

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3492

Appeal MA16-136-2

Simcoe Muskoka Catholic District School Board

September 11, 2017

Summary: The appellant sought access to financial records from Simcoe Muskoka Catholic District School Board from 2008 to 2014 regarding school generated funds for each individual board school as well as financial amounts raised by parents' councils. The board issued a fee estimate in the amount of \$1,425.00 in accordance with section 45(1) of the *Act*. The appellant appealed the fee estimate. In this order, the adjudicator upholds the board's fee estimate, in part.

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

BACKGROUND:

[1] The appellant made the following request to the Simcoe Muskoka Catholic District School Board (the board) pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

Section of board's financial records from 2008 to 2014 that show the amount of school generated funds for each individual school in the board. In addition, the amounts raised by parents' councils for each individual school in the board. Please include school number in release of data along with school name.

[2] The board's interim fee estimate stated, in part, as follows:

Under [the *Act*] the rate for searching and preparing the records is \$60 per hour, plus the cost of printing at \$0.04 per double-sided page of 8 ½ X 11 paper or \$0.045 per double-sided page of 8 ½ X 14 paper. In reviewing the list of information you have requested it appears to be an extensive review of documents. While the complete costs will not be known until we actually do the work of extracting the information that you have requested, we have estimated (based on a representative sample of records) that completing the search and preparation of the records will take approximately 47.5 hours. Thus our initial estimate of costs would be \$2,850 (plus printing/copying).

[3] The requester (now the appellant) appealed the board's fee estimate decision.

[4] During mediation, the mediator communicated with the appellant and the board. The board shared with the mediator some additional information about the steps that would be required to process the request and the mediator conveyed this information to the appellant.

[5] After further discussions between the mediator and each of the parties, the board issued a revised fee estimate to the appellant. In that revised fee estimate, although the board did not reduce the number of hours needed to complete the search, it did revise its hourly rate from \$60 to \$30. Therefore, the revised fee estimate is \$1,425.00 (plus the cost of any printing and postage).

[6] The appellant advised the mediator that she believes the revised fee estimate is too high.

[7] As mediation did not resolve the dispute, this appeal was transferred to the adjudication stage, where an adjudicator conducts a written inquiry under the *Act*. Representations were sought and shared in accordance with section 7 of IPC's *Code of Procedure and Practice Direction 7*.

[8] In this order, the adjudicator upholds the ministry's fee estimate, in part.

DISCUSSION:

[9] An institution must advise the requester of the applicable fee where the fee is \$25 or less.

[10] Section 45(3) sets out that where the fee exceeds \$25, an institution must provide the requester with a fee estimate.

[11] 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

[12] 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

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

[14] 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

[15] 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.

[16] 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.

[17] More specific provisions regarding fees are found in sections 6, 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.

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.

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.

Representations:

[18] In its representations, the board maintains that the fee estimate is reasonable and accurate due to the work involved in searching for and preparing the records for disclosure and therefore should be upheld. Also, the board states that during mediation, and at the suggestion of the mediator, it explored a number of ways to try to reduce the costs to the appellant, and corrected a calculation error that resulted in a 50% reduction in the fee estimate.⁵

[19] The board notes that shortly after receiving the request, it had a phone conversation with the appellant where the board explained that due to the way its financial records for school generated funds (SGF) and catholic school community councils (CSCC) funds are maintained, the cost to search and prepare the records as requested could be quite high.

⁵ The board had charged an hourly rate of \$60 in its first fee estimate.

[20] The board states that it suggested that the appellant reformulate her request by limiting the scope to the years after 2012 only, as that was the year its Finance Department implemented new software that provided for centralization and standardization of SGF and CSCC financial records. The board explained that there would still be work involved, but much less than for the entire period outlined in the original request. According to the board, the appellant accepted this advice and revised her request limiting the scope to 2012-2014. The appellant disagreed with the new fee estimate expressing her intent to appeal, however, as the appeal period had expired, she submitted a new request in January of 2016 in which she again sought all records from 2008-2014. In response to this request, the board states that its expert Finance Department staff derived an estimate of 9.5 hours of work per year for the period 2008-2012, and 4.5 hours of work per year for the years 2012-2014.

[21] The board explains that its estimate is based on work actually conducted by expert staff, the advice of an individual familiar with the type and contents of the requested records (i.e. a Finance Department staff member with expertise in SFG and CSCC records) and a review of a representative sample of records, in this case, one year's worth of records.

[22] The board notes that the relevant financial records for the years in question are stored in raw (i.e. hard copy) form in a number of 3" binders. It submits that there are a number of reasons for this:

- Prior to 2012 the board had no centralized accounting of SGF or CSCC funds. Each school maintained its own records, some using any one of a number of different computerized accounting software applications such as Quicken, some using any one of a number of different spreadsheet applications, some using paper, and some using a combination of all of these methods;
- Their elementary schools use Apple OS9 and OSX-based computers while their secondary schools use Microsoft Windows-based computers. The various operating systems, software versions, and hardware configurations in each school created compatibility issues that effectively prevented electronic storage of records; and,
- Each school maintains multiple bank accounts, each of which has its own supporting documents, statements and summaries. As well, banking institutions vary from school to school, and are, depending on the principal from time to time subject to change, so there is little to no consistency in record/statement formats.

[23] In its representations, the board comments on the actions required to prepare the records for disclosure by providing an outline completed by its expert Finance Department staff who work with SGF and CSCC funds. It noted that the board's current reporting is at a consolidated level (a grand total for all schools) for the Ministry of

Education. The board starts with school raw data and then reverses in total the dollar value of all transactions occurring between schools and the board. This information is then used for Ministry reporting.

[24] During the years that the current software is in use (2012 to 2014), there were a total of 50 schools, and during the years where the current software was not in use (2008 to 2012) there were a total of 53 schools. The steps required to report at the school level are noted to include:

1. Consolidating bank accounts at the school level (some schools have more than one bank account due to legal requirements).
2. Reversing out transactions occurring between school and Board.
3. Ensuring the total of all reports balance to amounts submitted to the Ministry. This requires extra formatting and verification.

[25] Because the board implemented new software in 2012 to assist with central management of SGF and CSCC funds, it takes 6 hours of work per school year to complete these steps for all schools. This figure was based on actual work completed for the initial request. This hourly figure was later revised to 4.5 hours when the second request was made.

[26] For the years between 2008 and 2012, the board notes that the records for this time period were not centralized. In addition, the board noted that prior to 2012, some schools had as many as 5 bank accounts (with multiple spreadsheets based on type of account), necessitating more time for the search. Based on a representative sample of records it estimated that it would take 9.5 hours to complete these steps for all schools for each year.

[27] The board spoke to the potential printing of the records noting that the final preparation of the records would require printouts only if the appellant requested them. It notes that the records could be submitted via e-mail and for this reason the fee estimate does not contain a total for photocopying. The board notes that in its estimate, it noted a lower rate for photocopying (if that was what the appellant chose) at 4 cents per letter sized page instead of the 20 cents per page allowed under the *Act*. The board suggests that this illustrates a spirit of cooperation and willingness to limit the costs charged to the appellant.

[28] The board maintains that its estimate is fair, reasonable and accurate. For records between 2012 -2014, the time required to search and prepare the information was approximately 5.5 minutes per school per year. For the years from 2008 – 2012, the board noted that the time to search was just under 11 minutes per school per year.

[29] The board states that it is the appellant's opinion that the fee estimate is too high with the only reasoning being a comparison to other school boards where the fees

were not as high. It is the board's view that this is indicative that the other boards did not have as much work to do to respond to the request. The board submits that what other boards did or did not do is not binding upon it. The board refers to a number of IPC Orders that point out that 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. It is the board's position that the appellant's personal opinion as to the ease with which this work ought to be accomplished is irrelevant to this appeal. Further, the board submits that the appellant has provided no rationale under the *Act* as to why the board should, in part or wholly, waive its fee.

[30] In the appellant's representations, she states that she does not understand why the board's fee estimate is significantly higher than the other 71 boards for which she received data. The appellant included 2 spreadsheets with her representations, one highlighting that she was able to get information from 49 school boards at no additional cost and for the remainder of the 71 boards, the fee ranges from \$4.80 to \$420.00. The appellant noted that the average fee for the other boards (not including the 49 for which there was no fee) was \$142.23 or approximately \$3.57 per school (compared with the board's estimate which she states is approximately \$28.50 per school). The appellant states that she believes the board uses the same finance system as many of the other boards and employs similar personnel therefore she wanted to understand why providing the information will cost this board significantly more per school (\$28.50) where on a whole as a province (not including school authorities) the information cost approximately \$1.10 per school.

[31] The appellant notes that she was willing to work with the board in determining which records they could provide due to the change in the board's finance system. However, the appellant states that at one point, the communication with the board ceased and they were unable to discuss further ways to make the process easier for the board and less costly for the appellant.

[32] The appellant states that the information she requested should be easily accessible information from each board. She refers to Ministry Guidelines set in 2012 which states that "to meet the public's expectations and demonstrate stewardship for public dollars, each school should prepare an annual report on school-generated funds." The appellant therefore believes that charging \$1,425.00 to access this information is too expensive.

[33] The board was sent the appellant's representations and was invited to submit reply representations. In its reply, the board states that it provided the appellant with reasons for its cost estimate at different points in the process including quite extensively in its initial representations (which were shared) and during mediation. Essentially, the board submits that the nature of the records and the way they are kept substantiates the fee. It states:

the records are maintained in hard copy and stored in binders because of a number of factors related to data compatibility: a decentralized accounting system (prior to 2012); a multi-platform computer network with various operating systems, software versions, and hardware configurations that are not compatible; and school-based processes that used various banking institutions, accounts and statements.

[34] The board concludes that in preparing its cost estimate, expert staff experienced with these records conducted a search of a representative sample of the records to determine the time required. It states that the *Act* does not contemplate comparisons as put forward by the appellant, nor does it require an institution to ensure its charges are in line with those of other organizations facing similar requests. This, the board submits, is in keeping with the *Act*, its regulations and a number of previous orders.

Analysis and finding:

[35] The fee estimate accounts for 47.5 hours of search and preparation time at the hourly rate of \$30.00 totalling \$1,425.00. There is no detailed breakdown of the fee between search and preparation times, however, from the board's representations, the steps noted to complete its search and preparation are as follows:

- consolidating bank accounts at the school level;
- reversing out transactions occurring between the school and the Board; and,
- ensuring the total of all reports balance to amounts submitted to the Ministry.

[36] The board notes that the fee does not include photocopy or delivery charges which would be quantified if the appellant chose to receive paper copies of the records.

[37] From its representations, it is apparent that the board based its fee estimate on a representative sample of the records, being one-year worth of records. In addition, it consulted with an individual in the Finance Department with expertise with these types of records, prior to issuing its fee estimate. This suggests that the board has taken reasonable steps to determine an accurate fee in its estimate.

[38] The board set out how the records are maintained as part of its explanation for the amount of time needed to complete the request. It noted that there are 2 systems in place, one for records prior to 2012 and the other for records dated thereafter. Because of the way the records were kept prior to 2012, the search for the years from 2008 to 2012 is significantly longer than for the years 2012 to 2014. The board explained that this was due to the fact that the records prior to 2012 were not centralized and not maintained by its current software.

[39] From a review of the appellant's representations, it is clear that it is her opinion that the fee estimate is too high with the reasoning being that other school boards did

not charge as much. I agree with the board that what other jurisdictions charged for records is not binding upon it. Orders of this office have confirmed that 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.⁶ In some instances, a comparison to what other institutions might charge could be relevant to show whether or not a fee is reasonable. However, I do not find a comparison useful in this instance. There is no evidence before me of how these other boards kept their records to suggest why their fee is lower than the fee at issue. Further, I find that the board has provided a reasonable explanation which substantiates its fee estimate. In its representations, the board broke down the time required to search records for each school, noting that it required 11 minutes per school per year for records before 2012 and 5.5 minutes per school per year for records after 2012 because those records were centralized. These time estimates, given the rest of the board's representations, appear reasonable.

[40] In reviewing the board's explanation for its fee estimate, I find that its estimate is reasonable. It has set out that it requires 4.5 hours per school year to search and prepare the records from 2012 to 2014 and 9.5 hours per school year to search and prepare records from 2008 to 2012. As the board explained it will take it longer to prepare the records prior to 2012 as those records were not centralized as part of its current software system, increasing the search and preparation times.

[41] Although I find that the fee estimate is reasonable, in my own calculation, I find that the board has substantiated 47 hours of search and preparation time, not 47.5. My calculation is as follows:

For records between 2008 and 2012 (4 school years)

For the 53 schools it will take a total of $9.5 \times 4 = 38$ hours
9.5 hours for each school year

For records between 2012 and 2014 (2 school years)

For the 50 schools it will take a total of $4.5 \times 2 = 9$ hours
4.5 hours for each school year

$38 \text{ hours} + 9 \text{ hours} = 47 \text{ total hours}$

[42] Although it may seem an insignificant difference, since I cannot account for the full 47.5 hours and the board did not specifically address its calculation to show how it reached 47.5 hours, I find that the board is entitled to only 47 hours of search and preparation time based on its own numbers. At the statutory rate of \$30.00 per hour, the total fee amounts to (47×30) \$1,410.00.

⁶ MO-1336, MO-1367, MO-1854, MO-2495.

ORDER:

1. I uphold the board's fee estimate in the reduced amount of \$1,410.00

Original Signed by: _____

Alec Fadel
Adjudicator

September 11, 2017 _____