



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-272

Appeal M-9300403

City of Scarborough



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ORDER

BACKGROUND:

The City of Scarborough (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for "a copy of all correspondence received by the City's Planning and Building Department relating to [the requester]". Due to the broad nature of the request and the fact that City files are not maintained according to the names of individuals, the City contacted the requester to determine whether the request could be narrowed or clarified.

The requester advised the City that he was looking for any correspondence relating to the Malvern Community and the Neilson Industrial Districts. The requester further indicated that he was interested in files pertaining to zoning, official plans and subdivision matters with respect to the months of May, June and July 1991. In addition, the requester stated that he was particularly interested in a specific letter but would not disclose the details or date of the letter.

The City responded to the requester by providing a calculation of a fee estimate for the time required to search for records responsive to the narrowed request. It was expressed as follows:

$$(12 \text{ hours} - 2 \text{ hours}) \times (\$30) = \$300$$

The City advised the requester that a deposit of 50% was required. The requester paid the City the \$150 which was sought.

Upon completion of its searches, the City advised the requester that an additional 15 hours were spent in order to respond to the request. However, in view of the time delay in responding to the request, the City decided to waive the fee for the additional time and to refund half of the fee (\$150) the requester had already paid.

The requester asked for a complete waiver of fees on the grounds that the specific record which the requester believed was in existence was not included in the records disclosed to him. The City denied the appellant's request for such a fee waiver. The requester appealed this decision to the Commissioner's office.

During the mediation stage of the appeal, the Appeals Officer explored the issue of whether the requester had been charged a fee for records which contained his personal information, since the requester had requested "all correspondence relating to him". The City took the position that the fee was charged in relation to records which did not contain the personal information of the requester.

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

ISSUES:

The issues arising in this appeal are:

- A. Whether the responsive records contain the appellant's personal information for the purposes of section 45(2) of the Act.
- B. If the answer to Issue A is no, whether the amount of the fee was calculated in accordance with section 45(1) of the Act.
- C. Whether the City'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 responsive records contain the appellant's personal information for the purposes of section 45(2) of the Act.

Section 45(2) of the Act states:

Despite subsection (1), a head shall not require an individual to pay a fee for access to his or her own personal information.

Personal information is defined, in part, in section 2(1) of the Act, to mean:

"recorded information about an identifiable individual",

In order to satisfy the requirements of the introductory wording of the definition of personal information, the record must contain information about **an identifiable individual** (Order P-316). It should be noted that the appellant's request, as reformulated, is not restricted to those records containing his personal information.

I have reviewed all of the records which the City claims are responsive to the reformulated request and which have been disclosed to the requester. There is nothing in the contents of the records which could be construed as personal information relating to the appellant for the purposes of section 2(1) of the Act.

I am, therefore, of the view that section 45(2) of the Act has no application in the circumstances of this appeal.

ISSUE B: If the answer to Issue A is no, whether the amount of the fee was calculated in accordance with section 45(1) 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.

Section 6(3) of Reg. 823, R.R.O. 1990, under the Act, reads:

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.

In reviewing the City's fee calculation, my responsibility under section 45(1) of the Act is to ensure that the amount charged by the City is reasonable in the circumstances. The burden of establishing the reasonableness of the fee rests with the City. In my view, the City discharges this burden by providing me with detailed information as to how the fee was calculated, and by producing sufficient evidence to support its claim.

In support of its \$300 search charge, the City has provided two affidavits sworn by the Managers of the East and Central Sections of the City's Planning and Buildings Department. These individuals indicate that they conducted searches of the City's files to determine which files might contain records which are responsive to the request. They attest that the East and Central Sections were both searched in order to locate the responsive records.

Based on the explanation provided by these Managers, the figures provided by the City in support of its fee represent the number of hours for **actual** search time.

The City has broken down these figures in the following fashion:

Location	Number of Hours of Search Time	Cost	Number of Files
East Section	12	\$360	30
Central Section	15	\$450	12
SUB TOTAL	27	\$810	
(Less 2 Hours free)	-2	-\$60	
TOTAL SEARCH TIME	25	\$750	

I find that the City would have been entitled to charge the requester this amount for the search time expended to locate the records. The \$750 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) of the Act. However, as previously explained, the City chose to charge the appellant only \$150.

ISSUE C: Whether the City'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 on the ground that the specific record which the appellant believed to be in existence, was not included in the records disclosed to him.

Section 45(4) of the Act reads as follows:

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,

- (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.

Section 8(1) of Reg. 823, R.R.O. 1990, under the Act reads:

The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:

Whether the person requesting access to the record is given access to it.

While the fee for the actual search time was established at \$750, the amount that was actually paid by the appellant was \$150. The City bases its decision not to waive the full amount of the fee on the following considerations:

Approximately 27 hours were spent searching and preparing records in response to this request and the requester was only charged for five ... The requester was also unwilling to narrow his request sufficiently for [the City] to conclude that the only records [the appellant] was interested in were those containing the personal information of the [appellant].

It has been established in a number of previous orders that the person requesting a fee waiver has the responsibility of providing adequate evidence to support a claim that such a waiver is appropriate [Orders

4, 10, 111 and P-425].

The appellant has not made any representations on this issue aside from stating in his appeal letter that the City's response was incomplete, late and that the records which were actually responsive to his request were not disclosed to him. Accordingly, in my view, the appellant has not discharged the burden of proving that the City'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 City's decision.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ February 22, 1994