



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-562

Appeal M-9400485

Credit Valley Conservation Authority



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NATURE OF THE APPEAL:

The Credit Valley Conservation Authority (the Authority) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to the Cawthra Woodlot Project. The Authority provided the requester with a fee estimate in the amount of \$187.20 to process the request. The requester appealed the Authority's fee estimate.

After the appeal was commenced, the appellant paid \$30 as a deposit on the fee, and asked the Authority to waive the fee as payment would cause him financial hardship (section 45(4)(b)) and because the record could be used by the public to decide matters of public health and safety. The Authority adjusted its original estimate, indicating the actual fee involved was \$186.80 (the fee was reduced by 40 cents to reflect the actual number of photocopies made) and denied the appellant's request for a fee waiver.

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

DISCUSSION:

Sections 45(1)(a) and (b) of the Act state:

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.

Section 6(1) of Regulation 823, made under the Act, states, in part:

The following are the fees that shall be charged for the purposes of section 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
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the record, \$7.50 for each fifteen minutes spent by any person.

...

Photocopying Charges

The Authority indicates that the actual number of photocopies provided was 34. Based on this information, I am satisfied that the photocopying charges have been properly calculated according to the Regulation.

Search

The Authority's decision letter indicates that "manual searching" amounted to 4 hours, for which the appellant was charged \$60 (4 hours less 2 free hours @ \$7.50 per ¼ hour). The Freedom of Information and Privacy Co-ordinator indicates that she contacted the Forester, the Records Management Clerk and the Computer Administrator for assistance in locating the records. The Co-ordinator indicates that the time taken by the Forester and the Records Management Clerk to manually search for the records was minimal, and that the appellant was not charged for the computer search conducted by the Computer Administrator. The Co-ordinator indicates that the bulk of the search time was spent by her, reading the records which these individuals provided in order to determine whether exemptions should be claimed.

The search charge prescribed by section 45(1)(a) and the Regulation relates to personnel time involved in **finding** the record. The time involved in making a decision as to the application of an exemption should not be included when calculating fees related to locating a record. Therefore, the Authority is not entitled to charge the appellant for the time spent by the Co-ordinator reviewing the records previously located by the other individuals. Accordingly, I disallow the \$60 charged.

Preparation Costs

The Authority indicated in its decision letter that 4 hours were spent on "record preparation and severing", amounting to \$120 (4 hours @ \$7.50 per ¼ hour). It indicates, however, that no exemptions were applied, and the appellant was granted access in full to 34 pages of records. The Authority indicates that the preparation charge relates to time spent numbering pages, photocopying and secretarial time spent creating the Authority's file relating to the request.

As the Authority granted full access to the records requested and did not apply any exemptions, the records did not need preparation in the way of severing. In Order 4, former Commissioner Sidney B. Linden, in considering the issue of preparation charges, stated:

In my view, the time involved in making a decision as to the application of an exemption should not be included when calculating fees related to preparation of a record for disclosure. Nor is it proper to include time spent for such activities as packaging records

for shipment, transporting records to the mailroom or arranging for courier service. In my view, "preparing the record for disclosure" ... should be read narrowly ...

I agree with this view and find that the preparation activities performed in this case more appropriately fall under the category of photocopying charges, the maximum charge for which has already been claimed. In Order P-608 Inquiry Officer Donald Hale allowed preparation costs for removing records from cerlox bound volumes and for taping together large maps. There is no evidence that the records in this appeal require such special preparation. I find that the Authority has not substantiated its claim for preparation time and no charge is allowed.

FEE WAIVER

Sections 45(4)(b) and (c) read:

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,

- (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.

As a result of this order, the fee has been reduced to \$6.80. The appellant has not provided the Authority or me with information which would lead me to conclude that payment of this amount would cause him financial hardship. While I appreciate that the record relates to work which was completed for safety reasons and that forested land has a beneficial effect on individuals, I am not convinced that the dissemination of the record would yield a public benefit by disclosing a public health or safety concern or by contributing meaningfully to the development of understanding of an important public health or safety issue. Accordingly, I uphold the Authority's decision to deny a fee waiver in the circumstances of this appeal.

ORDER:

1. I uphold the Authority's decision to charge \$0.20 per page for copies of each page of the records it provides to the appellant, and I order the Authority to refund the balance of the deposit paid by the appellant within 15 days of the date of this order.
2. I do not uphold the Authority's decision to charge \$60 for search time and \$120 for preparation time.
3. I uphold the Authority's decision to deny a fee waiver in the circumstances of this appeal.

Holly Big Canoe
Inquiry Officer

July 10, 1995