



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-325

Appeal M-9300529

Frontenac County Board of Education



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ORDER

BACKGROUND:

The Frontenac County Board of Education (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to copies of records related to the Board's Values, Influences and Peers (V.I.P.) program. The Board responded to the request by providing a fee estimate of \$20.00 to the requester and requiring payment of a deposit of \$10.00 "prior to proceeding with the request".

The requester paid the deposit and, in response, the Board provided the requester with records responsive to part of the request. The Board subsequently sent an invoice to the requester for \$53.60, representing the balance owing for the completion of the search and preparation of the request.

The requester appealed the amount of the fee charged by the Board and the Board's claim that no additional records exist. Mediation 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. Representations were received from both parties.

ISSUES:

- A. Whether the fee charged was calculated in accordance with section 45(1) of the Act.
- B. Whether the Board's search for responsive records was reasonable in the circumstances of this appeal.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the fee charged was calculated in accordance with section 45(1) of the Act.

Section 45(1) of the Act provides as follows:

- (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.

Section 45(6) of the Act states:

- (6) The costs provided in this section shall be paid and distributed in the manner prescribed by the regulations.

Section 6 of R.R.O. 1990, Reg. 823 provides, in part:

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.
...
- 3. For manually searching for a record after two hours have been spent searching, \$7.50 for each fifteen minutes spent by any person.
...

The Board broke down the fee of \$63.60 as follows:

Search time: 2 hours at \$7.50 per 15 minutes	..	\$60.00
Photocopies at 20 cents per page: 18 @ \$.20 each	..	3.60

Total	..	\$63.60
Less Deposit	..	-10.00
	..	_____
Balance of fee for processing	..	\$53.60
		=====

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

Photocopies

The Board has charged \$3.60 for photocopies based on 18 copies at \$.20 per page. I am satisfied that this cost was calculated in accordance with section 45(1) of the Act.

Search Time

In its representations, the Board indicated that "our search took 6 hours and we billed for the amount in excess of 2 hours at \$7.50 per 15 minutes." In fact, the Board has charged for only two hours of search time for a total of \$60.00. In my view, the charge for two hours of search time is in accordance with section 45(1) of the Act.

Therefore, I uphold the Board's decision to charge a fee in the amount of \$63.60 for search time and photocopying. Since \$10.00 has already been paid by the appellant, the amount remaining to be paid is \$53.60.

ISSUE B: Whether the Board's search for responsive records was reasonable in the circumstances of this appeal.

The appellant believes that additional records exist which are responsive to the request.

In its representations, the Board indicates that it has carried out a number of searches for relevant records and that no additional records exist which are responsive to the request.

The Act does not require the Board to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act the Board must provide me with sufficient evidence which shows that it has made a reasonable effort to identify and locate records responsive to the request (Order M-148).

As part of its representations, the Board provided an affidavit from the Superintendent of Education, who is also the Freedom of Information Co-ordinator for the Board. The Superintendent indicated that he carried out the search with assistance from a Secretary and the Executive Assistant. The following records were
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searched:

- Official Board minutes: 1970 to present;
- The school files at Central Public School - carried out by the School Principal and Acting Principal;
- Teacher's unit plan on the V.I.P. Program - carried out by the teacher, and the Principal;
- The file of minutes for the Physical and Health Education Subject Council- reviewed by the Chair of this Council;
- The Superintendent's file on the V.I.P. Program;
- Board personnel files;
- The Education Act;
- Ontario Schools: Intermediate and Senior Divisions; Program and Diploma Requirements, 1989, Revised Edition;
- The Board also contacted the organizations which created "Lion's Quest", "Feeling Yes/Feeling NO"; and "DAPPER" to answer question (O) of the request. To answer other parts of the request, the Board had to refer to the Board's response to the requester's previous request.

Having carefully reviewed the representations, I am satisfied that the search conducted by the Board was reasonable in the circumstances of this appeal.

ORDER:

1. I uphold the decision of the Board to charge \$63.60 for search fees and photocopy costs.
2. I uphold the Board's decision on the existence of additional records.

Original signed by: _____

_____ May 26, 1994

Anita Fineberg

Inquiry Officer

POSTSCRIPT:

While I have upheld the Board's decision on the calculation of fees in this appeal, I feel I should comment on two aspects of the Board's processing of this request as it relates to the charging of fees.

As I have indicated, the Board provided the requester with a fee estimate of \$20.00 and required a 50% deposit prior to proceeding to process the request. Section 45(3) of the Act requires an institution to provide a requester with a reasonable fee estimate of any amount over \$25.00. Thus, strictly speaking, it was not necessary for the Board to provide an estimate in this case.

However, section 7(1) of the regulations permits an institution to require payment of a 50% deposit if the estimate is \$25.00 or more. In this case, as the estimate was only for \$20.00, the Board should not have required the payment of the deposit before completing the request.