



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

ORDER M-986

Appeal M_9700115

The Corporation of the Town of Whitby



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NATURE OF THE APPEAL:

The appellant submitted a request to The Corporation of the Town of Whitby (the Town) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requested records relate to an industrial construction project.

The Town responded to the request by issuing a fee estimate in the amount of \$128, including charges for search time, preparation time and photocopies. The appellant paid the fee, and the Town granted access to the records it had identified as responsive.

The appellant appealed the amount of the fee and also indicated that, in his view, additional responsive records should exist. These are the sole issues in this appeal.

This office sent a Notice of Inquiry to the appellant and the Town. Only the Town submitted representations. However, I have considered the appellant's letters of appeal and other correspondence he has sent to this office in reaching the decisions set out in this order.

DISCUSSION:

FEE ESTIMATE

I will begin this discussion by setting out the relevant provisions of the Act and Regulation 823 (the Regulation). The charging of fees is authorized by section 45(1) of the Act, which states:

A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required 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;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

Section 6 of the Regulation also deals with fees. It states:

The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act for access to a record:

1. For photocopies and computer printouts, 20 cents per page.
2. For floppy disks, \$10 for each disk.
3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.
5. For developing a computer program or other method of producing a record from machine readable record, \$15 for each 15 minutes spent by any person.
6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

The Town's initial fee estimate was broken down as follows:

Search time - 2 hours @ \$30	..	..	..	\$ 60
Preparation time - 2 hours @ \$30	..	..	..	\$ 60
Photocopies - 40 pages @ \$0.20	..	..	..	\$ 8
			TOTAL	.. \$128
				=====

The Town subsequently realized that it had included ½ hour for “feeding the photocopy machine” in preparation time. This is not a permitted charge under the heading of preparation time, and accordingly, fees in connection with preparation time have been reduced by \$15, to \$45. Thus the Town's new total fees are \$113.

In relation to its fees for search time, the Town states that two employees each spent one hour searching for responsive records. However, elsewhere in its representations, the Town indicates that “[r]ecords of the nature requested by the appellant are kept in the Town's property files which are indexed by street address”. If this is the case, I do not understand how it can possibly have taken two hours to locate responsive records. The appellant was permitted to review this file to see whether it contained any additional responsive records, and he has also questioned the fee for search time on this basis.

In my view, ½ hour would be a more reasonable amount of time to locate 40 pages of responsive records in a single file, and I am prepared to allow a fee of \$15 for search time, in accordance with item 3 in section 6 of the Regulation.

With respect to preparation time, the Town indicates that this charge relates to separating the responsive records from the files and later returning them. It states that 1.5 hours was required

for this process. In my view, this is an excessive amount of time for removing and replacing 40 pages of records from a file. I find that ½ hour is a more reasonable amount of time for this activity, and I am prepared to allow a fee of \$15 for preparation time, in accordance with item 4 in section 6 of the Regulation.

I also uphold the Town's fee of \$8 for photocopying 40 pages of records, which is in accordance with item 1 of section 6 of the Regulation.

In summary, I uphold total fees of \$38 in connection with this request.

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records he or she is seeking, and the Town indicates that such a record does not exist, it is my responsibility to ensure that the Town has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Town to prove with absolute certainty that the requested record does not exist. However, in my view, in order to properly discharge their obligations under the Act, the Town must provide me with sufficient evidence to show that they have made a reasonable effort to identify and locate records responsive to the request.

As noted above, the Town indicates that all responsive records in its possession would be in the property file for the relevant street address. The appellant mentions several specific records which he believes should exist. He refers to applications, permits, drawings, the Building Inspector's report in relation to a list of concerns, and correspondence between the Town and the property owner. He also advises that the Building Inspector indicated to him verbally that he had filed a report.

In the circumstances, I am not satisfied that all reasonable efforts were made to locate responsive records. In my view, at a minimum, the Town ought to have consulted the Building Inspector who dealt with this project to determine whether any additional records might exist. I will therefore order the Town to conduct a further search for the records mentioned by the appellant, including consulting the Building Inspector who handled the file, if he is still a Town employee.

ORDER:

1. I uphold total fees of \$38 and order the Town to return any additional fees it has received from the appellant by sending him a refund on or before **September 15, 1997**.
2. I order the Town to conduct a further search for additional records, in particular applications, permits, drawings, the Building Inspector's report in relation to a list of concerns, and correspondence between the Town and the property owner, and this search is to include a consultation with the Building Inspector who handled the matter, if he is still a Town employee.
3. I order the Town to communicate the results of this search to the appellant by sending him a letter summarizing the search results on or before **September 15, 1997**.

4. If additional responsive records are located, I order the Town to issue an access decision concerning those records, treating the date of this order as the date of the request, in accordance with sections 19, 21 and 22 of the Act.
5. I order the Town to provide me with copies of the correspondence referred to in Provisions 3 and 4, as applicable, by sending a copy to me when it sends this correspondence to the appellant.

Original signed by: _____
John Higgins
Inquiry Officer

_____ August 15, 1997