

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4227

Appeal MA20-00548

Grand Erie District School Board

July 25, 2022

Summary: Grand Erie District School Board (the board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to financial transactions between the board and a named charity over a specified time period. The board issued a decision granting access to the responsive records and the appellant paid a fee for the board to process their request. After the board disclosed the records, the appellant appealed the fee. In this order, the adjudicator finds that the board's fee for photocopying is reasonable but that there is insufficient evidence to support the board's fees for manual search time, which the adjudicator reduces. The adjudicator also disallows the board's fee for preparing the records for disclosure. Accordingly, the adjudicator upholds the board's fee in part and orders the board to refund the disallowed portion of the fee to the appellant.

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, section 6.

Orders Considered: Orders M-562, MO-1380, P-741 and P-1536.

OVERVIEW:

[1] The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Grand Erie District School Board (the board) for the following:

- Financial transactions between [the board] (GEDSB) and [specified charity] over the past 5 years;
- Financial transactions between GEDSB and [specified charity] Corporations over the past 5 years;
- Financial transactions (including travel payments) between GEDSB teachers and [specified charity] over the past 5 years; and
- Financial transactions between GEDSB teachers and [specified charity] Corporations over the past 5 years.

[2] The board issued an interim access decision with a fee estimate of \$500.00 made up of 10 hours of search time, 5 hours of preparation time and \$50.00 for photocopies. The appellant paid the board a 50% deposit of \$250.00.

[3] The board issued a final access decision and stated that it was granting full access to the responsive records. In its final decision, the board revised the fee estimate for processing the appellant's request based upon the actual work done. The revised fee is \$690.00 made up of 16 hours of search time, 5 hours of preparation time and \$60.00 for photocopies.

[4] Although the board's access decision stated that it was granting full access, the disclosed records are redacted in some areas. This is relevant to the issue of the fee for preparation time, which I will discuss further below.

[5] The appellant paid the balance of the revised fee for release of the records. Upon receipt of the responsive records, which totalled 41 pages, the appellant queried the fee of \$60.00 for photocopying. The board agreed that the \$60 fee for photocopying was an error and, applying the rate of \$0.20 per page or a total of \$8.20, reduced the photocopying fee.

[6] The appellant appealed the board's revised fee decision to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was appointed to explore resolution.

[7] During mediation, the appellant advised that as a result of the board's error in the photocopying fee, they were dissatisfied with the board's explanation of its overall fee and they wished to challenge its reasonableness. The board further reduced its final fee to \$500.00.¹

[8] The appellant advised that they remain dissatisfied with the reasonableness of the board's revised fee. As a mediated resolution was not possible, the appeal moved to

¹ The board stated this was due to a "misunderstanding of the allowable scope for preparation time." Each time the board revised its fee, it refunded the appellant accordingly.

the adjudication stage, where an adjudicator may conduct an inquiry.

[9] The adjudicator originally assigned to this appeal decided to conduct an inquiry and sought and received representations from the board and the appellant. The parties' representations were shared in accordance with section 7 of the IPC's *Code of Procedure* and Practice Direction Number 7.

[10] The appeal was then transferred to me to continue the adjudication. I have reviewed the complete file material, including the representations from the board and the appellant. I have concluded that I do not need any further information before rendering a decision.

[11] For the reasons that follow, I uphold the board's fee in part. I reduce the fee from \$500 to \$83.20 and direct the board to refund the difference to the appellant.

DISCUSSION:

[12] The sole issue in this decision is whether I should uphold the board's fee. Institutions are required to charge fees for requests for information under the *Act*. Section 45 governs fees charged by institutions to process requests.

[13] Section 45(3) states that where a fee exceeds \$25, an institution must provide the requester with a fee estimate. 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.²

[14] In all cases, an institution must include in the fee estimate: a detailed breakdown of the fee and a detailed statement as to how the fee is calculated.³

[15] In this appeal, the board provided the appellant with a fee estimate. The appellant paid the deposit and the board performed the work to respond to the request.⁴ The appellant paid the revised fee set out in the board's final access decision after the work was performed, in order to access the responsive records. Accordingly, at issue in this appeal is the actual fee charged by the board and not the fee estimate in the interim access decision. After several reductions, the board's revised fee is \$500.

[16] In deciding whether to uphold the board's fee, I must consider whether it is

² Order MO-1699.

³ Orders P-81 and MO-1614.

⁴ Sections 7 and 9 of Regulation 823 provide for the circumstances when a head may require a requester to pay a fee (or a deposit) for access to a record before giving access to the record.

reasonable. The burden is on the board to establish that the revised fee of \$500.00 to process the appellant's request is reasonable.⁵ The board must provide detailed information on how the fee was calculated in accordance with the applicable provisions of the *Act* and provide sufficient evidence to support its position.

[17] Section 45(1) provides the fees that institutions must charge for requests and states:

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.

[18] The prescribed amounts of the fees to be charged under section 45(1) are found in section 6 of Regulation 823, which states:

The following are the fees that shall be charged for the purpose 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.

⁵ See for example Orders P-86 and M-549.

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.

Representations

[19] In its representations, the board provides the following breakdown for its revised fee of \$500 (as explained below, the breakdown adds up to \$510.70 but the board rounded it down to \$500):

Photocopy fees @ \$0.20 per page for 41 pages	\$8.20
16 hours manual search time @ \$7.50 per 15 minutes	\$480.00
44 minutes of preparation time based on redactions on 22 pages @ 2 minutes per page @ \$7.50 per 15 minutes	\$22.50

[20] The board relies upon items 1 and 4 in section 6 of Regulation 823 respectively for the prescribed fees for photocopying and the fee for the time spent making redactions.

[21] Regarding the fee for manual search time, the board relies upon item 3 in section 6 of Regulation 823 and submits that while it had initially estimated 10 hours of search time, the actual search time was greater and it required 16 hours to locate the responsive records. The board states that the archived physical records are properly stored and organised chronologically but the search time was substantial because the appellant was seeking records relating to financial transactions in relation to named third parties. The board submits that the search of the archived physical records is calculated at 3.25 hours for each of the five years of the time period covered by the request.

[22] The board submits that based on the above breakdown, the correct calculation of the statutorily prescribed fees chargeable is \$510.70, which it has reduced to \$500.00 and which it asks me to uphold.

[23] The appellant believes that, based on the original fee estimate and the revised fee that included photocopying fees of \$50.00 and \$60.00 respectively, the board has identified between 250 and 300 pages of responsive records but has only disclosed 41 pages. For this reason, the appellant is seeking a refund of the \$500.00 fee that they have paid on the grounds that the board has acted in bad faith.

[24] In their representations, the appellant sets out the chronology of the fee estimates from the board and the fees the appellant has paid and surmises that, on account of the errors in the fee calculation that the board has acknowledged, they have no confidence in the number of hours the board states that it has spent processing the

request.

Analysis and finding

[25] Based upon my review of the evidence, I am satisfied that the board's fee for photocopying is reasonable. However, the board has not provided sufficient evidence to establish that its fees for manual search time and preparation time are reasonable and recoverable under the *Act*. Accordingly, I allow a reasonable fee only for the manual search time and uphold the board's fee in part.

Photocopying Fees

[26] The board has identified 41 pages of records that are responsive to the appellant's request. These pages have been disclosed to the appellant and I therefore find that the board's corrected fee of \$8.20 based on the prescribed amount of \$0.20 per page is reasonable and I uphold this part of the fee.

Preparation Time

[27] The board explains that the fee for time spent preparing the records for disclosure is the time spent making redactions to the responsive records. It is the board's position that there are redactions on 22 pages and the board's revised fee includes \$22.50 for the time spent making these redactions. The board has calculated the preparation fee using the rate of two minutes to sever each of the 22 pages⁶ and the prescribed fee of \$7.20 per 15 mins from item 4 in section 6 of Regulation 823.

[28] The appellant does not make representations directly addressing this part of the fee. However, from my review of the board's decision letters, I note that the board states that it is granting the appellant full access to the responsive records. The board has not indicated that it intends to withhold portions of the responsive records and no exemptions are cited in its access decisions.

[29] In its representations, the board provides no reason for withholding information from the records disclosed to the appellant. The board states that there was a "misunderstanding of the allowable scope of preparation time" and this is the reason that the initial fee of \$150.00 for 5 hours of preparation time has been reduced to \$22.50 for 44 minutes of time spent making redactions.

[30] In my view, no preparation time at all is recoverable. As the board has not claimed any exemptions with respect to the responsive records nor provided representations about why it has made redactions, I am not satisfied that it has established that the fee for time spent preparing the records for disclosure to the appellant is reasonable.

⁶ The IPC has generally accepted that it takes two minutes to sever a page that requires multiple severances. See Order M-1083.

[31] The IPC has previously held that no fee may be charged for severing a record where access to records has been granted in full by an institution and no severances have been made.⁷ In this appeal, the board has made redactions to the records, however, there is no evidence before me about why this work was done or how it relates to the preparation of the records in response to the appellant's request, in light of the board's decision to grant access to the records in full.

[32] Accordingly, I find that the board has not demonstrated that the fee for time spent preparing the records is reasonable. I will therefore not allow any fee for preparation time.

Manual Search Time

[33] In the Notice of Inquiry sent to the board earlier in this appeal, the adjudicator asked the board to provide a detailed explanation of its fee calculation. In relation to the fee for manual search time, the adjudicator asked the board to explain how the requested records are kept and maintained, the actions necessary to locate the requested records and the amount of time involved in each action.

[34] Previous orders of the IPC have held that institutions cannot charge for time spent on tasks that are incidental to the work chargeable under section 45(1) of the *Act*. For example, an institution cannot charge for time spent on identifying records requiring severing⁸ or time spent re-filing and restoring records to their original state after they have been reviewed and copied.⁹ Evidence of the tasks carried out by the board when conducting its manual searches is therefore necessary to determine whether the actual work that has been done is chargeable under section 45(1)(a) of the *Act*.

[35] I have reviewed the board's representations regarding the manual search time. The board explains that it revised its initial fee because it needed to search through "a substantial number of archived physical records" to locate records responsive to the appellant's request for the specified time frame. The board explains that although these records are organised chronologically, the search time was substantial because the appellant requested records relating to financial transactions in respect of specific third parties.

[36] I am not satisfied that the board has provided sufficient information about the type of tasks it performed to locate responsive records or how long was spent on performing those tasks. Beyond its statement that the records are organised chronologically, there is no evidence about how the board's physical records of its financial transactions are stored or how searches of the records were conducted. The board provides no explanation regarding the volume of records involved or how records

⁷ Order M-562.

⁸ MO-1380.

⁹ Orders P-741 and P-1536.

relating to the named third parties were identified and located. I note that the request sought access to four categories of records but there is no evidence from the board about how the records in different categories were located or how the different financial transactions were identified.

[37] In its reply representations, the board states that the 16 hours of manual search time "equates" to 3.25 hours of search time for each of the five years covered by the time period of the request. However, I find that the board's explanation for how the 16 hours of manual search time is calculated is insufficient to support the board's position that this fee is reasonable or that it was spent on work that is recoverable under the provisions of the *Act*.

[38] Notwithstanding my finding that the board has provided insufficient evidence to support the fee for 16 hours of manual search time, I accept that the board has done some work to locate the responsive records. The fee provisions of the *Act* are premised on the "user-pay" principle whereby requesters are expected to carry a portion of the cost of processing a request.¹⁰

[39] The limited evidence from the board about the manual searches is that its physical records are organised chronologically and the 16 hours equates to 3.25 hours of work for each of the five years in the time period covered by the request. I therefore accept that the board carried out its searches chronologically and that the same time was spent searching through the records for each of the five years. In my view, this should be a relatively straightforward search and the appellant should not be penalized for any deficiencies in the board's recordkeeping that unnecessarily prolonged the search time. In the circumstances, I will allow 30 minutes of manual search time for each year, resulting in a total manual search time fee of \$75.00.

Summary

[40] I find that the board's fee for photocopying is reasonable and I allow the photocopying fee for \$8.20.

[41] However, I am not satisfied that the board has established that the portions of the fee for preparation time and manual search time have been calculated in accordance with the provisions of the *Act*. The board's fee for preparation time is therefore reduced to \$0 and its fee for manual search time is reduced to \$75.00.

ORDER:

1. The board's fee is reduced to \$83.20.

¹⁰ Subject to section 45(4) which requires that an institution waive fees, in whole or in part, in certain circumstances. The application of section 45(4) is not before me in this appeal.

2. The board is to repay the appellant the balance of the fee already paid.

Original Signed by: _____
Katherine Ball
Adjudicator

_____ July 25, 2022