



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

ORDER M-632

Appeal M_9500130

The Corporation of the Township of Temagami



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NATURE OF THE APPEAL:

The appellant submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Corporation of the Township of Temagami (the Township) for general records relating to the Temagami Non Profit Housing Corporation (the Housing Corporation). The Township transferred the request to the Housing Corporation pursuant to the Act and the Housing Corporation responded to the request by stating that it was not an institution as defined in the Act and was not, therefore, subject to the legislation.

That decision was appealed by the requester. In Order M-415 Inquiry Officer Anita Fineberg held that the Housing Corporation was deemed to be part of the municipal corporation of the Township for the purposes of the Act and ordered the Township to make a decision on access to the records requested. In compliance with Order M-415, the Township provided the appellant with a fee estimate in the amount of \$137 which had been prepared by the Housing Corporation and forwarded to the Township but did not make a decision regarding access to the responsive records. The appellant appealed the fee estimate.

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

PRELIMINARY ISSUE

The fee estimate ultimately provided to the appellant by the Township was, as indicated above, prepared by the Housing Corporation and forwarded to the Township. The correspondence accompanying the fee estimate indicated that the Housing Corporation was issuing the fee estimate to the Township and not to the appellant and that payment of the fee was expected from the Township. The Township then simply passed on the Housing Corporation's fee estimate to the appellant and asked the appellant to let the Township know if he wished to proceed with his request.

The appellant bases much of his argument in this appeal on the fact that the Housing Corporation prepared the fee estimate and directed it to the Township for payment. The Township again submits that the Housing Corporation is separate from it, has no funding or reporting relationship with the Township and is operated by a Board of Directors independent of the Township. The Township further restates the Housing Corporation's position that the Housing Corporation is not governed by the Act.

In my view, the relationship between the Township and the Housing Corporation for the purposes of the Act was determined in Order M-415. That order has not been the subject of a judicial review application by either the Township or the Housing Corporation and I will, therefore not revisit the issue. I find that the Housing Corporation **is part of** the Township for the purposes of the Act and the Township is, accordingly, bound by the fee estimate prepared by the Housing Corporation. The fact that the Township forwarded the fee estimate to the appellant is, in my view, further evidence of the Township having adopted the fee estimate as its own. Accordingly, I will hereafter refer to the fee estimate at issue as the "Township's fee estimate".

DISCUSSION:

ADEQUACY OF THE DECISION LETTER

The Township's fee estimate is contained in a letter which indicates that copies of the requested records will be released to the appellant upon payment of the fee. However, the same letter indicates that some portions of the records will have to be severed before being released and the accompanying fee estimate includes a charge for severing 118 pages of records.

Section 22 of the Act sets out the requirements an institution must satisfy when it intends to refuse to give access to a record or part of a record. Where the record exists, the institution must give the requester a notice of refusal setting out the specific provision of the Act under which access is being denied, the reason the exemption applies to the record, the name of the person who made the decision and that the requester may appeal to the Commissioner for a review of the decision.

In this instance, the decision provided to the appellant failed to meet these statutory requirements. The decision letter indicates that some portions of the records would be withheld but does not state which sections of the Act the Township intends to rely upon to exempt these portions from disclosure. Accordingly, I find that the Township has not provided the appellant with the final access decision directed in Order M-415 and defined in section 22. The records in this appeal are not so numerous as to fall within the parameters of Order 81, which permits an institution to render an interim access decision. I will, therefore, order the Township to issue a final access decision with respect to the requested records in accordance with section 22 of the Act.

FEE ESTIMATE

The Township's fee estimate may be summarised as follows:

Photocopying charge: 125 pages x \$0.20/page = \$25.00

Preparation of the record: 354 minutes less 2 hours @ \$30.00 an hour = \$112.50

In reviewing the fee estimate of the Township, it is my responsibility under section 45(5) of the Act to ensure that the amount of the fee estimate is reasonable in the circumstances. The burden of establishing the reasonableness of the fee estimate rests with the Township. In my view the Township discharges this burden by providing me with detailed information as to how the fee estimate was calculated, and by providing sufficient evidence to support its claim.

The Township has identified 125 pages of records as responsive to the appellant's request and intends to charge \$0.20 per page for photocopies of the responsive records. That is the amount prescribed for photocopies in section 6 of Regulation 823 made under the Act and, accordingly, I uphold that portion of the Township's fee estimate.

The Township's fee estimate also includes a charge for the preparation of the record. Included in the Township's representations is a letter from the Housing Corporation which explains that the

preparation charge represents the time required to sever information from 118 pages of the responsive records, calculated on the basis of three minutes per page. The only explanation of the extent of the severances is a statement in the Housing Corporation's letter to the Township which reads: "Since our Board meetings are not open to the public, we will be required to sever some information from these documents before they can be distributed to [the appellant]."

As discussed above, because the Township's decision was not a final access decision and I have not been provided with a detailed description of the records I am unable to determine the extent of any proposed severing of the subject records or whether the three minute per page fee estimate is reasonable. In addition, the Township has provided no evidence that **each** of the 118 pages will require severing. Accordingly, I will order the Township to revise its fee estimate to reflect the number of pages which will actually require severances.

ORDER:

1. I uphold the Township's fee estimate of \$25.00 for photocopies in connection with the request.
2. I order the Township to issue a final access decision with respect to the records which are responsive to the request within twenty-one (21) days after the date of this order, without recourse to a time extension under section 20(1) of the Act.
3. I order the Township to issue a revised fee estimate for the time which it has claimed to prepare the records based upon the number of pages which will actually require severances and reflecting the time required for actually severing the information which it intends to withhold from disclosure. I further order the Township to include this revised fee estimate in the final access decision referred to in Provision 2 of this order.
4. In order to verify compliance with the terms of this order, I order the Township to provide me with a copy of the correspondence referred to in Provisions 2 and 3 not later than twenty-five (25) days after the date of this order. This should be sent to my attention c/o Information and Privacy Commissioner/Ontario, Suite 1700, 80 Bloor Street West, Toronto, Ontario, M5S 2V1.

Original signed by: _____

Donald Hale
Inquiry Officer

_____ October 27, 1995