of a program to retrieve the responsive records and for quality assurance testing of the program. This is an allowable cost under section 45(1)(c) of the *Act*. The board is permitted to charge \$15 for each 15 minutes of time required to perform this function. The board submits that it requires 8 hours to develop and test the computer program to locate, compile and extract the responsive information. Based on my review of the appellant's request and the board's representations, I find that the board's fee estimate under section 45(1)(c) is not reasonable in the circumstances.

[20] As stated above, one purpose of the fee estimate is to assist requesters to decide whether to narrow the scope of their request in order to reduce the fee. This is what occurred in the present appeal as the board originally determined that responding to the appellant's request as initially framed would interfere with its operations. Consequently, the appellant narrowed the scope of his request from four employees to one employee and shortened the time period of his request. In response, the board provided the fee estimate which is the subject of this appeal.

[21] While the board has provided a breakdown for its fee, it has not provided me with an explanation of the necessity of conducting the search for responsive emails in the manner set out in its representations. The board submits that due to the nature of its system, two computer programmers would be required to write a specific program to identify, locate and extract the requested information from one user's email account. In my view, the board's chosen method of searching for responsive records is not reasonable. The board's submissions in support of its fee estimate do not provide me with the following:

- An estimate of the number of possible responsive emails. Is the subject matter of the appellant's request, i.e. the TVRAA, likely one that would have resulted in a large number of emails or just one responsive record? While the board is not required to search for a representative sample of records, the fact that the board provided no explanation or estimate of the number of responsive records leads me to question the reasonableness of developing a computer program to locate responsive records.
- An explanation as to why the individual email user (the specified employee) could not do a search of his own emails to locate the responsive records.
- An explanation as to what the computer program would actually be doing. The board submits that the program would be identifying, locating and extracting the requested information. Would this be done through a key word search?
- The reason why the board requires two ICT members to develop the computer program and do the quality assurance testing.

[22] The appellant's narrowed request is for emails to and from one board employee regarding the TVRAA for a specified period of time. In my view, this is not a complex request with multiple individuals, extensive issues or extensive and varied time periods. It is unclear to me from the board's submissions why a newly-written computer program is necessary to locate the responsive records.

[23] The board chose to rely on its Senior IT professional for the information for its fee estimate. While I do not dispute this individual's knowledge of the board's email system, I do question his judgement on the most effective way to locate responsive records. In my view, this is information that could have best been provided by an individual with the board's freedom of information staff who has knowledge about responding to requests made under the *Act*. In my view, the board should have taken into consideration whether the most reasonable way of searching for records was the development of a computer program in making its fee estimate.

[24] Further, I find the board's requirement of quality assurance testing to be unreasonable. The board submits that an error in the computer programming could possibly jeopardize its whole VoIP phone system and thus take out all the phones in the board's schools and offices. The fact that the board requires an additional hour and a half of quality assurance testing after six and a half hours of computer programming is unreasonable. The quality assurance testing should have been incorporated into the initial programming. However, even with the user pay principle, I find it is unreasonable to expect the appellant to pay the additional cost for this testing.



[25] Based on the board's approach taken to locate responsive records, I am not able to uphold the 8 hours of computer time claimed by the board in its fee estimate. Accordingly, I do not uphold the charge of \$480, in the board's fee estimate.

[26] I will now consider the \$120.00 claimed by the board for "preparation" time. The board's submissions state that the four hours claimed for this would include time to print the records and manually review them to sever personal information. Under section 45(1)(b), the board is permitted to charge for the costs of preparing the record for disclosure which is \$7.50 for each 15 minutes. The board estimates it will take four hours to sever the responsive records. As stated above, this office has accepted that it takes two minutes to sever a page that requires multiple severances. I accept the board's estimated fee of \$120.00 and this fee can be adjusted if the actual preparation time differs from the board's estimate because there are fewer responsive records.

[27] Finally, the board's fee estimate to the appellant indicated that the photocopying charges were not applicable in the circumstances as an electronic copy of the records was to be emailed to the appellant. However, the board's submission in support of its fee estimate indicates the possibility of photocopying charges. The board is permitted to charge \$0.20 per page if it provides a photocopy of the responsive emails to the appellant. If the board emails the responsive records to the appellant there should be no photocopying charges.

**ORDER:**

I uphold the boards' fee estimate of \$120.00 for record preparation time and disallow the amount of \$480.00 in its estimate for the creation and testing of a computer program.

Original signed by: \_\_\_\_\_  
Stephanie Haly  
Adjudicator

February 22, 2012 \_\_\_\_\_