



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

ORDER M-538

Appeal M-9400581

Board of Education for the Borough of East York



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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 Board of Education for the Borough of East York (the Board) received a two-part request for access to the following information:

- (1) a breakdown of all expenses incurred by each trustee, including those submitted directly or paid by the Board on behalf of the trustee, during the period of January 1, 1992 to July 31, 1994. The requester indicated that this information was to include the aggregate totals as well as the supporting documentation, including copies of the actual expense claim forms, invoices, receipts, credit card vouchers, credit card statements or any other attachments submitted by the trustees to the Board; and
- (2) a copy of the Board's alpha cheque register for the period of January 1, 1991 until June 30, 1994 (the requested period).

The Board initially issued a decision indicating that no records responsive to the second part of the request existed.

The Board subsequently explained to the requester that it did not maintain an alpha cheque register. The requester agreed that he would accept the Board's "Accounts Payable Cheque Register" (the Register) in lieu of the requested alpha cheque register. He also agreed that where the cheque was made payable to an individual, except a trustee, all information concerning the payment could be removed from the Register. The Board decided that the balance of the information would be disclosed to him upon payment of a fee estimated at \$1,552.

The Board also decided to grant full disclosure of the expenses incurred by each of the eight trustees. The Board provided the requester with a fee estimate in the amount of \$400 to process this part of the request. However, the Board advised the requester of a method by which it could provide him with essentially the same information at no charge.

The Board requested a deposit in the amount of \$976 in order to continue to process the request.

The requester appealed the Board's fee estimate.

The appellant subsequently advised the Board that he accepted the alternative method of access suggested for part one of the request. The Board provided the trustee expense to the appellant at no charge. Accordingly, the only matter remaining at issue is the Board's fee estimate of \$1,552 to process the second part of the request dealing with the Register.

This appeal is one of a series of related appeals which involve interim and final access decisions and fee estimates. One of the issues raised by these appeals is that of the circumstances in which an institution should issue an interim as opposed to a final access decision. As the disposition of this issue could have significant implications for both provincial and municipal institutions in Ontario, this Office determined that

Management Board Secretariat (Management Board) should be afforded an opportunity to provide submissions on the issues raised by these appeals. Accordingly, a Notice of Inquiry was sent to Management Board as well as to the Board and the appellant.

Representations were received from all three parties. The submissions of Management Board relate only to the circumstances in which an institution should issue an interim as opposed to a final access decision. As the Board has now issued a final decision, this matter is not at issue in this appeal. Accordingly, I will not consider Management Board's submissions in this order. Therefore, the sole matter to be determined in this order is whether the amount of the estimated fees was calculated in accordance with section 45(1) of the Act.

DISCUSSION:

Section 45(1) of the Act states, in part:

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,

- (b) the costs of preparing the record for disclosure;

Section 6(1) of Regulation 823, made under the Act, states, in part:

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

1. For photocopies and computer printouts, 20 cents per page.
...
4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each fifteen minutes spent by any person.
...

In reviewing the Board's fee estimate, my responsibility under section 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. 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.

As part of its representations, the Board has provided an affidavit prepared by its Freedom of Information and Privacy Co-ordinator (the Co-ordinator) who was involved in processing this request. The fee estimate was comprised of two elements: (1) photocopying charges and (2) preparation costs. I will address each of these in turn.

Photocopying Charges

The Co-ordinator indicates that, upon receipt of the request, she consulted with the Board's Accounting Manager regarding the most cost-effective way in which to reproduce the Register for the requested period. The Accounting Manager advised the Co-ordinator that the least expensive way in which to produce the computer printouts for the requested period was to make photocopies of the pages in a reduced format.

Accordingly, the Co-ordinator used a three-month sample from the requested period to estimate the copying costs. Based on the sample, an average of 30 pages per month was estimated. (A sample month provided to this Office actually contained 30 pages). As the requested period covers 42 months, the Co-ordinator estimated that 1,260 pages would need to be photocopied at a cost of \$0.20 per page for a total of \$252. The Co-ordinator further indicated that, once the copies have been completed, the appellant will only be billed for the actual cost to a maximum of \$252.

The Co-ordinator also advised that there was a mathematical error in the estimate provided to the appellant in the decision letter which resulted in an incorrect estimate of \$292 for photocopying charges.

Based on this information, I am satisfied that the photocopying charges have been properly estimated according to the Regulation.

Preparation Costs

As I have previously indicated, the appellant has agreed that information on the Register indicating the payment of a cheque to an individual, other than to a trustee, will be excluded from the scope of his request. Thus, this information has to be severed or removed from the copies of the Register before the documents are provided to the appellant.

In order to estimate these costs, the Co-ordinator used a two-month sample of the Register and advises that this process took an average of 60 minutes per month. (Based on the above estimate of 30 pages per month, this means that it took an average of two minutes per page to perform the deletions). This means that the severing process would take 2,520 minutes in total. (60 minutes per month X 42 months).

The Regulation prescribes a fee of \$7.50 for every 15 minutes required to sever a part of the record. Thus, the Board estimated that the severing charges would be \$1,260 in total. As was the case with the photocopying charges, the Board has indicated that if these costs are actually greater than the estimate, it will waive any costs above the estimate. If the costs are less, the appellant will only have to pay the actual costs.

I have reviewed the sample month provided to this office. By my calculation, some of these pages would require the severing of 44 entries, while others do not require any severing at all. In my view, the estimate

for preparing the record for disclosure is reasonable and properly calculated under section 45(1)(b) of the Act and section 6 of the Regulation.

To summarize, I uphold the Board's fee estimate in the amount of a maximum of \$252 for photocopying costs and \$1,260 for preparation charges.

The appellant has submitted that, in response to a prior request for expense account information of the Directors of Education, the Board eventually disclosed the requested information without charging a fee. He also indicates that he should not in effect be "penalized" by excessive fee estimates because of the inefficiency of the Board in its record keeping practices. He also states that the disclosure of their expenses is desirable for subjecting the activities of trustees to public scrutiny and should be provided without a fee being charged.

The intention of the Legislature to include a "user pay" principle is clear from section 45(1) of the Act. Thus the fact that the Board has not previously charged for similar information does not have a bearing on its decision to charge fees in this case.

I agree with the appellant that disclosure of trustee expenses is necessary to ensure public accountability of these individuals. In this case, the Board worked constructively and creatively with the appellant in order to provide him with the requested information at the least possible cost. It advised him that it did not have an alpha cheque register but indicated that its Accounts Payable Cheque Register could provide him with essentially the same information. The Board offered him an alternative manner in which to receive the trustee expense information which would eliminate all the costs associated with processing this part of the request. The appellant accepted this offer. When the Board forwarded this information to the appellant, it explained various entries related to conference and committee expenses.

In its submissions, the Board provided a detailed and comprehensive explanation of the charges associated with providing the appellant with the Register information. There is nothing in this material which indicates that the Board's record keeping practices have contributed in any way to the provision of an "excessive" fee estimate. In fact, I am of the view that the Board has processed this request in a manner consistent with the spirit and practice of the Act.

ORDER:

I uphold the Board's fee estimate in the amount of \$1,512.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ May 31, 1995