



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1090

Appeal M-9700327

Peel District School Board



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NATURE OF THE APPEAL:

The Peel District School Board (formerly the Peel Board of Education) (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for copies of records relating to all real estate transactions that it made from 1983 up to and including 1994. The appellant indicated that this would include all transactions of "Offer to Sell" and "Agreement of Purchase and Sale", as well as any proposed purchases and actual closings from developers. The Board provided the appellant with a fee estimate of \$6500 for all records relating to completed real estate transactions for that time frame. The appellant appealed this fee amount.

During mediation, the Appeals Officer clarified that the only issue in this appeal is the amount of the fee quoted by the Board for **completed** transactions.

With respect to the appellant's request for **proposed** real estate transactions, the parties agreed that the Board will issue another decision letter, and that this is not part of the current fee appeal. If the appellant is not satisfied with the Board's decision respecting the **proposed** real estate transactions, he may appeal that decision to this office and a new appeal file will be opened to address any issues raised by this new appeal.

This office provided a Notice of Inquiry to the Board and the appellant. Representations were received from both parties.

DISCUSSION:

FEES

The charging of a fee 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 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 Regulation 823 (as amended by O. Reg. 22/96) 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.

The Board indicates that complete real estate records are not kept on Board premises, but are in the custody of its lawyers. Along with its representations, the Board has attached an invoice provided to it by its lawyers. On this invoice, the Board's lawyers advise that there are approximately 205 files where lands have been either purchased, sold, exchanged or optioned by the Board between 1983 and 1994 inclusive. The Board explains that most of the files are large, accordion-sized files, and contain most of the transactions in which the Board was involved, such as appraisals, reports, surveys and tests, agreements of purchase and sale, options and options agreements. The Board states further that there are confidentiality requirements in some agreements, and each document must be read to ensure that there are no confidentiality requirements which might affect disclosure. In my view, the Board is implying that part of the cost of preparing the records for disclosure by its lawyers involved determining whether information in them should be disclosed.

The lawyers indicate that at the Board's request, they conducted a search through 10% of the files in order to provide an estimate of the time it would take for them to locate records responsive to the request. The Board indicates that it was advised by its lawyers that the files would have to be retrieved from storage, and that they are not necessarily all stored in the same area. Based on the work involved by staff at the lawyers' office an invoice was sent to the Board as follows:

Cost to pull files from storage

[IPC Order M-1090/April 2,1998]

| | |
|--|-----------------|
| \$3.50 per file x approximately 20.5 files | \$ 71.75 |
| Review of file to determine which documents would be relevant to the request and to photocopy relevant documentation 3/4 of an hour x 20.5 files at \$30 per hour | 461.25 |
| Photocopying Estimate of 30 pages per file at \$.20 per copy \$6 per file x 20.5 files | 123.00 |
| TOTAL | \$656.00 |

The Board indicates that this invoice was received from its lawyers and has been paid. The Board indicates further that based on the sample of 10% of the files, an estimate of \$6500 is not only reasonable but represents the actual cost to it of retrieving the requested records.

The appellant takes the position that the Board should have these records on its own premises. The appellant further surmises that there could not be more than 81 real estate agreements based on a listing which he has of the schools built between 1983 and 1993. He cannot understand why it would take so long to compile a list of 81 "single paged real estate documents".

While I believe that records of financial transactions involving the Board would be better kept in the Board's custody in order to facilitate public access to such information at a reasonable cost, the evidence of the Board is that these types of records are not kept on its premises, and I must accept this evidence. Further, the appellant did not restrict his request to information pertaining to the 81 transactions referred to in his representations. Rather, he requested "all" real estate transactions. Moreover, the appellant has provided no evidence that these records would consist of "single paged" documents.

It is clear that paragraph 6 of section 6 of the Regulation permits the recovery of **any costs** incurred by an institution in locating, retrieving, processing and copying a record **if those costs are specified in an invoice received by the institution.**

The invoiced costs consist of the lawyers' services exclusively for the purpose of processing the request. As indicated above, these costs include retrieving the files, reviewing them for responsive records, determining whether access can be given to them, and photocopying.

In Order P-1536, Assistant Commissioner Tom Mitchinson addressed the issues arising in a similar situation, that is, where an invoice is submitted to an institution for the processing of an access request. He found that in cases where a cost is not recoverable by an institution under the Act, any distinction based on the fact that an activity was done by an outside source and billed to the institution, was not supportable. In this regard, he stated that "the Ministry is not permitted to recover costs through

invoiced charges for activities which would be ineligible for cost recovery if performed internally by Ministry staff." I agree with the Assistant Commissioner's interpretation of this section.

Retrieval costs

In reviewing the costs associated with retrieving the file, I accept the invoiced amount.

Processing costs

Previous orders have found that the time spent reviewing records for release is not an allowable charge under the Act (Orders 4, M-376 and P-1536). Similarly, I find that charges for the time spent by the lawyers in determining what information should or should not be disclosed in accordance with confidentiality requirements are not allowable when included on an invoice. As I indicated above, this activity has been implied by the Board and has not specifically been claimed on the invoice.

Previous orders have also found that the costs associated with photocopying may only be charged once, in accordance with paragraph 1 of section 6 of the Regulation (Orders 184 and M-360). Similar to the reasoning above, I find that the Board is unable to charge more than \$.20 per page for photocopying the record, despite the fact that it has been charged twice for photocopying. In their invoice, the lawyers do not specify how much time was being claimed for photocopying the records.

On its invoice, the lawyers have claimed 3/4 of an hour per file for the activity of reviewing them for responsive records and for photocopying the records. I find that part of this time was spent in reviewing the records for disclosure, which is not an allowable cost. As I indicated above, the Board may not charge the appellant for photocopying other than in accordance with the Regulation. In my view, it would not be unreasonable to expect that 15 minutes per file would be spent on these two activities. Accordingly, I will only allow the Board to recover an amount equal to 1/2 an hour per file for reviewing the file in order to locate responsive records.

Photocopying costs

The amount charged by the lawyers in their invoice is in accordance with the requirements of paragraph 1 of section 6 of the Regulations and is therefore an allowable invoiced cost.

Effect of invoiced costs of sample on final cost

It is clear that the amount of \$656 was invoiced by the Board's lawyers for work done in processing 10% of the files. It is not clear that the remaining files are of an equal size to those sampled, thus requiring the same amount of work. However, in my view, this is a reasonable approach to take as a basis for determining an estimate of the amount the appellant can expect to be charged for processing his entire request. If the appellant agrees to pay the estimated fee and the Board proceeds to have its lawyers process this request, the appellant may only be charged for the actual time spent in locating responsive records as outlined above.

ORDER:

1. I uphold the Board's charges for retrieving and photocopying the records.
2. I uphold the Board's charges for processing costs at the rate of 1/2 an hour per file.
3. I do not uphold the Board's charge of \$656 for actual invoiced costs.
4. I do not uphold the Board's charge of \$6500 for proposed invoiced costs.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ April 2, 1998