



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-376**

**Appeal M-9400188**

**Regional Municipality of Halton**



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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 appellant has requested copies of receipts for the purchase of alcoholic or non alcoholic beverages and food by members of the Halton Police for the time period of June 1, 1993 to October 31, 1993. The request was processed by the Regional Municipality of Halton (the Municipality), the institution with custody of the records.

The Municipality responded to the request by providing the appellant with a fee estimate of \$630. The Municipality did not indicate whether the appellant would receive access to the receipts upon payment of the fee. The Municipality merely stated that it was anticipated that "section 8, 13, 14 as well as 45 will apply to the request". The Municipality asked for a \$315 deposit to continue to process the request. The fee estimate did not include any charges for photocopies which the Municipality advised would be charged at \$0.20 per page copied.

The amount of the fee estimate was appealed by the appellant.

A Notice of Inquiry was provided to the parties to the appeal. Representations were received from the Municipality only.

## **PRELIMINARY MATTER**

Because of the nature of the Municipality's decision, I will first consider whether the Municipality fulfilled its obligations under the Act when it responded to the request for access to the records.

The Municipality has not yet made a decision on whether (or not) access will be given to the records. In my view, until an institution issues a decision on whether access will or will not be granted to the requested records, it cannot provide the requester with a fee estimate. In most cases, the decision will be a final decision pursuant to section 19 of the Act. In those unusual cases where the records are unduly expensive to produce for inspection by the head in making a decision, the institution may provide the requester with an interim decision and fee estimate.

Order 81 addresses the situation in which a record may be "unduly expensive to produce for inspection by the head in making a decision ... whether the undue expense is caused by either the size of the record, the number of records or the physical location of the record within the institution." In such a case, the head can issue an interim decision indicating to the requester the degree of access which he or she is likely to receive, together with a reasonable estimate of the proposed fees. In addressing this issue, former Commissioner Sidney B. Linden made the following comments in the body of Order 81:

How can a head be satisfied that the fees estimate is reasonable without actually inspecting all of the requested records? Familiarity with the scope of the request can be achieved in either of two ways: (1) the head can seek the advice of an employee of the institution who is familiar with the type and contents of the requested records; or (2) the head can base the estimate on a representative (as opposed to a random) sample of the records. Admittedly, the institution will have to bear the costs incurred in obtaining the necessary familiarity with

the records, however, this is consistent with other provisions of the Act. For example, subsection 57(1)(a) stipulates that the first two hours of manual search time required to locate a record must be absorbed by the institution and cannot be passed on to the requester.

The head's notice to the requester should not only include a breakdown of the estimated fees, but also a clear statement as to how the estimate was calculated (i.e. on the basis of either consultations or a representative sample).

The Municipality has not indicated that the records at issue are unduly expensive to produce for inspection, such that the Order 81 procedures should apply. Rather, the Municipality's position is based on the unique facts involving circumstances which it believes are relevant to this appeal.

Subsequent to receiving the appellant's request, the Municipality received another request for exactly the same receipts covering the identical period of time. The Municipality submits that had it finished searching for and preparing the records to provide the appellant with a final decision on access, the second requester would have been able to secure the records at no cost, other than the photocopying fees. Should the appellant decide not to pay the fee and abandon the request, this would result in the Municipality being unable to recover the costs for the expended search time.

In my view, the fact that the Municipality has received a second request for the same information is not a proper consideration in determining whether to issue an interim or final decision. The intention of the Legislature to include a "user pay" principle is clear from the wording of section 45 of the Act (Order 111). There is nothing to preclude the Municipality from passing the cost of the search to the second requester, should the first requester (the appellant in this appeal) choose not to proceed with the request and/or not pay any allowable fees.

Therefore, in my view, this is not a situation in which the Municipality should have issued an "interim" decision.

The Act presupposes that an institution has made a decision on access when it issues a fee estimate (Order P-502). A requester should be in a position to know whether he or she will receive access to the requested records upon payment of the fee estimate. If a requester applies for a fee waiver pursuant to section 45(4) of the Act, the head must know whether access has been granted in order to consider this factor when deciding whether to waive the fee.

Accordingly, it is my view that the Municipality has not fully complied with its obligations under the Act in response to this request. On this basis, I order the Municipality to issue to the appellant a final access decision which conforms to the requirements of section 19 of the Act.

In order that the requester's appeal may proceed as expeditiously as possible once the Municipality issues its new decision letter, I will now consider whether the amount of the estimated fee was calculated in accordance with section 45(1) of the Act.

**DISCUSSION:**

**FEE ESTIMATE**

The costs of the search required by the request and charges related to making the records available to the requester are set out in the Act and the regulations made under the Act. Where no provision is made for a fee to be charged under any other Act, sections 45(1) and (6) of the Act provide that the Board shall require a requester to pay for costs related to the request such as (1) a search charge for every hour of manual search required in excess of two hours to locate a record, (2) the costs of preparing the record for disclosure, (3) computer and other costs incurred in locating, retrieving, processing and copying a record, (4) shipping costs and (5) that the foregoing costs should be paid and distributed according to the regulations made under the Act. Where these costs exceed \$25, the Board is also required to provide a reasonable estimate of the costs.

The amount and distribution of fees payable is set out in section 6 of the Regulations made under the Act:

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.  
...

From my review of the Municipality's representations and supporting evidence, the calculation of the fee can be summarised as follows:

- |     |   |    |          |
|-----|---|----|----------|
| (a) | Review of personal expense claims to locate responsive records:                     | .. | 6 hours  |
| (b) | Review of all cost centre account codes to locate responsive records:               | .. | 10 hours |
| (c) | Review of responsive records and consultations with respect to possible severances: | .. | 7 hours  |

With the first two hours of search time provided free of charge, the Municipality calculated 21 hours of search time at \$30 per hour for a total of \$630.

In reviewing the Municipality'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 the Municipality. In my view, the Municipality 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.

I will now examine each of the steps taken by the Municipality in its calculation of the estimate to ascertain the reasonableness of the fee.

### **SEARCH CHARGE**

The Municipality's representations include the sworn affidavit of the Supervisor of Accounts Payable who supervised a sample search of personal expense claims. The search consumed two hours of time and yielded nine responsive records. In the two hours, approximately one third of the alphabet (not necessarily one third of the claims) had been reviewed. Based on this sample search, it was estimated that an additional four hours would be required to complete the search of personal expense claims.

Based on the affidavit and the Municipality's representations, I am satisfied that the charges for the search of the personal expense claims are appropriate.

With respect to the remainder of the search, the Supervisor of Accounts Payable indicates that the search of all cost centre account codes such as conference travel, training allowances, petty cash and other miscellaneous accounts will require ten hours.

Other than noting that this is potentially over 100 account numbers, the Municipality has not provided any information about the steps it has undertaken in developing the estimate for this search time. The Municipality has provided no evidence as to what actions are necessary to locate and retrieve these records, nor did it provide evidence as to the nature of these records or the manner in which they are filed. I do not know whether this search is one which must be performed manually or by computer.

Accordingly, because there is no evidence before me to justify the fees for this part of the search, I disallow this portion of the fees charged.

### **PHOTOCOPIES/PREPARATION TIME**

With respect to the preparation of the documents for release, the Municipality included the sworn affidavit of the Freedom of Information Analyst. This individual estimated that seven hours will be required to review  
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the documents with the Halton Police Services Board staff, consult with the staff of the Municipality and make suggestions with respect to possible severances of the records.

I have not been provided with any evidence that this length of time would be required to **prepare** the records for disclosure. From the Municipality's representations, I can only conclude that it has included as part of its "preparation" time, the time to conduct a review of the records in order to make an access decision and determine which portions, if any, of the records should not be disclosed. The time spent for a review of the responsive records in order to make an access decision once they have been located is not an allowable charge under the Act (Order 4).

The Municipality did not submit any other representations on the charges for preparation time, although, as I have stated, it did advise the appellant that certain exemptions might apply to portions of the records. In its submissions, the Municipality gave no indication of the number and/or nature of the severances that would have to be made to the nine documents it located as a result of the search of some of the personal expense claims.

Given the nature of the request and the exemptions claimed, I would have been prepared to allow some charges associated with the actual time it would take to remove exempt information from the receipts prior to their disclosure. However, without being provided with a sample of the records or having any evidence on the number of severances which would have to be made to any one receipt and an estimate of how many documents in total must be severed, I have no information on which to make such a decision. Accordingly, I do not uphold the portion of the fee estimate for preparation charges.

Pursuant to the Regulations, I allow the Municipality to charge photocopying costs of \$0.20 for each page of the record that is disclosed to the appellant.

**ORDER:**

1. I order the Municipality to make a final access decision with respect to the appellant's request within twenty (20) days of the date of this order. This decision should be made in accordance with section 22 of the Act and without recourse to a time extension.
2. I uphold the Ministry's decision to charge for search time in the amount of \$120.
3. I allow the Ministry to charge photocopying costs at a rate of \$0.20 per page for each page of the records to be disclosed to the appellant.
4. I do not allow the Ministry to charge for preparation time.
5. I order the Ministry to provide me with a copy of the access decision letter issued to the appellant pursuant to Provision 1 of this order, within twenty-five (25) days of the date of this order. This copy of the decision letter should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: \_\_\_\_\_

Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ August 19, 1994

**POSTSCRIPT:**

The Municipality has expressed concerns about recovering its costs for the time taken to search for these receipts in the event that the appellant declines to pay the fees which I have allowed. Should this occur, I have indicated that the Municipality may include these charges in the fee estimate provided to the second requester. By providing a more thorough explanation of the searches undertaken and severances which have to be made, the Municipality may be in a position to recover all its search and preparation costs allowable under the Act.