



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

# **ORDER MO-1169**

**Appeal MA-980159-1**

**City of Hamilton**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## NATURE OF THE APPEAL:

In December, 1997, the appellant, who is a member of the media, submitted a request to the City of Hamilton (the City) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to records relating to the Hamilton Fire Department fire prevention activities at a specified address, including any references to the business located at that address and/or two named individuals. The appellant clarified that the time frame for the request was from January 1, 1997 to the time of the request.

The City provided the appellant with a fee estimate of \$6450 pursuant to section 45(3) of the Act. In its decision letter, the City indicated that the estimated fee relates to "search time". The appellant appealed this decision on the basis that the information sought concerns one year only, for one property. The appellant argues that the information should be contained in one file. He is also of the view that the information should be readily available to the City as the subject property was recently investigated by the Fire Department.

Immediately upon determining that the appellant had filed an appeal, the City provided him with a more detailed breakdown of its estimate, as follows:

<b>Search time</b>	(a)	identifying and assembling records from the Fire Department's computerized database and hardcopy fire response records	10 hours
	(b)	identifying and assembling e-mail records regarding the subject property	10 hours
<b>Preparation</b>	(a)	physically assembling, sorting, severing and copying records for provision to the City's Freedom of Information Co-ordinator	60 hours
	(b)	doing final copying of severed documents, cataloguing records, assembling exempted records, preparing summary of exemptions and preparing the package of records for pick up.	70 hours
<b>Total hours for search and preparation</b>		150 hours @ \$30 per hour	<b>\$4500</b>

In addition, the City indicated that the following additional charges would be added to the above amount:

<b>Photocopying</b>	4100 pages @ \$.20 per page	820
<b>Reproduction</b>	60 photographs (no negatives) @ \$1.20 each	72
	100 photographs (with negatives available) @ \$.80 each	80
	Two videotapes @ \$10.00 each	20
	<b>Total fee estimate</b>	<b>\$5492</b>

## **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.

### **Search costs**

The City submits that the appellant's request is very broad and encompasses a large number of records. The City outlines its efforts in attempting to clarify the appellant's request and/or to narrow it to specific records or types of records. The City states that the appellant was not willing to narrow the request. Accordingly, its search base was very broad.

As I indicated above, the appellant believes that there should only be one file and that it should be readily available due to recent activity at the subject property. I accept that the City has made efforts to clarify the records the appellant is seeking, and that without this information, the City would be required to conduct an extensive search to locate all possible responsive records.

The City indicates that it has allocated 20 hours for the identification and assembling of the responsive records. In this regard, the City advises that there are three filing sources which must be searched at the Fire Department in order to locate all records which might be responsive to the appellant's request. These sources include:

1. The Fire Department's Fire Prevention Division's Property File regarding the subject property;
2. The Fire Department's Fire Response Reports Filing (both computer and hard copy);

3. E-mail records of four Fire Department Personnel, including staff in both the Fire Prevention Division and the Administration Division Office (the Chief and/or Deputy Chief).

The City states that the review of the Fire Response Reports would take approximately nine and a half hours. This is because all Response Reports are filed chronologically and must be located and sorted through to find the responses relating to the subject property. The City explains that each report is given a Fire Response number and this number is entered into a database for future reference, as is the date, time and address to which the response was made. The Fire Response Reports are then filed in boxes and placed in storage in the basement of the Fire Department offices, with each box identifying the time period for the records contained therein. The City indicates that there are, on average, approximately 15,000 Fire Response Reports filed per year.

The City indicates that first, a search would be conducted electronically to flag those reports which pertain to the subject property. In this regard, the City notes that the computer search may be conducted by response number, date, time and/or address. Once the relevant Fire Response Reports are identified (by response number) a copy of the list can be printed. Then an employee would be required to locate the boxes for the relevant time period and go through the file and physically obtain those which had been identified. Although there are a large number of records filed for each year, I cannot accept that it would take nine and a half hours to perform this search. In my view, the primary purpose of maintaining relevant identifying information in electronic format is to facilitate the timely retrieval of the reports which contain this information. I cannot see how a search through an electronic database for approximately a one year period could take more than 15 minutes. Similarly, once the reports have been identified, it would only be a matter of flipping through the reports in the boxes and pulling those which have been already been identified by response number. In my view, this exercise should take, in total, no more than three hours. Therefore, that is all I will allow for this part of the search.

The City submits that it would take approximately nine and a half hours to search through four personal computers to locate relevant e-mails relating to the subject property. The City indicates that the four computers contain, collectively, approximately 500 e-mails. It indicates further that these computers are not equipped with folders which would allow for e-mails to be grouped by subject matter. Rather, each e-mail is listed by date and therefore, each e-mail must be perused to determine whether it contains responsive information. When asked whether the Fire Department personnel are able to use a search function which would identify the relevant e-mails, the City indicates that some of its computers have this capability and some have not yet been upgraded to perform this function. The City believes, although not with complete certainty, that the computers at the Fire Department do not have this capability. Therefore, the City submits that in order to determine whether the e-mails contain information which may have some relevance to the request, each one must be gone through line by line.

I do not accept the extent to which the e-mails must be searched for responsive information. In my view, the content of an e-mail is often readily discernable by the "Re" line alone and, in a large number of cases, e-mails could be eliminated from consideration as not responsive immediately. Further, I am not persuaded that it would be necessary to conduct a "line by line" review of each e-mail. The content of any e-mails which are not initially eliminated would be apparent by simply scanning the document. In my view, the time to conduct a search through e-mails would unlikely exceed five hours and that is all I will allow for this part of the search.

Finally, the City submits that the search through the Property File regarding the subject property would take approximately one hour. The City indicates that this would include the time taken to verify that all relevant and current correspondence was included in the file. The City notes that the Property file is maintained in three cardboard file boxes (approximately 122" X 16") and indicates that two of the boxes are full and the third is approximately 2/3 full. The City does not indicate where or how correspondence is kept or how often or the manner in which files are updated and maintained. I am not convinced that it would take an hour to obtain a file which is located on the premises of the Fire Department and ensure that all current correspondence is included in it. However, I would be prepared to accept that this task would take up to 15 minutes. Therefore, I will allow the City to allocate 15 minutes to this part of the search through this file.

The City advises that there are approximately 4100 pages of records in the files referred to above. The City indicates, however, that not all of the records in the Property File would be responsive to the appellant's request. For example, this file would also include records such as correspondence with other building owners regarding the suitability of their buildings for plastics storage, bid documents, Safety Data Sheets regarding various stored products and various court documents that do not relate directly to the activities of the Fire Prevention Office.

The City submits that it would take an employee of the Fire Department approximately 50 hours to identify responsive records. This time allocation is over and above the time required to search for and locate those records which might be responsive to the request.

While I accept that 4100 pages of records is a large number of pages to review, I am not persuaded that it would take a person who is knowledgeable regarding the types of records that have been requested to simply review and identify those that relate to Fire Prevention activities. The types of records that the City has referred to as being non-responsive would, in my view, be relatively easy to identify and remove. It should be noted that at this stage in the records search, all the City is required to do is determine whether a record contains relevant information. In my view, which to some degree is based on my own experience in reviewing large numbers of records, a preliminary determination of whether the records in the Property File contain information relating to the request should take no longer than seven hours. Therefore, that is all I will allow for this task.

Before I proceed further, I should note that the City's references to the number of pages being considered by different departments is somewhat confusing. Initially, the City indicated in its representations, that there are approximately 4100 pages in the locations identified above. However, upon further questioning, the City advised that all of the 4100 pages were contained in the Property File. The City does not estimate the number of pages which it expects to locate as a result of the other two searches. Moreover, the City indicates that Fire Department personnel would first review the 4100 pages to determine which records actually contain information pertaining to fire prevention activities relating to the subject property, and remove them. Although the City does not estimate what percentage of these records would be removed at this stage, presumably, the removal of non-responsive records would reduce the number of pages which would then be forwarded to the Freedom of Information Co-ordinator. When asked about this the City advised that it was not able to accurately determine how many pages would ultimately remain upon further review and after the searches were completed, therefore, it based its estimate on the best available information. I have taken this into account in determining whether the calculations used by the City are in accordance with the Act.

### **Preparation costs**

The City indicates that during the initial search for records by Fire Department staff, a staff member would incur an additional 10 hours to conduct preliminary severances of information to "ensure that all records provided to the City's Freedom of Information Officer were records responsive to the request". The City does not indicate the nature of the information to be severed at this stage or why it would need to be done prior to forwarding the records to the Freedom of Information Co-ordinator. In my view, the City has already accounted for the time necessary to identify non-responsive information in the records. I find that this additional charge is, therefore, excessive.

The City advises that the Freedom of Information Co-ordinator would then require over 100 hours to review and sever exempted information from the "estimated 4200 pages". Of this 100 hours, the City estimates that approximately 70 hours would be required to actually make the severances. The City notes that the 70 hours does not include "review" time. The City indicates further that the appellant was not charged for the additional 30 hours.

The City estimates that approximately 420 pages of records will require severing. It suggests that 10 minutes per page would be a reasonable amount of time to sever and prepare a clean copy of the record. Previous orders of this office have held that two minutes of preparation time per page for the severing of exempt information was reasonable (Orders M-811 and M-858). In my view, this amount of time is sufficient even though, as the City indicates, some records will require more severing than others and may require slightly more time. In the balance, some pages may take considerably less than two minutes. I see no reason to vary from this accepted approach. It is not clear whether the City intends to include the time taken to make photocopies in order to "prepare a clean copy of the record" as forming part of this 10 minutes. However, previous orders have held that an institution may only charge once for photocopying

records and that this cost must be calculated in accordance with paragraph 1 of section 6 of the Regulation (Orders 184, M-360 and M-1090). Therefore, I will not allow the City to include any time spent in preparing a "clean copy" of the records.

As a result, I will only allow the City to charge for two minutes per page to sever the records. Based on an estimate of 420 pages, the City will, therefore, be allowed 14 hours for this task. However, because the 420 pages is only an estimate, if there are fewer pages, the City will be required to adjust its estimate of the cost downward accordingly.

### **Copying**

The City indicates that it has based its calculation of the costs for photocopying the records on the amount as set out in section 6 of the Regulation. Section 6 of Regulation 823 permits an institution to charge \$.20 per page for photocopying. I am satisfied that the City has applied the appropriate charge. Assuming that there are 4100 pages of records, the City would be permitted to charge \$820. However, should the number of pages be less than estimated, the City would be required to reduce the cost accordingly.

With respect to the costs for reproducing the photographs (with or without negatives as the case may be) and the two videotapes, the City indicates that it has a supplier for these services. The City advises that it based the charges for reproduction on the amounts it has been charged in the past from its supplier for these services. I am satisfied that the costs are based on actual estimates, that they are reasonable, and therefore, allowable under section 45(1)(e).

### **Summary**

In summary, I disallow a number of the charges which have been claimed by the City. In the end, I find that the City may charge the appellant for the following:

<b>Search time</b>	15.25 hours @ \$30 per hour	\$ 457.50
<b>Preparation</b>	14 hours @ \$30 per hour	420.00
<b>Photocopying</b>	4100 pages @ \$.20 per page	820.00
<b>Reproduction</b>	60 photographs (no negatives) @ \$1.20 each	72.00
	100 photographs (with negatives) @ \$.80 each	80.00
	Two videotapes @ \$10.00 each	<u>20.00</u>



**Total allowable costs                      \$1869.50**

As I indicated above, if the actual number of pages of records are less than estimated, the City will be required to adjust its estimate accordingly.

**ORDER:**

1. I do not uphold the City's fee estimate in the amount of \$5492.
2. The City is entitled to charge the appellant \$1869.50 for search, preparation, photocopying and reproduction.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_ November 26, 1998