



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-429**

**Appeal M-9400549**

**Town of Amherstburg Police Services Board**



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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 Amherstburg Police Services Board (the Police) received a request for copies of the "in camera" portion of the Police Services Board's meeting minutes, from June 1991 to present. The Police issued a fee estimate, indicating that access to portions of the record would be denied pursuant to section 6(1)(b) and that the estimated fee to process the request was \$176.

The requester sought a fee waiver from the Police, indicating that she had been provided with access to other records in response to previous access requests free of charge. She claimed that it was unfair of the Police to suddenly request fees particularly when the record consisted of only 100 pages. The Police decided not to waive the fee and the requester appealed both the amount of the fee and the decision not to waive the fee.

During mediation of this appeal, the Police processed the request in order to provide the appellant with an actual fee as opposed to an estimate. The Police indicated that the actual fee was \$87, and provided the appellant with a 22-page index of the record, citing a number of exemptions. The appellant was not satisfied with the reduced fee, and chose to continue her appeal regarding both the amount of the fee and the decision to deny a fee waiver.

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

The issues to be decided in this order are whether the fee was calculated in accordance with the terms of the Act and the relevant regulation, and whether the decision of the Police to deny the fee waiver was fair and equitable in the circumstances.

## **DISCUSSION:**

### **CALCULATION OF THE FEE**

The intention of the Legislature to include a "user pay" principle is clear from the wording of section 45 of the Act (Order 111). The fees an institution is required to charge related to processing requests under the Act 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 Police 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 Police are also required to provide a reasonable estimate of the costs.

Section 6 of Reg. 823, R.R.O. 1990 (the Regulation) reads, 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.  
...
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.

The Police calculated the fee as follows:

<b>Preparation time:</b>	2 hours 18 minutes @ \$30/hour	=	\$69.00
<b>Photocopying charges:</b>	80 pages @ \$0.20/page	=	\$14.00
<b>Shipping costs:</b>		=	\$ 4.00
	<b>TOTAL</b>		<u>\$87.00</u>

The Police are charging a fee of \$69 for 2 hours and 18 minutes spent preparing the records for disclosure. I have examined the index prepared by the Police, in which they have indicated the proposed severances. Of the 105 pages contained in the record, the Police indicate that 66 pages are entirely exempt and on 11 pages the Police are claiming no exemptions at all. The fee claimed to sever the remaining 28 pages amounts to close to five minutes per page which, in the circumstances, I consider excessive. In my view, two minutes per page for making the severances on the remaining 28 pages would be proper (Order P-260). Accordingly, as 56 minutes of preparation time is allowable, the maximum fee allowed to be charged for this time is \$28.

The Police are charging a fee of \$14 for photocopying 80 pages. However, its index shows that 66 of the 105 pages will be withheld in their entirety. It follows that only 39 pages will be disclosed in whole or in part to the appellant, and the maximum fee allowed to be charged for the provision of photocopies of these pages is \$7.80.

With respect to the shipping charges of \$4, I have not been provided with any indication of how this amount was arrived at. In these circumstances, I am prepared to allow a fee for shipping costs, which is to be

calculated to equal the actual cost of shipping a copy of the pages of the record which are being disclosed in whole or in part to the appellant.

In her representations, the appellant indicates that she offered to view the records, free of charge, if the Police could find a way to sever the information which could not be disclosed. Whether the appellant wishes to view the records will not affect the amount of the fee I have allowed for preparation time. As 28 pages of the record require severances, I find that viewing these records would not be practical, and a charge for photocopying these pages is allowable. However, if the appellant wishes to view the 11 pages for which no exemptions have been claimed, the maximum photocopying charge should be reduced to \$5.60. Additionally, if the appellant wishes to save the institution from incurring costs associated with shipping the record to her, she may choose to pick up the records herself, in which case the shipping charges would be eliminated from the calculation of the fee.

### **FEE WAIVER**

The provisions of the Act relating to fee waiver appear in section 45(4), which reads:

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.

It has been established in a number of orders that the person requesting the fee waiver has the responsibility to provide adequate evidence to support such a claim (Orders 10, P-425 and P-463). In Order P-474, Assistant Commissioner Irwin Glasberg found that the appropriate standard of review for decisions under section 57(4) of the provincial Freedom of Information and Protection of Privacy Act (which is the equivalent of section 45(4) of the Act) is one of correctness. In that same order, Assistant Commissioner Glasberg also found that the phrase "in the head's opinion" means only that the head of an institution has a duty to determine whether it is fair and equitable in a particular case to waive a fee, and this wording does not affect the statutory authority of the Commissioner and his delegates to review the correctness of that decision. I agree with these conclusions and adopt them for the purposes of this appeal.

The appellant notes a long history of antagonism between herself and her husband and the Police. She states that this antagonism is the reason for the decision to not grant a fee waiver. She illustrates this point by noting that never before have the Police applied a fee to a request for information. She also feels that the Police can easily absorb the cost of complying with the request, and can afford to do so more than she.

Section 45(4) creates an exhaustive list of the matters the Police are required to consider in determining if a waiver of all or any part of a fee is appropriate. The fact that section 47(g) permits additional matters for consideration to be added by regulation reinforces this view and, in fact, two additional matters for consideration have been added by regulation to date -- whether the person requesting the record is given access to it, and whether the amount of the payment is too small (\$5 or less) to justify requiring payment. The submissions of the appellant do not make reference to nor do they, in my opinion, fit within the matters listed in section 45(4) of the Act.

The Police submit that the total fee applied in this request was a small portion of the actual time spent processing the request. That fee has been substantially reduced in this order, and may be further reduced should the appellant choose to view the records where no information has been withheld and/or pick up the records herself. In the circumstances of this appeal, I uphold the decision of the Police not to waive the fee.

**ORDER:**

1. I allow the charge for preparation time in the amount of \$28 and the charge for photocopying 28 pages of the record in the amount of \$5.60.
2. I allow the charge for providing photocopies of the 11 pages to which access has been granted in full in the amount of \$2.20, which amount will be eliminated from the calculation of the total fee should the appellant choose to view these records.
3. I allow a charge for shipping the 39 pages of the record to which access has been granted in full or in part equal to the cost actually incurred by the Police, which amount will be eliminated from the calculation of the total fee should the appellant choose to pick up the records herself.
4. I uphold the decision of the Police not to waive the fee.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_  
December 6, 1994