

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3262

Appeal MA14-469

Toronto District School Board

November 12, 2015

Summary: The appellant filed a request for the conference expenses of four school trustees over a period of four years. The appellant questioned the reasonableness of the school board's interim fee estimate decision requesting partial payment of its \$1,485.00 fee. The school board's fee is upheld in part but its search time is significantly reduced from 48 hours to 4 hours.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss.45(1)(a), 45(1)(b); *Regulation 823*, ss.6.1 and 6.3.

Orders and Investigation Reports Considered: Order PO-3035.

OVERVIEW:

[1] The appellant, a journalist, submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Toronto District School Board (the board) for copies of receipts and other expense documents filed by trustees for a specified period of time.

[2] The board located responsive records relating to 22 trustees and issued a fee estimate in the amount of \$3,300.00. The board subsequently reduced its fee estimate to \$1,485.00 after the appellant narrowed her request to the conference expenses for four named trustees.

[3] The appellant appealed the board's revised fee estimate to this office and a mediator was assigned to the appeal to explore settlement with the parties.

[4] During mediation, the board provided explanations about its revised fee estimate but the appellant continued to question the reasonableness of the board's estimated fee.

[5] As mediation did not resolve the appeal, the issues remaining in dispute were transferred to the adjudication stage of the appeals process, in which an adjudicator conducts an inquiry under the *Act*. During the inquiry stage, the parties submitted and exchanged written representations in support of their positions.

[6] In this order, I uphold the board's photocopying fee but significantly reduce its search fee.

DISCUSSION:

Should the board's fee estimate be upheld?

[7] The sole issue in this appeal is whether the board's fee estimate in the amount of \$1,485.00 should be upheld. An institution must advise the requester of the applicable fee where the fee is \$25 or less. Where the fee exceeds \$25, an institution must provide the requester with a fee estimate [Section 45(3)].

[8] 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.¹

[9] 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.² The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.³

[10] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.⁴ In its revised interim access and fee estimate, the board estimates that its fee to process the request would be \$1,485.00. The board requested that the appellant pay a deposit in the amount of

¹ Order MO-1699.

² Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

³ Order MO-1520-I.

⁴ Orders P-81 and MO-1614.

\$742.50 before it took any further steps to process the request. The board also provided the following breakdown of its estimated fee:

Search and preparation	48 hours at \$30.00 per hour	= \$1,440.00
Photocopying	225 pages at \$.20 per page	= <u>45.00</u>
Total estimated fee		\$1,485.00

[11] The appellant questioned the reasonableness of the board's estimated fee and appealed the board's fee decision to this office. 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.

Representations of the parties

[12] The appellant submits that her revised request should have resulted in a much lower fee from the board's initial \$3,300.00 estimate for the following reasons:

- the narrowed request seeks access to the expense claims of 4 trustees as opposed to the original 22 trustees; and
- the narrowed request seeks access to conference expenses where the original request sought access to all expense claims filed by the 22 trustees for the specified time period.

[13] The board submits that though the narrowed request resulted in fewer documents being found responsive, it did not dramatically reduce the board's search and preparation time to process the request. The board submits that the narrowed request required it to not only locate the responsive records but review them to determine which records contained conference expenses. In an affidavit filed in support of its position, the board states:

...while the reduction in the number of records did account for a reduction in the number of estimated records to be copied, the amended search imposed a more complex search since the [appellant] restricted the documents sought to a particular subject matter (conference materials) which necessitated a detailed search of the records to determine the responsive records. As a result there is not direct relationship between the reduction in search time and the reduction in the number of records sought.

[14] The appellant also questioned the amount of time the board advised is required to locate records relating to conference spending. In support of her position, the

appellant states:

I question whether any searching/sorting expense of documents actually needs to be performed to provide this information as these expense records were already identified and provided to the [the external auditor] as part of a forensic audit, released in December 2013...

[15] The appellant submits that the external audit report contains "several references to conference spending". She also submits that the board's own internal audit report also contain references about conference spending.

Decision and analysis

[16] Section 45(1) requires an institution to charge fees for requests under the *Act*. Section 45(1) provides that requesters are expected to pay fees in the amount prescribed by the regulations for manual search and photocopying costs. The board's \$1,485.00 fee is comprised of two parts.

[17] First, the board estimates its photocopying costs at \$45.00 representing 225 pages copied \$.20 per page. *Regulation 823*, section 6.1 provides that the board can charge \$.20 per page to recover its photocopying costs. There does not appear to be a dispute between the parties about the reasonableness of the board's \$45.00 photocopying charge. As the amount the board proposes to charge per page is in accordance with *Regulation 823*, section 6.1, I find that its photocopying charge is reasonable.

[18] Second, the board estimates that it would take a total of 48 hours to manually search its record holdings to locate the conference expenses for four trustees. *Regulation 823*, section 6.3 specifies that the board can charge \$7.50 for each 15 minutes spent by any person to manually search for a record. The board estimates it will take 48 hours to search for the responsive records for a total of \$1,440.00. For the reasons that follow I find that the board's search fee estimate is not reasonable and is not in accordance with the *Act* or *Regulation 823*, section 6.3.

[19] Section 45(1)(a) provides:

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 the costs of every hour of manual search required to locate a record.

[20] The board submits it based its search fee on the experience of one of its Account Payable Supervisors in "conducting a large number of similar searches in the past for trustee expense records". In support of its position, the board submits that:

- trustees' expenses are organized by the trustee's name and fiscal year;

- typically trustees file 12 expense claims per year;
- each expense claim is accompanied by a Trustee Expense Form with supporting documentation, such as meal, taxi and hotel receipts and other supporting documentation such as conference programs;
- it takes approximately 15 minutes per expense claim for its Account Payable Supervisor to search through the expense documentation to determine “which supporting expense records were responsive to a particular request and which ones were not”;
- that “the average number of pages submitted per claim is approximately 15 pages which includes the claim’s supporting documentation and may represent expenses incurred over the course of more than one day”; and
- based on the Account Payable Supervisor’s experience in reviewing trustee conference expense claims, the “total number of conferences attended for the 4 named trustees in the request [is] 15 conferences over the 4 year period of the request”.

[21] Given that trustees typically file 12 expense claims a year the board advises that it multiplied the estimated time it would take to review each individual claim by 12 (.25 hour x 12 claims per year = 3 hours). The search time was then multiplied by 4, representing the number of years in the request (3 hours x 4 years = 12 hours). Finally, as the request sought access for records relating to 4 trustees the board multiplied the search time by a further factor of 4 (12 hours x 4 trustees) bringing its estimate to 48 hours.

[22] In my view, the board overestimated the amount of time it should take to locate the relevant expense forms with conference expense documentation. The board’s evidence is that the total number of conferences attended by the four trustees from 2010 to 2014 was 15. Accordingly, on average each trustee attends one conference a year (15 conferences/4 trustees further divided by 4 years = .93). Taking into consideration that the type of expenses included in each claim is itemized on the form attaching the supporting documentation, I am of the view that there would be no need for the board to review each expense claim filed per fiscal year to locate which expense claim contains conference expenses. Rather, a review of itemized expenses on the Trustee Expense Form would indicate whether conference expenses were claimed that month.

[23] Having regard to the board’s evidence that the trustee’s attend on average one conference a year, it follows that the board would need to review on average one expense claim per trustee per year. Accordingly, following the board’s reasoning I find that a reasonable estimate of the board’s search time to locate responsive records for each trustee is 1 hour (.25 hour to review one claim x 4 years = 1 hour). As the request

seeks access to records for 4 trustees, the search time multiplied by 4 brings the total search time to 4 hours.

[24] Accordingly, I will allow 4 hours of search time, at the prescribed rate of \$7.50 for each 15 minutes, bringing the total to \$120.00.

[25] In addition, I find that the significant reduction of the board's search time is reasonable under the circumstances in this appeal. The appellant questioned whether the board was required to conduct a manual search for the responsive records given that copies of expense claims had been copied and provided to the board's external and internal audit teams. I note that the external audit report indicates that two individuals having the title Accounts Payable Supervisor were interviewed by the auditor. However, the external auditor's report indicates that only a representative sample of expense claims had been reviewed during the audit to determine if a more in-depth review of the expense claims submitted by trustees should be performed at a later date.

[26] Though the appellant's evidence falls short of demonstrating that the board's search for responsive records was unnecessary, the appellant's submissions establish that there has been considerable interest in recent years in the board's trustees' expense claims. I also note that the Toronto Catholic District School Board decided in 2007 to address the public's interest in its trustees' expense claims by posting all trustee expenses on its website.

[27] Furthermore, in Order PO-3035, Commissioner Brian Beamish significantly reduced the search time McMaster University charged to locate expense receipts for a specified individual during 2005 to 2010. In that order, the Assistant Commissioner stated:

The request was for records from January 5, 2005 to December 31, 2010, which I consider of recent origin. In my view, it is reasonable to expect that university records from this time period should be kept in a consistent and easily searchable manner. If they are not, which I believe is the case in this appeal, I am of the view that the appellant should not bear the financial burden of the university's failure to implement proper record management practices. Consequently, I find that the search time is excessive and that the university has not provided adequate evidence to satisfy me that the search time was reasonable.

[28] Given that the subject matter of this request informs the public about how its elected officials spent public monies, it is difficult to conceive of circumstances where it would be appropriate for a member of the public to pay for a laborious search process to access records of recent age that are the centre of recent audits and public debate. I also agree with the Commissioner's comments that requesters should not bear the

financial burden resulting from records not being kept in a consistent and easily searchable manner.⁵

[29] In summary, for the reasons above, I find that the board's estimate of its \$1,440.00 search fee is excessive and not in accordance with the fee provisions in the *Act* and *Regulation 823*. As a result, I have reduced the board's search fee to \$120.00.

ORDER:

1. I uphold the board's fee estimate of \$45.00 for photocopying records.
2. I reduce the search time claimed by the board to four hours for a total of \$120.00.

Original Signed by: _____
Jennifer James
Adjudicator

_____ November 12, 2015

⁵ See also Ordonnance PO-3439.