



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1641

Appeal MA-020152-1

Peel District School Board



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NATURE OF THE APPEAL:

An individual asked the Peel District School Board (the Board) for records related to the ten-year contract the Board entered into on March 1, 2000 with a named company. Under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), he requested these records specifically:

1. the Request for Proposal and other tender documents provided to prospective bidders for the contract
2. a list of the bidders
3. a list of the companies who submitted bids or proposals in response
4. the successful bids and proposals
5. a copy of the contract ultimately finalized between the Board and the company

Because disclosure of Records 4 and 5 could affect the named company's interests, the Board told the individual that it would notify the named company about the request and give it the opportunity to make representations.

In the meantime, the Board also searched for the remaining Records 1, 2 and 3, which were unrelated to the company. The Board informed the individual that no such records existed. The Board then provided the appellant with a fee estimate of \$165 to respond to his request.

The individual asked the Board to waive all fees except for those assessed for photocopying of the records. He contended that fees should be waived under sections 45(4)(b) and (c) of the *Act*. He argued that payment of the fees would cause him financial hardship because he was a private citizen who would not gain financially by release of the records. He also argued that his intended dissemination of the records would benefit public health and safety.

The Board refused to waive the fees so the individual launched an appeal.

During mediation, the Board finally agreed to reduce its fee estimate to \$100 but maintained its denial to waive fees altogether.

The individual (now the appellant) appeals only the denial of the fee waiver request.

Because numerous orders of this office have stated that it is the requester's responsibility to provide adequate evidence to support a claim for a fee waiver, I sought representations from the appellant first. I received detailed representations from the appellant, all of which I shared with the Board. I then provided all of the Board's representations to the appellant for his reply. I have considered all of the representations before me.

CONCLUSION:

It is not fair and equitable to waive the fees in the circumstances of this appeal.

ANALYSIS:

General

An institution can waive fees under the provisions of the *Act*. Where an institution decides not to waive fees under section 45(4), an appellant can ask this office to review that decision. This office will consider whether it is fair and equitable to waive fees after considering the criteria set out in section 45(4) which are these

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1)
- (b) whether the payment will cause a financial hardship for the person requesting the record
- (c) whether dissemination of the record will benefit public health or safety, and
- (d) any other matter prescribed in the regulations

At the adjudication stage, the appellant abandoned the argument that payment of the fees would cause him financial hardship [criterion (b)]. Instead, he asserted only that fees should be waived because his intended dissemination of the records would benefit public health and safety [criterion (c)].

Even where an appellant can show that he meets one or more of the listed criteria, he must still show that overall it is *fair and equitable* to waive the fee in the particular circumstances. Previous orders of this office outline the factors an adjudicator should consider in determining whether a waiver of fees is fair and equitable. These factors are

- the manner in which the institution attempted to respond to the appellant's request
- whether the institution worked with the appellant to narrow and/or clarify the request
- whether the institution provided any documentation to the appellant free of charge
- whether the appellant worked constructively with the institution to narrow the scope of the request
- whether the request involves a large number of records
- whether or not the appellant has advanced a compromise solution which would reduce costs, and

- whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the Ministry

(See Orders P-474, P-890, P-1183, P-1259, P-1557, PO-1953-F and PO-1962).

Even if I assume, without concluding, that the appellant has provided sufficient evidence that his intended dissemination of the records will benefit public health or safety, I am not persuaded that it is fair and equitable to waive the fees in this case.

I have considered the factors pertinent to determining this issue and find that they do not favour the appellant:

- The Board responded to the appellant's request in a timely fashion. The appellant made his request for information by letter dated February 23, 2002. In mid March 2002, the Board asked the appellant to clarify his request. In early April, the Board informed the appellant that it intended to notify the affected third party. Finally, by letter dated April 24, 2002, the Board provided its decision including the fee estimate.
- The Board responded to the appellant's fee waiver request also in a timely manner (within one week) and reduced the fee by \$15. The Board had charged this amount to search for Records 1, 2 and 3, which did not exist.
- While the appellant advanced another solution to reduce the cost, I am not satisfied that the Board's workload would have been made lighter. The appellant suggested that the Board could provide him with
 - sales figures for three specific years broken down by product type
 - documents presented to members of school committees indicating product options available to each school and commissions associated with each type
 - promotional materials

In fact, these documents are significantly different from those requested in the first place.

- During mediation, the Board further reduced the fee estimate to \$100 in an effort to resolve the appeal.
- The fee itself is not exorbitant and the appellant is not impecunious. In fact he abandoned his claim of financial hardship and agreed that the fee estimate was a reasonable one.

When I consider these factors in light of the Legislature's intention to include a user pay principle in the *Act*, I conclude that it is not fair and equitable to waive the fees in the circumstances of this appeal.

ORDER:

I uphold the Board's decision not to waive the fee.

Original signed by:
Rosemary Muzzi
Adjudicator

April 29, 2003