



Information and Privacy
Commissioner/Ontario

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

ORDER M-203

Appeal M-9300068

Metropolitan Licensing Commission



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ORDER

On September 20, 1993, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

BACKGROUND:

The Metropolitan Licensing Commission (the Commission) received a request pursuant to the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records listing the taxi license plates owned by 44 named licensees on a particular date in 1975, at which time each of these owners were granted additional licenses. With respect to one of the licensees, the requester also sought access to an affidavit provided by the licensee to the Commission when the additional license was granted in 1975. The Commission responded by informing the requester that the estimated fee for processing the request would be \$1095, which is comprised of:

- | | | |
|----|---|----------|
| 1. | Search costs beyond 2 hours
(\$30.00 per hour) | \$840.00 |
| 2. | Photocopy costs
(\$0.20 per page) | 15.00 |
| 3. | Preparation of the record
(\$30.00 per hour) | 240.00 |

The Commission requested a deposit of \$547, and informed the requester that exemptions under section 14 of the Act might apply to some or all of the records requested.

The requester appealed the amount of the fee estimate.

Mediation of the appeal was not successful and notice that an inquiry was being conducted to review the decision of the Commission was sent to the appellant and the Commission, both of whom submitted representations.

ISSUE:

The sole issue in this appeal is whether the amount of the estimated fee 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.

In appealing the amount of the fee estimate provided by the Commission, the appellant maintains that the search and preparation charges are unreasonable because the Commission has the information in its possession. The Commission has indicated that it most likely has the requested information, though not in the form of a list, as sought by the requester. The issue is, however, whether the Commission's estimate of the cost to take information from a number of sources and create the requested list is reasonable.

I propose to deal with each component of the Commission's fee estimate individually.

1. Search charges:

The Commission submits that, on the basis of the initial search of records which it undertook to locate documents responsive to the appellant's request, 30 hours of manual search time would be required to search the records **and** compile the list. The actual list of the number of cab plates owned by various individuals in 1975 no longer exists, making it necessary for the Commission to search various sources and re-create the original list. The computerized record-keeping system now in use was not installed until 1980. It would, therefore, be necessary to manually search the following records containing the requested information for the years back to 1975:

- 1. Commission minute books
- 2. Issuing files (active licenses)
- 3. Dead issuing files (non-active licenses)

4. Cab owner index files
5. Shareholder index cards
6. Company shareholder files

The Commission also notes that the age of the information requested, 18 years, exceeds its record retention requirements for several of the sources which it would have to consult. It states that:

Because the Institution did not retain all of its records for the 18 year period at issue in this request it is not possible to fulfil this request quickly and easily. Given that cab owner and shareholder cards are retained for five years past the time they are superseded and plate files are disposed of at the discretion of the department head, plates that have changed hands prior to 1988 cannot be traced back to 1975 through these files. Alternative sources have to be consulted in these cases. This increases the manual search time without a guarantee that all pertinent information will be located.

I have carefully reviewed the Commission's submissions, including representative samples of shareholder index cards, company shareholder files and lists of co-op cab owners, and I am satisfied that considerable search time will need to be expended in order to locate the information in question.

With respect to the appropriateness of the fee estimate, I agree with the statement of former Commissioner Sidney B. Linden in Order 31 which I have excerpted below. While Order 31 dealt with section 57(1) of the provincial Freedom of Information and Protection of Privacy Act, section 57 of the provincial Act is very similar in wording to section 45(1) of the Municipal Freedom of Information and Protection of Privacy Act. Order 31 states the following:

In this case, the major component of the estimated fee is the costs related to locating the record for disclosure (subsection 57(1)(a)). In calculating these search costs, the institution took into account the time involved in locating files which are properly filed and/or accounted for and the number that are currently in use whether properly accounted for or not. While the institution's filing system may not be the most efficient, the Act does not mandate a requirement on the part of the institution to keep records in such a way as to be able to accommodate any of the myriad of ways in which a request for information might be framed.

In this appeal, a situation similar to that described in Order 31 exists. The Commission's filing system does not lend itself easily to searches for records dating back to 1975. A request for information which pre-

dates the computerization of the Commission's records necessitates a lengthy search of many sources due to the inefficiency of the Commission's record-keeping systems.

In reviewing the Commission's fee estimate, however, I find that the Commission has failed to distinguish between the charge for manual search time provided for in section 45(1)(a) of the Act, and the cost of preparing the record for disclosure provided for in section 45(1)(c). Both search time and preparation time have been included in Item 1 of the Commission's fee estimate. The cost of preparing the record for disclosure has also been provided for under item 3, and to permit an allowance for preparation under item 1 would result in a fee being charged for the same work twice.

Given the number and variety of the records to be searched I am prepared to allow an estimated twenty hours of manual search time under item 1.

2. Photocopy charges:

In its decision letter, the Commission estimated photocopying charges of \$15. It reduced this figure to \$5 in its submissions, based on the cost of reproducing only the pages of the final list, once it is compiled. I am of the view that this cost was calculated in accordance with section 45(1) of the Act.

3. Preparation of the record:

The Commission submits that, because of the nature of the records, it must create a new list containing the names of the 44 licensees and the cab plates that each licensee owned in 1975. It estimates that preparing this list, including formatting, typing and proof reading, will require eight hours.

As noted above, I have excluded the cost of preparing the records from item 1 of the fee estimate. This cost is not, technically, the cost of "preparing the record"; rather, it is the cost of compiling a new record containing the information which is responsive to the request. In my opinion such an activity is entirely in keeping with the intention of section 45 as it is, in these circumstances, the cost of putting the information requested into the form asked for by the requester. The time spent preparing a record for disclosure may also include the time needed to sever any information which may fall within the exemption provided by section 14 of the Act.

I am satisfied that the Commission's estimate of eight hours for preparation, including the time spent compiling the list, formatting, typing, proof-reading and severing information is reasonable.

ORDER:

I order that the amount of the allowable fees be \$785, comprising the following:

[IPC Order M-203/October 22, 1993]

1.	Manual search charges (18 hours) (beyond two hours)	\$540.00
2.	Photocopying charges	5.00
3.	Preparation charges (8 hours)	240.00

Original signed by: _____

Donald Hale
Inquiry Officer

_____ October 22, 1993