



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-390

Appeal M-9400309

The Corporation of the City of North Bay



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Corporation of the City of North Bay (the City) received a request for access to building records relating to three named properties.

The City responded by providing the appellant with a fee of \$37.02, plus photocopying charges of \$5.60, and indicated that access to the 28-page record would be granted. The appellant claimed that, as the cost was in excess of \$25, the City was required to provide an estimate (section 45(3)). The City reduced the cost of the fee to \$25. The appellant then requested a waiver of the \$25 fee. The City denied the request for waiver.

The appellant paid the fees and received the record. The appellant is appealing the amount of the fee, excluding the photocopying charges, and the decision of the City not to waive the fee.

A Notice of Inquiry was provided to the appellant and the City. Representations were received from both parties.

DISCUSSION:

FEE ESTIMATE

Sections 45(1), (3) and (6) of the Act provide as follows:

- (1) 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.
- (3) The head of an institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over \$25.
- (6) The costs provided in this section shall be paid and distributed in the manner prescribed by the regulations.

The amount and distribution of fees payable is set out in section 6 of R.R.O. 1990, Reg. 823, which 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.
...

In its representations, the City submits that a total of 3.5 hours was expended by four staff persons to respond to the request. The City states that the files are old and required a manual search in Central Records.

The Regulations under the Act provide for a charge of \$7.50 for each fifteen minutes of search time spent by any person and a maximum of \$0.20 for each page of photocopying. The Regulations are also very clear as to the payment and distribution of costs.

In its representations, the City indicates that the "**search, compiling and copying** was done by four different staff members of the Building Department totalling 3 and 1/2 hours" [emphasis added]. The City has not indicated what component of the \$25 fee charged is allocated to search, preparation and other costs, if any.

In addition, the City has charged \$5.60 for photocopying 28 pages @ \$0.20 per page. While this amount is in accordance with the fees chargeable under the Regulations and is not at issue in this appeal, it appears that the photocopying cost is also included in the 3.5 hours. Twenty cents per page is the maximum amount that may be charged for photocopying and this includes the cost of the individual "feeding the machine" (Orders M-360 and P-490). Therefore, this cost may not be included in search time.

I note that the City deducted the two hours of free search time and chose to charge its actual cost of \$37.02 based on an average hourly rate of \$24.68, significantly lower than the \$7.50 per 15 minutes allowed under the Act. This amount was further reduced to \$25 on the basis that a fee estimate was not given (section 45(3)).

In reviewing the City's fee, my responsibility under subsection 45(5) of the Act is to ensure that the amount is reasonable in the circumstances. In this regard, the burden of establishing the reasonableness of the fee rests with the City (Order 86). In my view, the City discharges this burden by providing me with detailed information as to how the fee has been calculated, and by producing sufficient evidence to support its claim.

In the circumstances of this case, the City has provided no evidence on the actual **search time** and/or **preparation time** components of the fee estimate. The City has also duplicated its photocopying costs in the fee estimate given. I find that the City has not provided me with the necessary detailed information as to how the \$25 fee was calculated and has not produced sufficient evidence to support its claim. Therefore, I disallow this fee.

Because of the way in which I have disposed of this issue and the fact that the \$5.60 photocopying charge is not part of this appeal, it is not necessary for me to consider the issue of fee waiver.

ORDER:

1. I order the City to refund the appellant the fee of \$25.
2. I order the City to refund the fee as set out in Provision 1 above within fifteen (15) days of the date of this order.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ September 16, 1994