



Information and Privacy
Commissioner/Ontario

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

ORDER M-1083

Appeal M-9700283

Halton Board of Education

NATURE OF THE APPEAL:

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Halton Board of Education (the Board). The request was for access to the ages of all full-time probationary teachers who were first-time hires by the Board since 1991, in the form of a bar graph by decades of age.

The Board provided the appellant with a fee estimate of \$225 to search for and prepare the information. The details of the fee were set out in the Board's decision letter as follows:

Manual Searching

\$7.50 per 15 minutes per person: estimated 5 hours (includes manual check of birth dates and reporting of relevant information - approximately one minute per name)	\$150.00
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Preparation

Run reports from Personnel system to identify appropriate Elementary and Secondary staff, 1 hour @ \$7.50 per 15 minutes	\$ 30.00
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Assembly and proofing of data, 1.5 hours @ \$7.50 per 15 minutes	\$ 45.00
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The Board also indicated in its decision letter that the following actions would be necessary in order to complete the request:

Manual Searching

(i) Search and locate records, run reports and identify appropriate staff	1 hour
(ii) Check birth dates and record relevant information	5 hours
(iii) Assemble information, proof data, photocopy	1.5 hours

Total Estimated Time	7.5 hours
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The appellant has appealed the fee amount.

A Notice of Inquiry was sent to the Board and the appellant. Representations were received from both parties.

DISCUSSION:

The charging of fees is authorized by section 45(1) of the Act, which states:

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.

Section 6 of R.R.O. 1990, Regulation 823 also deals with fees. It states:

The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act for access to a record:

1. For photocopies and computer printouts, 20 cents per page.
2. For floppy disks, \$10 for each disk.
3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
4. For preparing a record for disclosure, including severing a part of the 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 amount of 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. Although there is no burden of proof specified in the Act with regard to fees, the burden of proof in law generally is that a person who asserts a position must establish it. 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.

Search charges

The Board's submissions are simply a reproduction of its decision letter to the appellant, which I have quoted from above. The only difference is one minor miscalculation and a general point about the impact of staff downsizing over the past 1.5 years. The Board submits:

Staff downsizing over the past 1.5 years has meant that we have no secretarial staff available for this task. It is our intent to hire temporary assistance to complete as much of this task as possible. Where this is not appropriate we will be asking Human Resources and Information Technology staff to address the needs in addition to their regular tasks. We feel that \$30/hour is reasonably conservative considering the implications for our people.

The Board concludes by stating, "The Managers who provided these estimates are knowledgeable and experienced. Again, we feel that the estimates are reasonable."

The Act provides that \$7.50 per 15 minutes (or \$30/hour) spent by a person is the maximum the Board can recover for the task of manually searching to locate a record. The impact of downsizing and the lack of available staff does not make the amount legislated to be charged any more conservative.

The appellant has provided a copy of a response he received from a different Board of Education releasing precisely the same information he requested from the Board, where no fee, aside from the standard \$5 application fee, was charged. The appellant also indicates that the same information was requested from a third Board of Education and was disclosed for a fee of \$22.50. He submits that in light of the fact that other boards can supply the requested information at little or no cost, he is left to conclude that the Board is either terribly inefficient, for which he should not be penalized, or is purposely using the high fee as a deterrent to members of the public who may wish to exercise their legal right to obtain information.

The search charges described in the Act are available with respect to **manual** search activities required to locate a record. The appellant submits, and the responses he has received from other institutions imply, that the amount of time required to locate the record responsive to his request is minimal, as the information is readily available in electronic format within the Board's computer systems. The use of the phrase "run reports from Personnel system" and the suggestion that Information Technology staff may assist in processing the request lead me to conclude that the Board does maintain the responsive information in some kind of electronic format. Additionally, the referenced capability of the Board's Personnel system to "run reports"

is commonly understood as an ability to select fields of data, such as date of birth and date of hire, from a larger database of information to generate a record. This type of electronic search is not manual and does not, in my view, fall within section 6.3 of the Regulation. Accordingly, I find that the Board is not entitled to charge the appellant a search fee for the time spent on this activity under section 45(1)(a).

The Board specifies that the 5 hours of manual search time includes a manual check of birth dates and recording of information, calculated on the basis of approximately one minute per name. These activities relate to information which has already been located and cannot, in my view, be properly included as search activities for the purposes of calculating a fee estimate. Accordingly, I find that the Board is not entitled to charge a fee for these activities under section 45(1)(a).

Preparation Charges

The Board claims 2.5 hours of preparation time to “search and locate records, run reports and identify appropriate staff” and “assemble information, proof data, photocopy”.

Activities associated with “searching and locating records” are not chargeable as preparation costs under section 45(1)(b), but should be considered when assessing search costs under section 45(1)(a). In the circumstances of this appeal, I have found that the Board is not entitled to charge a fee under section 45(1)(a).

In the circumstances of this appeal, time spent by a person running reports from the personnel system would fall within the meaning of “preparing the record for disclosure” under section 45(1)(b) and, therefore, the rate of \$7.50 per 15 minutes established under section 6.4 of the Regulation may be charged. It should be noted, however, that the Board can only charge for the amount of time spent by any person on activities required to generate the reports. The Board cannot charge for the time spent by the computer to compile the data, print the information or for the use of material and/or equipment involved in the process of generating the record.

The Board has not provided any details respecting the activity it describes as “identify appropriate staff”. As the Board has not established the reasonableness of this aspect of its fee estimate, I find it is not entitled to charge preparation fees in association with this activity.

In my view, “preparing the record for disclosure” under subsection 45(1)(b) should be read narrowly (Order 4). It is not appropriate, in my view, to include time spent to “assemble information, proof data” within what is chargeable under section 45(1)(b).

Finally, the Board may not include the time to actually photocopy the records within the calculation of preparation time. The \$.20 per page photocopying charge referred to in section 6.1 of the Regulation is the maximum amount that may be charged for photocopying, which charge includes the cost of an individual ‘feeding the machine’ (Order 184).

In summary, then, I find that the Board is entitled to charge for the costs of preparing the record for disclosure, at the rate of \$7.50 for each 15 minutes spent by any person on activities required

to generate the reports. The Board is not entitled to include in this estimate the time spent by the computer to compile the data or print the information or for the use of material and/or equipment involved in this process. As the Board previously estimated that it would be able to "search and locate records, run reports and identify appropriate staff" in one hour, it follows that to run reports, the only activity for which a charge is allowable, an estimate of less than one hour would be reasonable.

ORDER:

1. I uphold the Board's decision to charge for the costs of preparing the record for disclosure, at the rate of \$7.50 for each 15 minutes spent by any person on activities required to generate the reports, and find that an estimate of less than one hour is reasonable.
2. I find that the remainder of the Board's fee estimate is not reasonable.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ March 9, 1998