



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

ORDER M-66

Appeal M-9200113

Township of Flos



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

On October 1, 1992, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and [IPC Order M-66/November 26, 1992] make orders under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

BACKGROUND:

The Township of Flos (the Township) received two requests under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records. The first request was duplicated in the second request, which consisted of seven parts. The second request was for access to records regarding roads, building permits, properties, property owners, Township Council members, records of the requester's meeting with the Council, and correspondence regarding the requester. In response to the first request (and the duplicate part of the second request), the Township charged a fee of 40 cents for photocopying responsive records. In response to one part of the second request, the Township issued a fee estimate of \$190.00 for search time and photocopying responsive records.

The requester asked for a waiver of fees on the grounds that a waiver would be in the public interest. The Township denied the appellant's request for a fee waiver. The requester appealed the Township's calculation of the fees and the decision not to waive the amount of the fees.

During mediation of the appeal, the appellant agreed to discontinue his appeal in respect of the photocopying fee of 40 cents applied to his first request (and the duplicate part of the second request). Further mediation of the appeal was not successful, and notice that an inquiry was being conducted to review the Township's decision was sent to the Township and the appellant. Written representations were received from both parties.

ISSUES:

The issues arising in this appeal are:

- A. Whether the Township's decision to charge a fee under section 45(1) of the Act is in accordance with the terms of the Act.
- B. Whether the Township's decision not to waive the fee under section 45(4) of the Act was in accordance with the terms of the Act.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the Township's decision to charge a fee under section 45(1) of the Act is in accordance with the terms of the Act.

Section 45(1) of the Act reads:

If no provision is made for a charge or fee under any other Act, a head shall require the person who makes a request for access to a record to pay,

- (a) a search charge for every hour of manual search required in excess of two hours 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; and
- (d) shipping costs.

Sections 6(1) and 6(3) of Reg. 823, R.R.O. 1990, read:

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.
- 3. For manually searching for a record after two hours have been spent searching, \$7.50 for each fifteen minutes spent by any person.

The Township submits that, since the issuance of the fee estimate, the search has been conducted. Accordingly, its representations are based on actual search time and actual number of photocopies rather than estimates.

The Township indicates that a total of eight hours was spent reviewing by-laws, road maintenance and construction budgets, correspondence with the Ministry of Transportation, minutes of the Municipal Council, the planning file for the appellant's property, and property roll files searching for records responsive to part of the appellant's request. This search was

conducted by the Municipal Clerk-Treasurer, who is responsible for maintaining the Township's corporate records, including those which were searched. The Township's calculation of the search charge for this part of the request is:

$$(8 \text{ hours} - 2 \text{ hours}) \times (\$30.00) = \$180.00$$

The Township's original fee estimate for photocopying the records was based on an estimated 50 pages of responsive records. During the actual search, the Township indicates that 139 pages of responsive records were located. The Township's calculation of the photocopying charge for these records is:

$$140 \text{ pages} \times 20 \text{ cents per page} = \$28.00$$

In his representations, the appellant has not made reference to the calculation of the fees.

I find that the Township is entitled to charge fees for costs incurred in circumstances outlined in section 45(1). The search charge has been calculated in accordance with section 6(3) of Reg. 823, R.R.O. 1990, and is authorized under section 45(1)(a).

The amount of the copying charge has been calculated on the basis of 140 pages of responsive records, however, the Township has indicated that it has located 139 pages which are responsive. In accordance with section 6(1) of Reg 823, R.R.O. 1990, and section 45(1)(b), the Township is authorized to charge 20 cents per page. Accordingly, if the Township photocopies only 139 pages, the allowable photocopying charge is \$27.80.

ISSUE B: Whether the Township's decision not to waive the fee under section 45(4) of the Act was in accordance with the terms of the Act.

The appellant has requested a fee waiver under sections 45(4)(c) and (d) of the Act. These sections read:

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,

- (c) whether dissemination of the record will benefit public health or safety; and
- (d) any other matter prescribed in the regulations.

The Act is silent as to who bears the burden of proof in respect of section 45(4). However, it is a general rule that the party asserting a right or duty has the onus of proving its case.

The appellant submits that the Township's decision to charge a fee is discriminatory and, directly or indirectly, health and safety is involved.

The record relates to a property matter in which the appellant has an interest. Aside from stating that there was group representation made on the matter, the appellant has not demonstrated that there will be any **public** benefit and, in particular, no benefit to public health and safety by the dissemination of records relating to a property matter. Accordingly, in my view, the appellant has not discharged the burden of proving that the Township's decision not to waive the fee under section 45(4) of the Act was not in accordance with the terms of the Act.

ORDER:

I uphold the Township's decision.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ November 26, 1992