



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-337

Appeal M-9400097

Halton Board of Education



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant requested access to the credit card statements and expense account sheets of the Director of the Halton Board of Education (the Board) for January 1, 1990 to December 31, 1993 inclusive with attachments and receipts.

The Board responded by providing the appellant with a fee estimate of \$541.90 under section 45 of the Act and indicated that partial access to the responsive records would be granted, with the personal information of individuals other than the requester being withheld from disclosure pursuant to section 14(1) of the Act.

The appellant appealed, claiming that the fees estimated are excessive. Subsequent to the filing of the appeal and prior to resolution by this order, the appellant paid the estimated fees to the Board, on a no prejudice basis, pending resolution of this appeal. In return, the Board agreed to give her access to the records.

A notice of inquiry was provided to the appellant and the Board. Representations were received from both parties.

DISCUSSION:

FEE ESTIMATE

The costs of the search required by the request and charges related to making the record available to the requester are set out in the Act and the regulations made under the Act. Where no provision is made for a fee to be charged under any other Act, sections 45(1) and (6) of the Act provide that the Board shall require a requester to pay for costs related to the request such as (1) a search charge for every hour of manual search required in excess of two hours to locate a record, (2) the costs of preparing the record for disclosure, (3) computer and other costs incurred in locating, retrieving, processing and copying a record, (4) shipping costs, and (5) that the foregoing costs should be paid and distributed according to the regulations made under the Act. Where these costs exceed \$25, the Board is also required to provide a reasonable estimate of the costs.

The amount and distribution of fees payable is set out in section 6 of R.R.O. 1990. Reg. 823:

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.

4. For preparing a record for disclosure, including severing a part of the record, \$7.50 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 the record if those costs are specified in an invoice received by the institution.

The Board provided the following calculation of the fees requested:

Search time:

$$3:15 \text{ hours per year} \times 4 = 13:00$$

Preparation of records:

$$1:08 \text{ hour per year} \times 4 = 4:32$$

Off-site retrieval:

$$45 \text{ minutes (one-time charge)} = 0:45$$

$$\text{Less two hours of free search time} = - 2:00$$

$$\begin{array}{r} \hline 16:1 \text{ h} \\ \text{(rounded to 16:15)} \end{array}$$

$$16:15 \text{ hours @ } \$7.50 \text{ per 15 min.} = \$487.50$$

Plus photocopying charge:

$$\text{Copies: } 68 \times 4 \times \$0.20 = 54.40$$

$$\textbf{TOTAL} \quad \underline{\underline{\$541.90}}$$

In reviewing the Board's fee estimate, my responsibility under subsection 45(5) of the Act is to ensure that the amount estimated 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 indicated that in preparing its fee estimate it consulted the Accounts Payable Supervisor and the Manager of Accounting. An affidavit of the Manager of Accounting (the affidavit), included with the Board's representations, states:

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.

The affidavit relates to a sample search undertaken for another appeal resolved by Order M-171. The affidavit was analyzed and accepted in Order M-171 with respect to the various steps taken to calculate the search and preparation time, the charges for same, and the photocopying costs that comprise the fee estimate. The subject appeal and the appeal resolved by Order M-171 involve decisions from the same institution (the Board) and the same type of records filed in the same manner.

The Board states that it relied on the calculations in the affidavit for time taken to conduct the sample search for the fee estimate that it provided to the appellant. The Board submits that the process outlined in the affidavit and the calculations which were used to arrive at that fee estimate are equally applicable to the records sought by the appellant.

I have carefully reviewed the contents of the affidavit. I agree with the reasoning set out in Order M-171 and I adopt it for the purposes of this appeal as the calculations in the affidavit are equally applicable to the records sought by the appellant in this matter. I am also in particular agreement with the reasoning in M-171 with respect to the one-time charge for off-site retrieval. I agree that this charge does not qualify for search time nor does it fall under preparation costs. Since it is a "projected cost", it is not identified in an invoice received by the Board and, therefore, does not qualify for those special costs allowable under section 6(6) of Regulation 823 made under the Act.

Based on a careful review of the representations of the parties and the affidavit of the Board, I find as follows:

- (1) that the search time of 13 hours estimated by the Board, less two hours of free search time, at a cost of \$330 is reasonable in the circumstances;
- (2) that the fee estimate of \$135 for the cost of preparing the records for disclosure is reasonable and calculated in accordance with the Act and the regulations;
- (3) that the estimated cost of \$54.40 for 272 copies (based on 68 copies for each year) is reasonable and properly calculated according to the Act and the regulations;
- (4) that the charge for off-site retrieval is not reasonable and is not calculated in accordance with the Act and the regulations.

ORDER:

1. I uphold the Board's fee estimate in the amount of \$519.40.
2. I order the Board to refund the appellant the \$22.50 paid for 45 minutes to retrieve documents stored off-site.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ June 28, 1994