



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

ORDER M-139

Appeal M-9200390

Ottawa-Carleton Regional Transit Commission



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ORDER

BACKGROUND:

The Ottawa-Carleton Regional Transit Commission (OC Transpo) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the pension policy agreement between OC Transpo and the Standard Life Assurance Company, and for the pension benefits paid out to retired members of the pension plan. OC Transpo was uncertain as to the exact nature of the request and, consequently, as to what records would meet the request. In the course of attempting to resolve this uncertainty, OC Transpo provided two fee estimates. The requester appealed OC Transpo's second fee estimate.

Mediation was successful to the extent that the parties were able to agree on what records would satisfy the request. These are described as follows:

1. Standard Life Policy Numbers 10253, 11491P1F1A and the covenant to the latter.
2. Monthly reports (59 in total) prepared by the pension fund trustee, Royal Trust, for the period January, 1987 to November, 1991.
3. Quarterly reports (24 in total) prepared by Royal Trust for the period January, 1987 to December, 1992.
4. Annual Actuarial Reports and Financial Statements (6 of each) prepared by Royal Trust for 1987-1992.

Once the responsive records had been identified, OC Transpo agreed to provide the appellant with access to the records, subject to the severance of personal information and the payment of fees by the appellant. The appellant agreed to the severance of the personal information but not to the fee estimate issued by OC Transpo. OC Transpo indicated that the records responsive to the request have not been produced; however, it estimated that they would consist of approximately 970 pages. It issued a new fee estimate, as follows:

Manual search to locate record in excess of 2 hours (\$7.50/15 minutes)	\$ 60.00
Cost of preparing Standard Life policies and covenant for disclosure (\$7.50/15 minutes)	\$ 30.00
Cost of preparing Royal Trust documents for disclosure (\$7.50/15 minutes)	\$ 540.00

Photocopy costs (\$0.20/page)	\$304.40
TOTAL	<u>\$934.40</u>

The parties agreed that the appeal would proceed to inquiry on the basis of the above fee estimate rather than on those previously produced by OC Transpo. Notice that an inquiry was being conducted was given to the appellant and OC Transpo, and written representations were received from both parties.

ISSUES:

The sole issue arising in this appeal is whether the amount of the estimated fees was calculated in accordance with section 45(1) of the Act.

SUBMISSIONS/CONCLUSIONS:

Section 45(1) of the Act reads as follows:

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.

Section 6 of Regulation 823, under the Act states:

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 for each disk.
3. For manually searching for a record after two hours have been spent searching, \$7.50 for each fifteen minutes spent by any person.
4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each fifteen 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 fifteen minutes spent by any person.
6. For any costs, including computer costs, incurred by the institution in locating, retrieving, processing and copying the record if those costs are specified in an invoice received by the institution.

OC Transpo indicates in its representations that the fee estimate was calculated based on a representative sample of the records.

In reviewing OC Transpo's fee estimate, my responsibility under subsection 45(5) of the Act is to ensure that the amount estimated is reasonable in the circumstances. In this regard, the burden of establishing the reasonableness of the estimate rests with OC Transpo. In my view, OC Transpo 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 Charge

In its representations, OC Transpo states that a total of 4 hours would be required to conduct a manual search of the records; however, it has not justified the search time or explained where the searches would be conducted and how extensive they are. I have not been provided with any evidence that 4 hours would be required to produce the records and, therefore, OC Transpo is precluded from charging any fee for searching the records.

Cost of Preparing the Record

OC Transpo has not provided me with the Standard Life policies and covenant, nor with any other evidence in support of its one hour of preparation time, and I disallow this portion of the fee estimate.

OC Transpo has determined, based on a review of a sample of the Royal Trust documents, that 18 hours would be required to prepare the records for disclosure. It states that this time is required to "extract the required pages from the Royal Trust Pension documents from 24 quarterly reports and 59 monthly reports and to identify and sever personal information from these reports and also from a few of the Actuarial Reports." It states that it takes between 1 to 2.5 minutes per page to complete this exercise. Assuming the figure of 970 pages to be accurate, it has allowed approximately 1.1 minutes (18 hours for 970 pages) for each page of the record to carry out the exercise described above, whether or not the page contains a severance.

OC Transpo has not provided me with any details as to what the nature of the exercise of "extracting the required pages" consists of, therefore, in the absence of sufficient information, I am unable to take into account any amount of time claimed for this exercise.

With respect to preparation fees relating to severing personal information, OC Transpo estimated that approximately 552 of the 970 pages will contain severances. I have reviewed the sample pages containing personal information, on which the severances have been indicated, that were provided to me by OC Transpo. They contain an average of 3.3 severances per page. Moreover, the format of the pages and the clarity of the personal information contained on them make it doubtful, in my opinion, that any time greater than the 1.1 minutes per page figure used by OC Transpo would be required.

In my view, the nature of the severances required is such that the act of severing should not require much time. I have therefore concluded that it would be reasonable to allow 1 minute for the preparation of each page regardless of the number of severances it contains. This amounts to a preparation fee of \$0.50 per page and I will allow in this order for adjustments to reflect the actual number of pages which contain severances and are ultimately provided to the appellant.

Costs for Copying the Record

In its representations, OC Transpo states that 552 pages of the record which require severances require two photocopies each. Thus, it totalled the estimated number of pages to be photocopied to 1,522. At \$0.20 per page, it calculated the photocopy charges to be \$304.00.

OC Transpo has provided me with no details or explanation as to why two copies would be required to be made to disclose the pages of the record containing severances. If the appellant is going to receive 970 pages, this means that OC Transpo is charging approximately \$0.31 per page, or \$0.11 above the rate allowed under the Regulations. Accordingly, I will allow a fee of \$0.20 for each page provided to the

appellant.

ORDER:

1. I do not uphold OC Transpo's decision to charge a search fee.
2. I allow OC Transpo to charge \$0.50 preparation cost for each page of the record to be disclosed to the appellant that contains a severance.
3. I allow OC Transpo's photocopying cost at a rate of \$0.20 per page for each page of the record to be disclosed to the appellant, whether or not the page contains a severance.

Original signed by: _____

Asfaw Seife
Inquiry Officer

_____ June 4, 1993