



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

## **ORDER M-881**

Appeal M\_9600355

**Hamilton-Wentworth Roman Catholic Separate School Board**



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## **NATURE OF THE APPEAL:**

The Hamilton-Wentworth Roman Catholic Separate School Board (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to the awarding of a contract for the construction of a new secondary school. The Board responded by providing the requester with a fee estimate in the amount of \$900, comprising 30 hours of search time. The requester (now the appellant) appealed the amount of the Board's fee estimate.

A Notice of Inquiry was provided by this office to the appellant and the Board. Representations were received from both parties.

## **DISCUSSION:**

### **FEE ESTIMATE**

The request and the subsequent appeal are governed by the following statutory and regulatory provisions:

#### **Section 45(1)**

A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required 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;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

#### **R.R.O. 1996, Regulation 823, Section 6, as amended by Regulation 22/96**

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.

2. For floppy disks, \$10 per disk.
3. For manually searching for a record, \$7.50 for each 15 minutes spent by any person.
4. For preparing a record for disclosure, including severing a part of a record, \$7.50 for each 15 minutes spent by any person.
5. For developing a computer program or other method of producing a record from machine readable record, \$15 for each 15 minutes spent by any person.
6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

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, it 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 has provided a detailed explanation of the searches which are required to locate the records responsive to the request. It will be required to examine records prepared for various meetings, documents in the custody of the Controller of Plant Operations, the Director of Education and records relating to communications between the Board and its consultants on the construction project. These records are physically located in the Catholic Education Centre, the Central Office of Records and the Maintenance Office which are at three separate locations in the City of Hamilton.

The appellant submits that only the Board's actual expenses should be recognized and indemnified. He argues, therefore, that since the search would be undertaken by a Board employee, it would not incur any additional expense in responding to the request.

I find that the Board is entitled under section 45(1)(a) of the Act to recover the costs of every hour spent conducting a manual search for records which are responsive to the request, regardless of the fact that the search is performed by a Board employee. The fee prescribed by Regulation 823, section 6, as amended by Regulation 22/96, is \$30 per hour.

I have reviewed the representations of the parties and am satisfied that the estimated fee provided to the appellant by the Board is reasonable in light of the actual time which will be required to manually search for the requested information in the Board's record-keeping systems.

**ORDER:**

I uphold the Board's fee estimate.

Original signed by: \_\_\_\_\_ December 19, 1996  
Donald Hale  
Inquiry Officer