



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

ORDER M-598

Appeal M_9500223

The Board of Education for the City of Hamilton



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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 City of Hamilton (the Board) received a request for access to "a print-out" showing the deductions from payments by the Board to its occasional teachers which were remitted to the teacher's bargaining agent between 1988 and the date of the request. The Board determined that the cost of providing the responsive records to the requester would be \$2,064 and asked her to remit payment of 50% of the estimated fee, in accordance with section 6 of Regulation 823/90 made under the Act.

The requester appealed the fee estimate provided to her. The Board subsequently provided the appellant with a revised fee estimate in the amount of \$3,528. The appellant then requested the Board to waive the fee in accordance with section 45(4) of the Act. The Board refused to grant the appellant a fee waiver and the appellant appealed this decision to the Commissioner's office as well.

There are, therefore, two issues to be determined in this appeal. First, I must determine the appropriateness of the fee estimate provided by the Board and, second, I must decide if the Board was correct in refusing to grant the appellant a fee waiver.

DISCUSSION:

CALCULATION OF FEES

The Board indicates that the retrieval of the information in the format sought by the appellant would require it to create a computer program. It submits that the creation of a new program is necessary because the existing computer printouts include the deductions made from evening and skill school teachers, as well as occasionals. In order to reduce the existing data to include only occasional teachers, it would be necessary to write a new computer program designed to capture only the information which the appellant seeks. It estimates that the time required to write the program would be 20 hours. The dollar value of the time spent creating the necessary program would, as described in the Board's correspondence with the appellant, be \$540 (20 hours x \$30 less 2 free hours).

In addition, the Board submits that the search time necessary to locate the requested information for the years 1993 to 1995 would be 38 hours, along with 6 hours to sever the personal information contained therein. For the years 1988 to 1992, the Board estimates that it would take one hour to locate the correct computer tapes and 33 hours to actually run and retrieve the requested information, using the new computer program. The total estimated time incurred for actual search and record preparation would, accordingly, be 78 hours. The dollar value of the time spent searching for and preparing the record for disclosure is, according to the calculations of the Board, \$2240 (78 hours x \$30).

Further, the Board submits that it would be required to make 390 pages of photocopies to respond to the request, for a total of \$78 (390 pages x \$0.20).

With her representations, the appellant supplied this office with sample copies of the documents which she is seeking. The sample record is five pages long and lists the monthly deductions made by the Board to evening school and occasional teacher payments which is then remitted to the teachers' bargaining agent. The appellant maintains that the records she is seeking consist only of these monthly reports which have been filed with the bargaining agent since 1988. She submits that there is no need to incur the kind of expense described in the fee estimate provided by the Board as the records already exist in the format which she requested.

The appellant did not share this information with the Board and failed to respond to the many attempts made by the Board to clarify the nature and extent of her request. In my view, the Board was correct in taking the approach that the appellant was seeking only information about union remittances made by occasional teachers and that to extract that information from its records system would entail the creation of a computer program. It is now apparent, however, that the appellant's request may be answered to her satisfaction through the provision of photocopies of the remittances made by the Board for its occasional, evening school and skill school teachers for the requested period.

I will, accordingly, allow the Board to charge a fee for the provision of this information only. In my view, this fee may be calculated as indicated below.

Photocopies

The appellant's documents indicate that the requested printout is five pages long and is remitted to the bargaining agent on a monthly basis. The fee which may be charged is, accordingly, calculated as follows:

$$5 \text{ pages per month} \times 12 \text{ months} \times 6.5 \text{ years} = 390 \text{ pages} \times \$0.20 \text{ per page} = \$78.00.$$

Should greater or fewer copies actually be required, the Board may charge the requisite \$0.20 per page for such copies.

Search and Preparation Time

I am prepared to allow the Board ten hours search time to identify and locate the appropriate responsive records in its computer system. As printouts of the information sought by the appellant are made each month when the remittances are made to the bargaining agent, this information is retrievable without the creation of a new computer program. Search time may, therefore, be charged for eight hours (ten hours less 2 free hours) x \$30 per hour for a total of \$240.

In addition, the Board may wish to sever certain information from the responsive records. In the circumstances of this appeal and considering the nature of the records requested, I am prepared to allow the Board to charge a fee, calculated as follows, for the preparation of the record for disclosure:

$$390 \text{ pages} \times 1 \text{ minute per page} = 5.5 \text{ hours} \times \$30 \text{ per hour} = \$165.$$

The total fees allowed for photocopies, search and preparation time are, accordingly, \$483.

FEE WAIVER

In her fee waiver request, the appellant submits that the Board should waive payment of the fee in the circumstances as to decline to do so would cause her economic hardship. Section 45(4)(b) of the Act states:

A head shall waive the payment of all or any part of an amount required to be paid under this Act if, in the head's opinion, it is fair and equitable to do so after considering,

whether the payment will cause a financial hardship for the person requesting the record;

It has been established in a number of previous orders that a person requesting a fee waiver must justify such a request. The appellant simply submits that the fee waiver is necessary as the payment of the fee will cause her a financial hardship. No further evidence as to her present financial circumstances was provided by the appellant. I am also mindful of the Legislature's intention to include a user pay principle in the Act, as evidenced by the provisions of section 45.

Section 45(4) creates an exhaustive list of the matters the Board is required to consider in determining if a waiver of all or any part of a fee is appropriate. Previous orders have set out a number of factors to be considered to determine whether a denial of a fee waiver is "fair and equitable".

I have carefully considered the Board's representations in light of the factors identified in previous orders, as well as the appellant's request for waiver. I find that a waiver of the fee in the circumstances of this appeal would shift an unreasonable burden of the cost of access from the appellant to the Board. I find, therefore, that the Board's refusal to provide a waiver of the fees to be fair and equitable in the circumstances of this appeal.

ORDER:

1. I allow the charge for search and preparation time in the amount of \$405.
2. I allow the charge for providing photocopies in the amount of \$0.20 per page.
3. I uphold the decision of the Board not to waive the fee.

Original signed by: _____

September 22, 1995

Donald Hale
Inquiry Officer