



Information and Privacy
Commissioner/Ontario

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

ORDER M-171

Appeal M-9200319

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/Télééc: 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) for access to all records which detail the expenditures for the years 1987 through 1991 charged against the Discretionary Expense Account of the Director of Education. The request specified that the records should include the following:

1. a record of the authorized budget amount and the actual expenditure for the Discretionary Expense Account for each of the years requested;
2. a cheque register (the summary listing of the cheques written);
3. the processed cheques which have cleared at the bank and been returned to the institution for filing;
4. invoices and bills submitted by suppliers who have provided goods and services which have been charged against the Discretionary Expense Account; and
5. documentation supporting all voluntary payments made by the Board and charged against the Discretionary Expense Account.

The Board responded to the request by providing the requester with an interim decision on access and a fee estimate. The interim decision stated that the requester would receive partial access to the requested records, with the personal information of individuals other than the requester being withheld from disclosure pursuant to section 14 of the Act. The Board's decision also stated that "In addition to Section 14 applying to many documents, other exemptions may also apply when and if we are asked to produce all records for viewing to the requester".

The fee estimate of \$685.00 was calculated on the basis that the requester wanted to examine the originals of the requested records, not to receive copies. This was confirmed by the requester.

The requester appealed the fee estimate contained in the interim decision stating that "... the institute [the Board] has a statutory obligation under section 183(3) of the Education Act [now section 207(4)] to provide access to its current accounts free of charge." The requester subsequently raised the issue of the calculation of the fee itself.

Mediation of the appeal was not successful, and notice that an inquiry was being conducted to review the Board's decision was sent to the appellant and the Board. Written representations were received from both parties.

ISSUES:

The issues arising in this appeal are:

- A. Whether the fee provisions of the Act apply to the records in the circumstances of this appeal.
- B. Whether the amount of the estimated fees was calculated in accordance with section 45(1) of the Act.

SUBMISSIONS/CONCLUSIONS:

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

Sections 45(1) and 45(6) of the Act read:

1. **If 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.
6. The costs provided in this section shall be paid and distributed in the manner prescribed by the regulations.

[emphasis added]

The appellant submits that no charges for fees under the Act may be levied because under section 207(4) of the Education Act there is a provision for a fee of \$0.25 for each 100 words of copying.

Section 207(4) of the Education Act reads:

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]

In his representations, the appellant submits that the five categories of records that he has requested are all "current accounts" because they are all linked together to form a cohesive unit of expenditure recording and control. It is his position that "current accounts" are the records of day to day transactions of expenditures on goods and services and revenues received. He states that ... "In the context of Section 207(4) the term "current account" must be given the broadest possible definition because it is the only way School Boards can be made fully accountable under the Act".

In support of his position, he cites definitions of the term "account" that are found in The Dictionary of Canadian Law and The Canadian Law Dictionary.

The Dictionary of Canadian Law, Daphne Dukelow & Betsy Nuse eds., (Scarborough: Thomson Professional Publishing Canada, 1991) defines "account" as:

1. Settlement of debits and credits between parties.
2. Any monetary obligation not evidenced by any chattel paper instrument or securities ...
5. Any invoice, statement, claim, contract, journal voucher or other voucher or document claiming payment from a department on a single or recurring payment basis. (p.7)

"Accounts" are defined as:

The statement of profit and loss and the balance sheet. (p. 7)

The Canadian Law Dictionary, R.S. Vasan ed., (Don Mills: Law and Business Publications (Canada) Inc., 1980) defines "account" as:

A statement in writing of debits and credits, or receipts and payments ... An open or

running or current account is one through which credit and debit items are constantly passing. (p. 23)

On the other hand, the Board submits that an account is merely a statement or list of transactions, or of debits and credits, or of receipts and payments and cites Black's Law Dictionary in support of its position.

Black's Law Dictionary, 6th edition, Joseph R. Nolan & Jacqueline M. Nolan-Haley eds., (St. Paul: West Publishing Co., 1990) 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. (p. 18)

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. (p. 18)

In addition, the Board further submits the following:

If the Legislature had intended that the "accounts" would include vouchers and documents related to expenses, it would have been unnecessary to mention "vouchers, "agreements" and "documents" in clause 96(1)(d) and subs. 234(4). The use of different words in the same statute must be interpreted as indicating a change of meaning.

Section 96(1)(d) of the Education Act provides that it is the duty of a separate school board:

... to lay all the accounts of the board before the auditors, together with the agreements, vouchers, contracts and books in its possession, and to afford the auditors all the information in its power as to the receipt and expenditure of school money;

Section 234(4) of the Education Act provides that:

An auditor of a board has the right of access at all reasonable hours to all books records, documents, accounts and vouchers of the board and is entitled to require from the members and officers of the board such information and explanation as in the auditor's opinion may be necessary to enable the auditor to carry out his or her duties.

In my view, if "vouchers" and other documents fell within the meaning of the term "current accounts", it would not be necessary to specifically mention "vouchers" and "documents" in these other sections of the Education Act. I note that section 207(4) of the Education Act provides that any person may inspect the

"minute book", the "audited annual financial report" and the "current accounts" of a board. Minute books generally contain information about the organization of the board and a summary of what took place at each meeting. The "audited annual financial report" would be a statement of the finances for the preceding fiscal year. In neither case do these terms include any background documents which went into preparing the minutes or the audited annual financial report and, it is therefore my view that the surrounding words support the interpretation that the term "current accounts" does not include vouchers, invoices or other documents.

The Board has also submitted an affidavit from its Manager of Accounting who states that the Board's "current accounts" are the Board's accounts for the current fiscal year which runs from January 1 to December 31 of each year. She also states that these accounts are contained in the monthly statements that the Superintendent of Business Services and the Director of Education submit to the Board for approval.

Attached to this affidavit is an example of the monthly statement from October 1992. Such statements for all 12 months would, in the Board's view, constitute its "current accounts" for that fiscal year. In my view, it is clear that the information contained in this document is **not** information which is responsive to the appellant's request.

To summarize, it is my view, that the term "current accounts" in section 207(4) refers to a statement in writing of debits and credits and that the current accounts are the Board's accounts for the current fiscal year and do not include documents which may have in some way contributed to the numbers which appear on the statement.

I am supported in this view by the decision of Inquiry Officer Asfaw Seife in Order M-166. In that case, the appellant had requested access to the expense accounts of five individuals of the Board for a period of five years. Her request included receipts, invoices, and supporting documentation. At page 4 of the order, Inquiry Officer Seife stated:

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 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.

Accordingly, it is my view that section 207(4) of the Education Act does not provide for a charge or a fee for the types 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 amount of the estimated fees was calculated in accordance with the section 45(1) of the Act.

I have quoted section 45(1) of the Act on page 3 of this order. Section 6(1) of Regulation 823 under the Act reads:

The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act:

1. For photocopies and computer printouts, 20 cents per page.
2. For floppy disks, \$10 for each disk.
3. For manually searching for a record after two hours have been spent searching, \$7.50 for each fifteen minutes spent by any person.
4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each fifteen 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 fifteen minutes spent by any person.
6. For any costs, including computer costs, incurred by the institution in locating, retrieving, processing and copying of the record if those costs are specified in an invoice received by the institution.

In its decision letter, the Board broke down the fee estimate of \$685.00 as follows:

Manual Searching

First 2 hours	No Charge
Each additional 15 minutes at \$7.50 per person estimated at 15 hours	\$450.00

Preparation of Documents

Each 15 minutes @ \$7.50 per person estimated at 5.5 hours	\$165.00
Photocopying for viewing @ 20¢ per page	70.00

Total Estimated Fee \$685.00

In reviewing the Board's fee estimate, my responsibility under subsection 45(5) of the Act is to ensure that the amount estimated by the institution is reasonable in the circumstances. In this regard, the burden of establishing the reasonableness of the estimate rests with the Board (Order 86). In my view, the Board discharges this burden by providing me with detailed information as to how the fee estimate has been calculated, and by producing sufficient evidence to support its claim.

The Board's position is that it would be unduly expensive to retrieve all of the records responsive to the request for the purpose of making a final decision on access under section 19 of the Act.

The procedure to be followed by an institution when responding to requests involving records which are unduly expensive to retrieve for inspection by the head in making a decision under section 19 of the Act was established in Order 81. In that order, former Commissioner Sidney B. Linden stated:

In my view, the Act allows the head to provide a requester with a fees estimate pursuant to section 57(2) of the Act [now section 57(3), which is the equivalent of section 45(3) of the Act]. This estimate should be accompanied by an "interim" notice pursuant to section 26 [of the provincial Freedom of Information and Protection of Privacy Act, which is the equivalent of section 19 of the Act]. This "interim" notice should give the requester an indication of whether he or she is likely to be given access to the requested records, together with a reasonable estimate of any proposed fees.

How can the head be satisfied that the fee estimate is reasonable without inspecting all of the records responsive to the request? In the same order, the former Commissioner stated:

Familiarity with the scope of the request can be achieved in either of two ways: (1) the head can seek the advice of an employee of the institution who is familiar with the type and contents of the requested records; or (2) the head can base the estimate on a representative (as opposed to a random) sample of the records.

... the head's notice to the requester should not only include a breakdown of the estimated fees, but also a clear statement as to how the estimate was calculated. (i.e. on the basis of either consultations or a representative sample.)

The Board indicated that in preparing its fee estimate it consulted the Accounts Payable Supervisor and the Manager of Accounting. The affidavit of the Manager of Accounting outlines the activities that were carried out in arriving at the fee estimate. The representative sample were the documents available for 1991.

In her affidavit, the Board's Manager of Accounting states the following:

[IPC Order M-171/August 6, 1993]

The estimate was prepared based on sample searches conducted by me and the Accounts Payable Supervisor. We are the individuals most familiar with these records, and therefore most able to locate and retrieve the documents quickly and efficiently.

It is helpful to analyze the steps taken by the Board to calculate the search, preparation time, charges, and the photocopying costs that comprise its fee estimate.

SEARCH CHARGE

The Manager of Accounting attests that it took four minutes to retrieve and print the General Ledger Trial Balance Sheet (the GLTBS) for the Discretionary Expense Account of the Director of Education. The GLTBS contained the information on the authorized budget amount and actual expenditures for the Discretionary Expense Account (item #1 of the appellant's request).

The GLTBS was then used to identify transactions for which supporting documentation (e.g. invoices, vouchers) would have to be pulled (items #4 and #5 of the appellant's request).

There were 54 entries with respect to the Discretionary Expense Account. However, three were correction/reversal entries. Of the remaining 51 entries, nine were journal entries and 42 were accounts payable entries. From these 51 transactions, approximately one-half were chosen for the purpose of searching for back-up documents, invoices and bills related to these transactions. The process was timed and it took an average of two minutes, per transaction. (Thus if all 51 transactions were checked the process would have taken 2 min./transaction x 51 transactions = 102 minutes).

It took five minutes to locate and retrieve the cheque register for 1991 (item #2 of the appellant's request). Since there were 42 accounts payable entries listed on the General Ledger Trial Balance Sheet, 42 processed cheques would have to be located and retrieved (item #3 of the appellant's request). A representative sample of cheques were pulled and the process was found to take two minutes per cheque. Consequently, it was estimated that it would take 84 minutes to pull 42 cheques.

In summary, the Board estimated that it would take 195 minutes (3.3 hours) of manual search time to locate the records responsive to the request. At a charge of \$7.50 for each fifteen minutes per person, this works out to be a charge of \$99.00.

PREPARATION CHARGES

Of the 51 entries in the GLTBS responsive to the request, nine were credit card entries. Two of the credit card entries were checked and the result was 26 documents in support of the expenses, an average of 13 documents per credit card entry. However, the Board chose to calculate the fee estimate on a more

conservative figure of 10 documents per credit card entry.

The remaining 42 entries related to items other than the credit card. The Board had conducted a similar search in response to a previous analogous request and it was determined that these entries are supported on average, by 2.5 documents each. It was, therefore, determined that a total of 105 background documents would have to be retrieved:

$$\begin{array}{r r r r}
 9 \text{ credit card entries} \times 10 \text{ documents} & = & 90 & \\
 42 \text{ other entries} \times 2.5 \text{ documents} & = & \underline{105} & \\
 & & & 195
 \end{array}$$

Of the 26 credit card documents that were examined, 19 (73%) contained personal information that would have to be severed. Therefore, it was estimated that 70 percent of the credit card documents would require severances. For documents related to non-credit card entries, it was conservatively estimated that five percent would require severances.

For 1991, the total number of documents requiring severances was estimated to be 68, calculated as follows:

$$\begin{array}{r r r r}
 90 \text{ credit card documents} \times 70\% & = & 63 & \\
 105 \text{ non-credit card documents} \times 5\% & = & \underline{5} & \\
 & & & 68
 \end{array}$$

The personal information that would have to be severed included addresses, telephone numbers, and Social Insurance Numbers, among other things. It was estimated that it would take conservatively one minute to make the necessary severances on the 68 documents. Consequently, it was estimated that it would take 68 minutes (rounded down to 1.1 hours) to make severances on 68 documents. At a charge of \$7.50 for each fifteen minutes spent per person, this works out to be a charge of \$33.00.

PHOTOCOPYING

At \$0.20 per page, the Board estimated that it would cost \$13.60 to copy those records which required severances, in order to prepare them for viewing. This is based on an estimate of 68 pages requiring severing before they are viewed by the appellant.

Taking 1991 as a representative year, the Board summarized its fee estimate for the five years requested by the appellant as follows:

Task	Time	Charges
------	------	---------

[IPC Order M-171/August 6, 1993]

Manual Searching	5 x 3.3 hrs.= 16.5 hours	\$435.00
	- 2 hrs. free = 14.5 hours	
Time to drive to off site storage location to retrieve records for 1987-90	40 min., rounded to .5 hours	15.00
Preparing records for viewing	5 X 1.1 hrs.= 5.5 Hours	165.00
Photocopies	5 x \$13.60, rounded to nearest dollar	<u>70.00</u>
	TOTAL	\$685.00

In my view, the time to drive to an off-site storage to retrieve records cannot properly be described as time to conduct a manual search, nor can it be characterized as time to prepare a record. Such costs, if they may be charged at all, could only fall under section 6(6) of the Regulation 823. This section restricts the costs that can be charged to those which are specified in an invoice received by the institution (section 6(6)) of the Regulation. In my view, at the very least, at the time of a fee estimate, an institution is obliged to provide evidence as to how this "projected" cost was arrived at. I have not been provided with any such evidence. The Board appears to have estimated the fee related to this item as \$15.00 based on 30 minutes of time. In my view, this part of the fee estimate is inappropriate and I disallow any charges for this time.

In my view, taking into account all of the Board's representations and the nature of the request, I am satisfied that the estimated search time of 16.5 hours is reasonable in the circumstances and is calculated in accordance with section 45(1)(a) of the Act and section 6 of Regulation 823, under the Act. I also find that the fee estimate for the cost of preparing the records for disclosure is reasonable and properly calculated under section 45(1)(b) of the Act and section 6 of the same Regulation, except as stated above, the part relating to the time to drive to an off-site storage.

If pages of a record are to be severed to remove exempt information, in my view, it would not be reasonably practicable to provide the appellant an opportunity to examine these pages, while at the same time ensuring that the exempt information is not disclosed. In such cases, it is appropriate that the appellant pay the photocopy costs for those pages (Order 2).

ORDER:

I uphold the Board's fee estimate in the amount of \$670.00.

Original signed by:
Anita Fineberg
Inquiry Officer

August 6, 1993