



Information and Privacy
Commissioner/Ontario

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

ORDER M-166

Appeal M-9200357

Halton Board of Education



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Halton Board of Education (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to examine the expense accounts from 1987 to the date of the request (May 27, 1991) for five named individuals. The Board determined that it did have records responsive to the request and responded initially by denying access in full pursuant to section 14 of the Act.

The requester appealed the denial of access and that appeal was assigned as Appeal Number M-910315.

During the processing of Appeal Number M-910315, the Board advised that the request involved a large number of records and that it only conducted a sample search and retrieved a representative sample of the responsive records. An Appeals Officer visited the Board's offices to view a sample of the records at issue.

The Appeals Officer also met with the appellant to clarify the scope of the request. The appellant indicated to the Appeals Officer that she wished to view the detailed expense account statements for the named individuals for all of the five years, including actual receipts, invoices, phone bills and other supporting documents. The Board advised that it does not keep statements of expense accounts in the manner requested by the appellant, but suggested that it could produce computer printouts for each of the named individuals detailing the date and amount of each cheque made out to them as reimbursement for expenses. The appellant, however, declined to narrow her request in that manner and wished to examine each expense claim and all of the supporting documentation submitted by the individuals for the time period specified in her request.

The Board issued a new interim decision which included a general description of the records, and a fee estimate of \$12,047. The decision also indicated access would not be given to parts of the records which contain personal information of individuals, pursuant to section 14 of the Act.

The appellant appealed the fee estimate contained in the interim decision, stating that: "I do not believe that there should be any fees applicable to the particular records to which I have requested access in this case." Accordingly, Appeal Number M-910315 was closed and a new file, Appeal Number M-9200357 was opened, and it is this appeal which is the subject of this order.

During the processing of the appeal, the appellant requested the Board to waive the fee. The Board denied the request and the appellant has indicated that she wishes to appeal the Board's decision not to waive the fee.

Subsequent to the issuance of the interim decision, the Board discovered that there was an error in the calculation of the fee and reduced the estimate to \$10,677.60.

The breakdown of this estimate is as follows:

Manual Search:	
346.13 hours, less 2 hours free	
344 x \$30.00 =	\$10,320.00

[IPC Order M-166/July 23, 1993]

Preparing the Records for Disclosure:

8.55 hours

8.5 x \$30.00 = 255.00

Copying (records which require severances)

513 pages:

513 x .20c = 102.60

TOTAL FEE ESTIMATE

\$10,677.60

The Board also provided in its decision letter a three-page detailed description of the steps required to accomplish the various tasks involved in identifying, searching, retrieving and preparing the responsive records for disclosure, time estimates for each step to be taken, the volume of records to be retrieved, and the extent of severances of personal information required. The letter also contains a detailed breakdown of the fee and a step-by-step demonstration of how it was calculated.

The appellant does not dispute the amount of the fee estimate itself; her position is that there should be no fee charged for access to the records she requested.

Mediation of the appeal was not successful and notice that an inquiry was being conducted was sent to the appellant and the Board. Representations were received from both parties.

The issues in this appeal are as follows:

ISSUES:

- A. Whether the fee provisions of the Act apply to the records in the circumstances of this appeal.
- B. If the answer to Issue A is yes, whether the Board's decision not to waive the fee under section 45(4) of the Act is in accordance with the terms of the Act.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the fee provisions of the Act apply to the records in the circumstances of this appeal.

Section 45(1) of the Act reads:

[IPC Order M-166/July 23, 1993]

Where no provision is made for a charge or fee under any other Act, a head shall require the person who makes a request for access to a record to pay,

- (a) a search charge for every hour of manual search required in excess of two hours 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; and
- (d) shipping costs.

(Emphasis added)

The appellant states that no charges for fee can be levied under the Act in the circumstances of her request because section 207(4) of the Education Act [formerly section 183(3)] makes specific provision for collection of a fee for access to records of the nature of those she has requested, thereby excluding the application of the fee provisions of the Act. She submits that since her request is to view the records and not receive copies, she is entitled to examine the records under the Education Act free of charge.

Section 207(4) of the Education Act provides:

Any person may, at all reasonable hours, at the head office of the board inspect the minute book, the audited annual financial report and the **current accounts** of a board, and, upon the written request of any person and upon payment to the board at a rate of 25 cents for every 100 words or at such lower rate as the board may fix, the secretary shall furnish copies of them or extracts therefrom certified under the secretary's hand. (emphasis added).

The appellant's request does not refer specifically to any of the types of records listed in the above-mentioned section of the Education Act. However, it appears from her representations that she is claiming receipts and other documents supporting an expense account would qualify as "current accounts". The appellant has not explained why she believes such records fall under the term "current accounts"; however, I have considered whether the records she requested would qualify as "current accounts" under section 207(4) of the Education Act.

The term "current accounts" is not defined in the Education Act. In addressing this issue, it is worthwhile examining some of the different dictionary definitions of the terms "account" and "current accounts".

The Dictionary of Canadian Law, (Thomson Professional Publishing Canada, 1991) defines "accounts" as:

The statement of profit and loss and the balance sheet.

Black's Law Dictionary, 6th edition, defines "account" as:

A statement in writing, of debits and credits, or of receipts and payments; a list of items of debits and credits, with their respective dates.

In the same dictionary, "current account" is defined as:

An open or running or unsettled account between two parties; the antithesis of an account stated.

The Concise Oxford Dictionary, 8th edition, defines "account":

(often in pl.) a record or statement of money, goods or services received or expended, with the balance.

As indicated above, the appellant's request is to examine the expense accounts of the five individuals, for a period of five years, and includes receipts, invoices and other supporting documents.

In my view, generally, receipts, invoices and other documents tendered as evidence of money received or expended would not be included in the term "current accounts", for the purposes of section 207(4) of the Education Act. Rather, the term "current accounts" would refer to a statement of the debits and credits. In addition, this statement would refer to the current fiscal year, and would be distinct from the audited annual financial reports which would refer to past fiscal years. Therefore, it is my view that section 207(4) of the Education Act does not provide for a charge or fee for the type of records requested by the appellant. Therefore, I find that the fee provisions of the Act apply in the circumstances of this appeal.

ISSUE B: Whether the Board's decision not to waive the fee under section 45(4) of the Act was in accordance with the terms of the Act.

Section 45(4) of the Act reads as follows:

A head shall waive the payment of all or any part of an amount required to be paid under this Act if, in the head's opinion, it is fair and equitable to do so after considering,

[IPC Order M-166/July 23, 1993]

- (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 in the regulations.

It has been established in a number of orders that the person requesting a fee waiver has the responsibility to provide adequate evidence to support a claim for a fee waiver (Orders 4, 10, 111).

The appellant argues that if a fee must be charged under the Act then it should be waived under the Act, since payment of the fee will cause her financial hardship. The Board has accepted that payment of the fee would cause the appellant financial hardship. However, the Board declined to grant a fee waiver on the grounds that, in its opinion, "it would not be fair and equitable" to waive the fee in the circumstances of this appeal.

In interpreting the opening paragraph of section 57(4) of the provincial Freedom of Information and Protection of Privacy Act, which is identical to section 45(4) of the Act, Assistant Commissioner Irwin Glasberg has stated that the phrase "in the head's opinion" means that the head of an institution has a duty to determine whether it is fair and equitable in a particular case to waive a fee and held that the Commissioner has a statutory authority to review the correctness of that decision (Order P-473). I agree with Assistant Commissioner Glasberg's view and adopt it for the purposes of this appeal.

In its decision letter, the Board stated:

... financial hardship is not the only issue to be taken into account in determining whether or not it is fair and equitable to waive payment of the fee. Our prime responsibility is to the local taxpayer. We have taken into account your financial situation, and do not feel that it outweighs the potential \$12,047 cost to the public school taxpayer.

In its representations, the Board indicates that in deciding whether it is fair and equitable to waive the fee, it also considered other factors, including: that the fee was lower than the actual cost of locating, retrieving and preparing the records; the requester would ultimately obtain access to most of the responsive records; the dissemination of the records would not benefit public health and safety and the fact that waiving all or part of the fee would force the Board, and therefore, the taxpayers to bear additional costs. The Board also

considered the fact that the records are extremely voluminous and that the appellant is unwilling to narrow her request or accept other types of computer generated records.

In his affidavit, the Freedom of Information and Privacy Co-ordinator for the Board and Assistant to the Director of Education states:

After receiving the original request, I contacted the requester in order to clarify what she wanted. She told me that she wanted to "flip through the files" to examine each individual's personal expenses. I remember her telling me that she wanted to know "who spent what on whom and for what purpose".

I discussed other options with the requester, including the possibility of showing her a list of the total expenses for each individual. She insisted that she wanted to inspect the actual background documentation -- invoices, credit card slips, phone bills, etc. -- related to all the expenses. The requester made it clear she was less interested in learning the amount spent than in reviewing the supporting invoices and receipts.

During our conversations, I also told the requester that her request related a very large number of documents. She left me with the impression that she fully understood that her request was voluminous, but that she is unwilling to amend it.

In January 1992, I travelled to Toronto and met with [an Appeals Officer] of the Information and Privacy Commissioner. We discussed the possibility of offering the requester as much information as could possibly be extracted from our computer records (including full details of expenses totals), in place of pulling five years of invoices, receipts and bills. The Board wanted to resolve the request in this manner, but [the Appeals Officer] subsequently informed me that the requester was not going to modify her original request.

The Board indicates that "satisfying the appellant's request would require that one employee devote approximately two months exclusively to the request. At the same time, reductions in expenditures on staffing force us to make more efficient use of the Board's employee resources."

The appellant states:

I understand the problem of personal information contained in the school board records and the enormity of the task in deleting such information from the record. However, because the school board has a "statutory" obligation under section 183(3) [now section 207(3)] of the Education Act to allow access to current accounts to any member of the public at any reasonable hour, surely it is incumbent upon that institution to keep their records in such a manner to allow for the public review.

...

The fact that the school board has no system in place, as in other government offices, etc. to record in statement form, accurate details of expenses of individuals, without personal information, is hardly my problem.

The major component of the estimated fee relates to locating records which I found do not fall under section 207(4) of the Education Act and the Board has no obligation to make them available under that Act. While I sympathize with the appellant's position, that the Board's filing system may not be the most efficient, in my view, the Act does not require an institution to keep records in such a way as to accommodate the various ways in which a request for information might be framed. In the circumstances of this appeal, the Board has attempted to respond to the appellant's request by providing alternative records which are less expensive to produce.

Having considered the representations of the parties and based on the evidence provided to me, it is my view that it would not be "fair and equitable" to waive the fee, in the circumstances of this appeal. In coming to this conclusion, I have considered the manner in which the Board has attempted to respond to the appellant's request; the fact that the request involves a very large volume of records; that the appellant was not prepared to narrow her request but insisted on receiving raw data which requires extensive searches and time consuming severance procedures; that the appellant has not advanced a compromise solution which would reduce the costs; that the actual cost of producing the records exceeds the fee estimate itself and that waiving of the fee will shift an unreasonable burden of the cost of access from the appellant to the Board, resulting in significant interference with the operations of the Board.

ORDER:

I uphold the Board's decision not to waive the fee.

Original signed by: _____

July 23, 1993

Asfaw Seife
Inquiry Officer