



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-583

Appeals M_9400584 and M_9400585

Board of Education for the City of York



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BACKGROUND:

These fee appeals under the Municipal Freedom of Information and Protection of Privacy Act (the Act) arise from two of a series of requests for expense-related information made to school boards in the Metropolitan Toronto area.

The appellant, on behalf of a taxpayer organization, asked the Board of Education for the City of York (the Board) for access to the following information:

- (1) A breakdown of all expenses incurred by eight school board trustees during the period between January 1, 1992 and July 31, 1994.
- (2) A copy of the Board's alpha cheque register for the period between January 1, 1991 and June 30, 1994.

The appellant indicated that he wished to receive the aggregate totals for each expense category as well as any supporting documents. These would include credit card vouchers and statements, expense claim forms, invoices and receipts.

With respect to the first request, the Board provided a fee estimate of \$980. This figure was broken down into \$860 for search time beyond two hours and \$120 for photocopy costs.

For the second request, the Board advised the appellant that it maintained its cheque register in numerical rather than alphabetical order. The Board provided a fee estimate of \$350 representing photocopy charges only. The appellant has indicated that the numerical format is acceptable.

In both cases, the Board indicated that it would require a deposit of 50 per cent of the estimated fee to proceed with the request.

The Notice of Inquiry sent to the Board and the appellant included the provisions of the Act and the accompanying regulations which relate to the charging of fees. Representations were received from both parties. As part of its submissions, the Board included an affidavit prepared by its Senior Superintendent of Business who was involved in preparing both fee estimates.

In its representations, the Board indicates that it has now actually searched for the responsive records and, as a result, it has reduced the fees to \$754.09 and \$349.20, respectively. The Board also states that it is prepared to disclose all responsive records provided that it receives a deposit of \$551.64 with the balance to be paid on delivery of the records.

Originally, one of the issues raised by these appeals related to the circumstances in which an institution is permitted to issue an interim as opposed to a final access decision. This has come to be known as the "Order 81" situation. Since the Board has now searched for the records and has decided to disclose them, upon payment of the appropriate fee, it is not necessary for me to address this issue. However, in Order M-555, which involved the Toronto Board of Education,

the same requests and appellant as in these appeals, Inquiry Officer John Higgins discussed the "Order 81" situation in detail.

THE CALCULATION OF FEES:

The sole issue for me to determine is whether the Board calculated the fees in accordance with the provisions of the Act.

For this purpose, I have considered the wording of section 45(1) of the Act and section 6(1) of Regulation 823 (which set out the fees a government organization is entitled to charge for providing access to records), the content of previous orders issued by my office and the representations of the parties, including the affidavit of the Senior Superintendent of Business. My conclusions are as follows:

- (1) With respect to the first request, the Board states that its records management systems are not structured in a way which allows expense-related information to be extracted in a customized fashion. For this reason, the Board indicates that it has taken approximately 40 hours to locate all of the expense-related information which the appellant seeks. I accept the Board's evidence and find that the search fee of \$650.09 has been calculated in accordance with the provisions of the Act. In making this determination, I have considered that the Board charged the great majority of search time at \$15.25 per hour rather than the \$30 maximum rate set out in the regulations.
- (2) The Board has determined that there are 520 pages of records which are responsive to the first request. The Board is entitled to charge \$0.20 a page for photocopying for a total of \$104.
- (3) With respect to the second request, I accept the Board's evidence that there are 1746 individual pages that are responsive to the request. Therefore, it is entitled to charge photocopying fees of \$.20 a page for a total of \$349.20. The Board indicates that it decided not to charge for search time since the cheque register for the Board is presented regularly at public meetings of the Board. I compliment the Board for taking this approach.

ORDER:

1. I uphold the Board's revised fee of \$754.09 to complete the first request and \$349.20 to complete the second request.
2. In the event that the appellant pays the fees, prior to disclosing the records, I order the Board to delete the credit card numbers of the trustees and any information about identifiable individuals who were involved with the Board in other than a business, professional or employment capacity.

Original signed by: _____
Tom Wright
Commissioner

August 18, 1995

POSTSCRIPT:

I would like to use this order as an opportunity to comment more generally about the freedom of information part of Ontario's freedom of information and privacy acts. Before doing so, I wish to make it clear that my comments are not directed specifically to the York Board or to the other Metro Toronto-area school boards that received similar requests.

In his representations, the appellant states that taxpayers should have the right to scrutinize the employment-related expenditures of school trustees. I agree.

The appellant asserts that, by charging fees to obtain such information, school boards are frustrating this legitimate objective.

It is also the appellant's view that information relating to school board expenditures (and to payments made to trustees in particular) should be readily accessible. He submits that, where a school board's records management system is not organized in a way which permits information to be provided inexpensively, the board, and not the requester, should bear the costs associated with disclosing the information.

Previous orders made by this office have recognized that the Act contemplates a user pay principle for providing access to general records. Other orders have held that government organizations are not obliged to maintain records in such a manner as to accommodate the various ways in which a request for information might be framed.

I believe, however, that these principles must be applied flexibly, taking into account the nature of the information being sought and how frequently requests of a particular type are received.

This viewpoint was effectively expressed by Assistant Commissioner Irwin Glasberg in Order M_372 where he commented on the increasing public demand for information on the expenses incurred by government officials. The Assistant Commissioner said:

... [T]he Board should be aware that government organizations across the province are now regularly receiving access requests regarding the expense accounts of senior officials. This is part of a trend where members of the public are seeking to hold institutions of all types more accountable for the expenditure of tax dollars. That being the case, I would strongly encourage the Board to reassess the manner in which it maintains its expenditure related records so that these documents can be retrieved more easily and at a minimal cost to requesters.

I share this view, but would take it one step further. I believe it's time for all government organizations to make expenditure-related information routinely available to the public. Such information should include the expenses incurred by senior officials for which they will be reimbursed by the organization. In my view, this "routinely available" approach has equal application to all general records held by government.

For some government organizations a move in this direction will mean rethinking the way in which they maintain expenditure and expense-related information and other general records. I see this as a positive step and one which has advantages for both government organizations and the public.

Returning to the facts of these appeals, as mentioned, the appellant made a series of similar requests to school boards in the Metro Toronto area. In addition to the appeals involving the York Board, my office received appeals from fee estimates issued by six other boards.

As a matter of interest I looked at the amount of the **original** fee estimate issued by each of the other six boards. I was astonished to find that the virtually identical request resulted in fee estimates which ranged from over \$25,000 down to \$400.

My purpose in referring to the disparity of fees is not to question how they were calculated - this has been dealt with in orders issued in the individual appeals. It is simply to point out that, for a number of reasons, it seems to make little sense that any government organization, school board or otherwise, would find it necessary to charge a requester \$25,000 for basic expense-related information.

For instance, even assuming that a requester was willing to pay, does any government organization want to expend more than \$25,000 worth of scarce resources to process a freedom of information request for such basic information?

In addition, in my view, the idea that a member of the public could be asked to pay up to \$25,000 to find out how a public institution spends tax dollars is at direct odds with the fundamental purpose of all freedom of information laws - accountability to the public. Such circumstances represent a clarion call for fresh approaches.

At a time when the financial resources available to public organizations continue to decline, the need for creativity in the administration of programs is even more pressing. Freedom of information is no exception - there are straightforward, inexpensive solutions.

For example, I'm aware of a mayor of a sizeable Ontario city who has a copy of each of his expense statements placed in a file available to anyone who asks for this information. This is a low-tech, inexpensive way to respond to inquiries from the public for this type of information. But its simplicity hides a fundamental truth. This mayor clearly recognizes that this type of information should be readily available to the public as an integral part of the day-to-day business of the city.

For me, it is the attitude demonstrated by this mayor toward the public's right of access to information that is the key to achieving a vibrant, cost-efficient freedom of information system in Ontario. This mayor has thought about the public's right of access to information, as well as the type of information in which the public is likely to be interested.

I believe that the routine disclosure of various types of government-held information will assist government organizations to respond to requests for information more effectively, more efficiently and at significantly less cost. Or to say it in plain words, routine disclosure makes access to information better, faster and cheaper.

To this point my comments have been directed toward government organizations. In my opinion this is appropriate since these organizations maintain the records and, therefore, can determine how they are best made available to the public. However, in my view requesters also have a responsibility when making requests.

The reality is, as unfortunate as it may be, that government organizations do not have an unlimited capacity to respond to freedom of information requests. Therefore, as I have said publicly on numerous occasions, users of the freedom of information system have an obligation to be reasonable; to be conscious of the financial constraints under which all government organizations are operating.

For example, users can consider viewing records, instead of asking for copies. They can narrow their requests and clarify exactly what information they are seeking.

Finally, I would like to comment on what I see as the role of my office in the freedom of information system.

As the oversight agency for both the provincial and municipal freedom of information acts, my office is a significant player in seeing that the acts work as the Legislature intended. I firmly believe that one of our most important objectives is to do everything possible to make use of the acts a matter of last resort.

This is why we have begun to focus on systemic solutions as well as the one-off processing of appeals. For example, a group of access and privacy professionals from municipal and provincial government organizations, the Freedom of Information and Privacy Branch of Management Board Secretariat, and my office have published a series of guidelines to help government organizations determine which records could be routinely disclosed.

I am confident that through the combined commitment of government organizations and this office, Ontarians will continue to benefit from a freedom of information system which is second to none.