



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

ORDER M-557

Appeals M-9400582 and M-9400583

Board of Education for the City of Etobicoke



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NATURE OF THE APPEALS:

These are appeals under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Board of Education for the City of Etobicoke (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 (Appeal M-9400583); and
- (2) a copy of the Board's alpha cheque register for the period of January 1, 1991 until June 30, 1994 (Appeal M-9400582).

Appeal M-9400583

This appeal relates to part 1 of the request. With respect to this part, the Board provided the requester with a financial analysis indicating expenses incurred on behalf of each trustee. With regard to the supporting documentation, the Board indicated that it estimates there would be 500 responsive pages, some of which may contain personal information which would need to be severed (such as trustees' credit card or bank account numbers). This is an apparent reference to the exemption provided by section 14(1) of the Act (invasion of privacy). The Board also indicated that it would require a 20-day time extension, commencing when the requester either confirms he wishes to proceed, or sends in his deposit.

The Board also included a fee estimate in its response with respect to part 1 of the request, broken down as follows:

Search and preparation time (beyond 2 hours):	\$510
Photocopies of 500 pages @ \$0.20 per page:	\$100
TOTAL	\$610.

The Board asked for a deposit of \$305 in connection with this part of the request. It advised the requester that he could view the original records instead, and in that case he would only be charged for photocopies of the records which required severances.

Appeal M-9400582

This appeal relates to item 2. With respect to this item, the Board indicated that it would grant access to two types of reports which detail expenses, including payee, a brief description, the amount and the cheque number. One class of reports deals with expenses over \$3,000, and the other with expenses for amounts under \$3,000.

The Board indicated that the reports average about 60 pages per month, which would be about 2500 pages for the 42 month period specified in this part of the request. On this basis, the Board estimated its fees, based upon \$0.20 per page for photocopies, at \$500. Again, the Board indicated that it would require a 20-day time extension, commencing when the requester either confirms he wishes to proceed, or sends in his deposit. The Board asked for a deposit of \$250 in connection with this part of the request, or alternatively, gave a contact person to call in case the requester wished to view the original records at no charge.

The Appeals

The requester filed appeals of both these decisions.

These appeals are part of a series of related appeals which involve interim and final access decisions and fee estimates. One of the issues raised by this series of appeals is that of the circumstances in which an institution should be permitted to 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.

DISCUSSION:

INTERIM AND FINAL ACCESS DECISIONS

All of the related appeals mentioned above deal with requests which are, in essence, identical to the one at issue here, except for the fact that they have been submitted to different Boards of Education in the Metropolitan Toronto area. The only difference between the requests is that, with regard to trustee expenses, the actual names of the trustees are included. These names differ as between the several Boards of Education involved.

In response to the questions in the Notice of Inquiry about when an interim (as opposed to final) access decision should be permitted in connection with a fee estimate, the Board's representations state that "... [f]inal access decisions occur when requests are relatively straightforward, records are not large in number, records are not time-consuming or expensive to produce and no complicated issues arise (such as privacy considerations and/or severing)".

I considered this issue, and Management Board's submissions in this regard, in considerable detail in Order M-555. That order dealt with another of the related appeals in this series, in which the requests were made to the Board of Education for the City of Toronto.

The concept of an "interim" access decision to accompany a fee estimate was first discussed in Order 81. In that order, former Commissioner Sidney B. Linden established that an interim access decision may be issued to accompany a fee estimate "... where the institution is experiencing a problem because a record is unduly expensive to produce for inspection by the head in making a decision." Order 81 goes on to indicate that the undue expense may be caused by "... the size of the record, the number of records or the physical location of the record within the institution". It also sets out guidelines for the contents of interim access decisions and the preparation of fee estimates.

I am not persuaded by the representations of the Board on this subject (which are reproduced in their entirety above) that any other approach should be adopted. For the same reasons given in Order M-555, I conclude that the threshold established by Order 81 for interim access decisions, and the guidelines it sets out for the contents of such decisions, strike a reasonable and appropriate balance between the requirements imposed by the provincial equivalents of section 19 and the fee estimate provisions of the Act and Regulation. Therefore I affirm the approach taken in Order 81 with respect to interim access decisions and fee estimates, and I will apply it in this order.

In that regard, I note that the Board's representations indicate an intention to make an interim access decision with respect to both parts of this request. However, the only items for which fees have been charged are photocopying and preparation time, as outlined below. In my view, this does not substantiate a finding that the records are "unduly expensive to produce" for a decision, since the location of these records appears to be well-known and no other expenses have been detailed in connection with "producing the records" for a decision. Accordingly, in my view, the Board ought to have made final access decisions in connection with these appeals.

In that regard, I note that in Order M-555, I found that there are certain circumstances in which it would be appropriate for an institution, should it choose to do so, to issue a final access decision without inspecting each record. This would apply where the records consist of a number of copies of the same generic form, completed by different persons. It would also apply where the institution is certain that the records are very similar to each other and all contain the same types of information.

It is possible that the responsive records in this appeal might have met one of these criteria, and this approach could have been followed. However, I am not suggesting that institutions are required to follow this approach, only that it is an option available to them. Since, as indicated above, I will be ordering the Board to make a final access decision, it may decide to do so without reviewing all the records if, in its view, one of the criteria for doing so specified in the preceding paragraph has been met.

FEE ESTIMATE

I will now consider whether the items and amounts included in the estimate are in keeping with the provisions of the Act and Regulation.

Sections 45(1) of the Act provides for the charging of fees, and states as follows:

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.

I will also consider the following provisions of section 6 of Regulation 823, made under the Act:

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 Board 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.

Appeal M-9400583

This appeal relates to part 1 of the request, pertaining to trustee expenses. The Board's representations in this regard indicate that the fee estimate was arrived at by estimating the number of responsive records at

500, allowing 2 minutes per record for severing (for a total of 17 hours) and multiplying this by \$30 per hour to arrive at a total fee of \$510 for preparation time. Order P-565 found that 2 minutes per page is a reasonable amount to allow for severing, even where only a small number of severances are required per page.

However, the Board has not indicated whether any sample was reviewed to determine what proportion of the responsive records would require severance. It may well be that not every responsive page will require severing. On this basis, I will order the Board to revise its estimate to reflect the number of pages which it estimates will actually require severances.

The estimated fee for photocopies is \$0.20 per page for 500 pages, which amounts to \$100. Given the nature of the request, I am prepared to accept that 500 responsive records is a reasonable estimate, and since the rate of \$0.20 per page is consistent with section 6(1) of the Regulation, I am prepared to uphold this aspect of the fee estimate if the appellant wishes to receive photocopies of these records.

As previously noted, the Board's decision letter states that if the appellant decides to view the records instead of requiring copies, the Board would only charge for photocopies of records which require severances. In this regard, it is important to note that, where records are being severed, the per page charge for photocopies may only be levied for photocopies which are actually given to the appellant, and not for copies required as part of the severing process which are not ultimately given to the appellant. In other words, if a page has to be copied twice to facilitate severing, only the copy of that page which is given to the appellant may be charged for.

Appeal M-9400582

This appeal relates to part 2 of the request, pertaining to the alpha cheque register. The Board's representations indicate that the estimate for this appeal relates to photocopies only. The number of copies was estimated by inspecting the records for three separate months at different periods in the year, counting the records and arriving at an average of about 60 records per month. For the 42 months covered by the request, this would lead to an estimated 2,520 responsive pages to be copied. At \$0.20 per page, this results in an estimated fee of \$504, which the Board has rounded down to \$500. In my view, the method used for calculating this estimate was reasonable, and the amount charged per page reflects the amount allowed by section 6(1) of the Regulation. Accordingly, I uphold an estimate of \$500 in this regard if the appellant wishes to receive photocopies of these records.

However, if any fee estimate I have upheld in this order is paid by the appellant and the actual costs associated with that item prove to be lower than the estimate, the Board will be required to refund to the appellant any excess amount which has been paid.

ORDER:

1. I uphold the Board's estimate of \$100 for photocopies in connection with part 1 of the request, and \$500 for part 2 of the request, but this fee may only be charged if the appellant wishes to receive photocopies of the records.
2. I order the Board to issue final access decisions with respect to both parts of the request within twenty-one (21) days after the date of this order, without recourse to a time extension.
3. I order the Board to issue a revised fee estimate with respect to preparation time for part 1 of the request, based upon the estimated number of pages which are expected to require severances, and reflecting the time estimated to be required for actually severing the information to be withheld from disclosure, and to include this revised estimate in the final access decision referred to in Provision 2 of this order.
4. If any of the terms of this order require clarification, the parties may contact me for assistance.
5. To verify compliance with the terms of this order, I order the Board to provide me with a copy of the correspondence referred to in Provisions 2 and 3 of this order not later than twenty-five (25) days after the date of this order. This should be sent to my attention c/o Information and Privacy Commissioner/Ontario, Suite 1700, 80 Bloor Street West, Toronto, Ontario, M5S 2V1.

Original signed by: _____
John Higgins
Inquiry Officer

_____ June 30, 1995