



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-168

Appeal M-9200174

Township of Mariposa



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ORDER

BACKGROUND:

The Township of Mariposa (the Township) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) from an individual who represents a local taxpayers coalition. The request was for certain materials identified in attachments to the request. The attachments numbered eight pages and listed specific items from six separate meetings held between February 10 and March 16, 1992. The request letter specified that the request "should include but was not limited to relevant documents and correspondences regardless of form ... including all documents and notes of Council."

The Township responded to the request by providing a fee estimate and advising that "our preliminary view indicates that some of the following exemptions might apply to the records you have requested: solicitor-client privilege ... and personal information." The requester appealed the Township's decision.

In the course of processing this appeal, the appellant also requested from the Township a waiver of the fee. The Township denied this request.

During the processing of the appeal, the parties to the appeal have agreed that the request is narrowed to records held by individual Councillors with respect to matters specified in the original request and that the issues to be determined are the ones which relate to the Township's fee estimate. The Township has agreed that the responsive records would be in its custody and control and, subject to possible severances and the payment of the fees, access will be given to the appellant.

Further mediation was not successful and notice that an inquiry was being conducted to review the Township's decision regarding the fees was sent to the appellant and the Township. Representations were received from both.

ISSUES/DISCUSSION:

The issues arising in this appeal are as follows:

- A. Whether the amount of the estimated fees was calculated in accordance with section 45(1) of the Act.
- B. Whether the head's decision not to waive fees was in accordance with section 45(4) of the Act.

SUBMISSIONS/CONCLUSIONS

ISSUE A: Whether the amount of the estimated fees was calculated in accordance with section 45(1) of the Act.

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(1) of Regulation 823 under the Act, states, in part:

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.
- 4. For preparing a record for disclosure, including severing a part of the record, \$7.50 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.

In its decision letter, the Township stated:

The fee estimate is \$390.00. The details of the estimate are:

For each Council member manually searching for the records and preparing the records for disclosure, including severing parts of the record, if required - 3 hours time for each for 5 Council members = 15 hours less 2 hours = 13 hours @ \$7.50 for each 15 minutes = \$390.00.

In its representations, the Township explained:

... In preparation for Council Meetings, the Clerk prepares an agenda and attaches to it various reports, various items of business, and any correspondence which is pertinent to the Council. Depending upon the style, training, background, interest, or the particular mood, a Councillor may or may not make any notes on any or all of the items before she/he. Further, the Councillor may or may not choose to file any or all of the items. No Councillor files any information at the Township office. No Councillor is provided with any assistance to establish or maintain a filing system in their residence but each Councillor does retain certain of the items which have been discussed and some Councillors do make notes on the items. To provide access to the appellant will require each Councillor to locate, sort, search and repeat many times. Few, if any, have an organized record system and accordingly the task will be onerous and time consuming and for some Councillors, the number of documents located will be few in deed ...

...

It is possible that one or more of the five Councillors may have none of the correspondence or documents; or, which is more likely, they may have the correspondence or documents but with no minutes or notes. ... the appellant will be given access, but it is quite possible that in one or more cases, i.e. with one or more Councillors, there may be no correspondence or records to access. We simply do not know at this time and we will not know until a search is made.

The Township states that the cost of "preparation" includes the costs of locating documents responsive to the request, removing the documents or correspondence from the file and bringing such documents to the Township's office. The Township indicates that the cost of photocopying the records is not included in the fee estimate because the Township is not able to determine the number of pages that would be responsive to the request at this time.

The Township has provided no further details or explanation of the estimate. It has not justified the preparation costs, or explained the basis for determining the amount of time required to search for the records. In fact, it is clear from the Township's representations that it has not yet determined whether the responsive records exist, which makes it difficult to understand how fees could even be estimated.

The Township has estimated three hours time per councillor to locate, prepare, and deliver the records to

the Township. The requested records all relate to six meetings held during a six-week period in 1992. It is my view that the estimate of three hours per councillor is not a reasonable estimate, particularly in light of the Township's own admission that there may be few or no records responsive to the request. In addition, the Township has included in the search time the time for preparing the records for disclosure. In my view, the time taken to prepare the records for disclosure cannot be included with the search time. These are two separate items in the Act and the Township should provide a breakdown of the fees according to the provisions of the Act and the Regulations.

In my view, the Township has not provided sufficient evidence to substantiate its fee estimate. I find that the 15 hour estimated time to locate, prepare, and deliver the records to the Township office is not reasonable, and has not been calculated in accordance with section 45(1) of the Act. Accordingly, I find that the amount of the estimate does not comply with the requirements of section 45(1) of the Act, and the Township is precluded from charging any fee for processing the appellant's request.

Because of the manner in which I decided Issue A, it is not necessary for me to deal with Issue B.

ORDER:

1. I do not uphold the Township's decision to charge a fee for the processing of the appellant's request. I order the Township to issue a final written notice to the appellant as to whether or not access to the requested records will be given, within 15 (fifteen) days of the date of this order, and without recourse to a time extension.
2. In order to verify compliance with this order, I order the Township to provide me with a copy of the decision letter sent to the appellant pursuant to Provision 1 within 20 days of the date of this order, **only** upon request.

Original signed by: _____
Asfaw Seife
Inquiry Officer

_____ July 28, 1993