



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1103

Appeal M-9800029

Township of Horton



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NATURE OF THE APPEAL:

The Township of Horton (the Township) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) from a former Township councillor. The request was for access to:

1. Copies of new information which led Council to rescind a motion of October 14, 1997.
2. Minutes of all Council meetings from December 1997, including Special Meetings of Council.
3. All written notices for Special Council Meetings as required under the procedural by-law (*what they were called for*).
4. Copy of affidavit for [a named individual], if it exists - date it was written and signed.
5. Copy of resolution, if any, where Council overrode the procedural by-law and refused to accept or discuss the requester's letter of November 27, 1997, or a copy of a suggestion to Council to not discuss or accept the requester's letter of November 27, 1997, which caused Council to not follow the procedural by-law.

The Township located Minutes of Council meetings held on December 1, 8, 9 and 15, 1997 and granted access to them in their entirety. The Township indicated that no records responsive to parts one, three, four and five of the request exist. The Township also charged the requester \$5.80 for photocopying the records which were disclosed to her. The requester appealed the Township's decision on the basis that additional records responsive to her request should exist and that she should not have been charged a fee of \$5.80 for the photocopying of the records.

DISCUSSION:

FEES

The charging of a fee 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 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 Regulation 823 (as amended by O. Reg. 22/96) 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.

In reviewing the amount of the Township's fee, my responsibility under section 45(5) of the Act is to ensure that the amount estimated by the Township is reasonable in the circumstances. Although there is no burden of proof specified in the Act with regard to fees, the burden of proof in law generally is that a person who asserts a position must establish it. In this regard, the burden of establishing the reasonableness of the fee rests with the Township. In my view, it discharges this burden by providing me with detailed information as to how the fee was calculated, and by producing sufficient evidence to support its claim.

The Township indicates that the invoice provided to the appellant covered only its costs, as authorized by paragraph 1 of section 6, for photocopying 29 pages of records responsive to part two of the appellant's request. The appellant was not charged for any search or preparation time.

I note that section 6 of Regulation 823 provides that "The following are the fees that **shall** be charged for the purposes of subsection 45(1) of the Act for access to a record" (my emphasis). In my view, the use of the word "shall" imposes a mandatory requirement on an institution to charge the fee stated in the Regulations for the photocopying of records responsive to a request under the Act. As a result, I find that

the fee of \$5.80 for photocopying the responsive documents to be reasonable and I uphold this part of the decision.

REASONABLENESS OF SEARCH

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

A reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request (Order M-909).

The Township was asked to provide a written summary of all steps taken in response to the appellant's request.

The appellant is specifically seeking access to the Minutes of a Township Council meeting which she believes took place on the afternoon of December 5, 1997, and an affidavit sworn by a named individual on or about December 9, 1997, which was provided to the Township. The appellant has provided me with evidence to substantiate her belief that a Council meeting took place on December 5, 1997, and that a copy of the requested affidavit should have been provided to the Township.

In response, the Township indicates that no Council meeting took place on December 5, 1997. Rather, several Councillors were present at the Township offices on that day to pick up their "meeting packages" for the upcoming Council meeting on December 9, 1997. A telephone call was apparently made by one of the Councillors to another member of Council at his place of work. According to the Township Clerk, no meeting took place though there may have been some discussion between the Councillors of the agenda items for the December 9, 1997 meeting.

The Township Clerk has provided me with a sworn affidavit outlining the nature of the search undertaken for the requested Affidavit in the Township's files and that no such record was located. The Clerk also stated that he is not aware of whether the named individual executed the requested affidavit and that if he had, a copy may have been provided to the Ontario Ministry of Natural Resources. In conclusion, the Clerk indicates that the Township does not have in its possession a copy of the requested affidavit.

Based on the information provided to me by the Township, I am satisfied that a reasonable search was undertaken for the requested affidavit and this aspect of the appeal is, accordingly, dismissed.

ORDER:

1. I uphold the Township's decision to charge a fee of \$5.80 for photocopying the responsive records.
2. I find that the Township's search for the December 5, 1997 meeting Minutes and the requested affidavit was reasonable and I dismiss this aspect of the appeal.

Original signed by: _____

_____ May 14, 1998

Donald Hale
Adjudicator
(formerly Inquiry Officer)