



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

# **ORDER M-1023**

**Appeal M-9700195**

**City of Elliot Lake**



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## **NATURE OF THE APPEAL:**

The appellant made a six-part request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the City of Elliot Lake (the City). The request was for access to records related to the City's financial contribution to an identified corporation.

Following clarification of the request, the City indicated that Item 1 of the request required a record to be generated and the City declined to do so. Access was granted to records pertaining to Items 2, 3, 4 and 6. Access to a record responsive to Item 5 was denied pursuant to the solicitor-client privilege exemption in section 12 of the Act.

The City indicated that the 12 pages of records responsive to Items 2, 3, 4 and 6 of the request would be provided to the appellant upon payment of a fee of \$225 plus 20 cents per page for photocopying. The fee represented 7.5 hours of search time at \$7.50 per quarter hour.

The appellant appealed the decision to deny access, the amount of the fee, and stated that additional records should exist.

During mediation, the appellant agreed to remove Item 1 from the scope of the appeal as it involved a request to create a record. The appellant also stated that he was not requesting the legal opinion in Item 5, but the records "surrounding" it. The legal opinion itself and the City's application of section 12 to it are, therefore, no longer at issue. The City, however, indicated there were no records "surrounding" the legal opinion.

This office sent a Notice of Inquiry to the City and the appellant. Representations were received from both parties.

## **PRELIMINARY ISSUES:**

The appellant submits that because the City did not provide him with an estimate of the cost for the requested information and did not request a deposit before taking any further steps to respond to the request, he should not be required to pay the fee, and should receive the information free of charge.

Section 45(3) of the Act states:

The head of an institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over \$25.

In the circumstances of this appeal, before giving access to the records, the City informed the appellant of the **actual** amount required to be paid under the Act, as opposed to a reasonable estimate. In my view, the City's actions were appropriate, given that it had already conducted the search and the actual fee was known.

Section 7(1) of Regulation 823 under the Act states:

If a head gives a person an estimate of an amount payable under the Act and the estimate is \$100 or more, the head **may** require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request. [emphasis added]

This section of the Act is discretionary, which means that the City has the choice of requiring a deposit from the appellant. The City is not obligated to ask for a deposit, and its decision not to require the appellant to pay a deposit does not invalidate its fee in the circumstances of this appeal.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

Where a requester provides sufficient detail about the records which he is seeking and the City indicates that further records do not exist, it is my responsibility to ensure that the City has made a reasonable search to identify any records which are responsive to the request. The Act does not require the City to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the City must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in the City's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist.

The City has provided me with a summary of the search conducted by six of its employees. These employees were experienced, with direct responsibility for the areas searched. The City submits that it solicited and received clarification of the request from the appellant prior to processing the request. The City indicates that, during mediation, files in the Chief Administrative Officer's Office where the legal opinion was located were re-examined for additional records with respect to Item 5 of the access request and it was reconfirmed that no additional records existed. Having reviewed the details in the City's submissions, I am satisfied that the search encompassed appropriate departments and was conducted by experienced employees with direct knowledge of the requested records and the areas searched. Accordingly, I find that the City has made a reasonable effort to identify and locate records responsive to the request.

## FEES

The charging of fees is authorized by section 57(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, in part, as follows:

The following are the fees that shall be charged for the purposes of subsection 57(1) of the Act for access to a record:

- 1. For photocopies and computer printouts, 20 cents per page.  
...
- 3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.  
...

The appellant, in his representations, refers to a previous version of section 45(1), which provided for two hours of free search time. Section 45(1) of the Act and the accompanying regulations dealing with fees were amended in February, 1996 by the Savings and Restructuring Act (Bill 26). The request and appeal in this case were initiated **after** these amendments. Therefore, the relevant provisions of section 45(1) and the accompanying regulations for the purposes of this appeal are those which existed at the time of the request and appeal.

## **SEARCH TIME**

The appellant submits that 7.5 hours of search time is excessive, given the small size of the City's administration. In his view, "... the people involved are either slow workers or did not have a good understanding of the requested information". As well, the appellant submits that the records should have been readily at hand as the Ontario Provincial Police had investigated the matter of the City's contribution just three months prior to his request.

The City indicates that the Mayor and his secretary spent three hours searching for records responsive to the request. Their search encompassed a review of the Mayor's personal DayTimer, his credenza filing drawer (which contains approximately six years of telephone message slips) and the Mayor's filing cabinet.

The City indicates that the second aspect of the search covered the office of the Chief Administrative Officer (CAO). This search was conducted by the CAO and the Mayor's secretary, who spent one and one half hours searching for records responsive to the request in the CAO's information logs and files, including approximately 10 filing boxes of material which was in the process of being put into the inactive records archive, as well as the CAO's current active and working files.

The City indicates that the Treasurer's Office also spent 45 minutes searching for records responsive to the request. This aspect of the search was conducted by the City Treasurer and encompassed consultation with staff who might have knowledge of the requested files or information and a review of files.

The City indicates that the Economic Development Office (EDO) spent two hours searching for records responsive to the request. This aspect of the search was conducted by the EDO Secretary and encompassed the central file index and files, EDO Committee minute books, and eight telephone log books.

Finally, the City Clerk's office spent 15 minutes searching for responsive records by querying the resolutions and by-law databases using key words. In addition, this search examined active and stored file indices for potential matches.

Having reviewed the details contained in the representations, in my view, a search time of 7.5 hours is reasonable in the circumstances. Therefore, I uphold the City's fee estimate of \$225 for search time.

## **PHOTOCOPYING**

The City has indicated to the appellant that a fee of \$.20 per page will be assessed for photocopying. In my view, this fee is appropriate in the circumstances.

**ORDER:**

I uphold the City's fee of \$225 for search time, and \$.20 per page for photocopying.

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

Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ October 15, 1997