



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

# **ORDER MO-1206**

**Appeal MA-980168-1**

**City of Hamilton**



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## NATURE OF THE APPEAL:

The appellant 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 activities at a specified address. Specifically, the appellant requested any letters; notices of violation under the Fire Code; written recommendations regarding the Fire Code; Fire Marshall's Orders; appeals of the Fire Marshall's Orders; decisions or orders of the Fire Marshall; information relating to enforcement actions by the Fire Department which were made by laying an information before a Justice of the Peace; records of fires or any instance where the attendance of the Fire Department was requested and documents or correspondence relating to matters as outlined in the Fire Protection and Prevention Act.

The appellant clarified that he was seeking records for the last ten years. The appellant also indicated that he wished to view the responsive information so that only copies of the documents he requires need be made.

The City provided the appellant with an initial fee estimate of \$6510 pursuant to section 45(3) of the Act on June 2, 1998. The appellant then revised his request by altering the time parameter to ten years prior to November 1, 1997. The City indicated that the amount of the fee remained unchanged.

The appellant appealed the fee estimate. The appellant also indicates that the fee should be waived as the records deal with a matter of public safety and because paying the fee would result in financial hardship.

On October 26, 1998, the City issued a subsequent decision in which it provided a revised fee estimate of \$416, which includes \$56 for photocopying.

The appellant submitted another request to the City under the Act for additional records concerning the specified property. In particular, he requested any and all notices given to the Fire Marshall for changes of occupancy and use and for any and all records of occupancy and use kept by the Fire Department for the property. During mediation of the current appeal, the City and the appellant agreed to roll this request into the current request with no revision to the fee estimate.

The appellant continues to argue that the estimated fees are excessive and that he is seeking a waiver of the fees.

In its decision letter, the City indicated that the fee was broken down as follows:

<b>Search time</b>	(a) identifying and assembling records of fires and responses at the property from the Fire Department's computerized database and hard copy fire response records	2.30 hours
<b>Preparation</b>	(a) physically sorting and conducting initial severing of records for provision to the [IPC Order MO-1206/April 22, 1999]	

	City's Freedom of Information Co-ordinator			7.20 hours
	(b) time spent by Co-ordinator conducting final record severances			2.50 hours
<b>Total hours for search and preparation</b>	12 hours @ \$30 per hour	..		\$360
<b>Photocopying</b>	280 pages @ \$.20 per page	..	..	\$ 56
				<hr/>
	<b>TOTAL FEE</b>	..		<b>\$416</b>
				<hr/> <hr/>

I sent a Notice of Inquiry to the City and the appellant. Representations were received from both parties. Although the appellant requested a fee waiver on the basis of public safety and financial hardship, his representations only address the calculation of the fee.

The City indicates that the appellant has neither approached it nor submitted any written representations to the City respecting a waiver of the fee. The City submits that the appellant has not provided any information to support his request.

In Order 31 and subsequent orders, it has been held that it is up to the requester to raise the question of fee waiver under section 45(4), and to provide adequate evidence to support a claim for a fee waiver. In view of that, in the absence of any representations on this issue by the appellant, I will not address his entitlement to a fee waiver.

**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.

### **Introduction**

Both the appellant and the City indicate that they have based their respective approaches to the estimate of the costs of processing this request on the analysis and findings in Order MO-1169. In that order, I addressed the issue of fees calculated by the City with respect to a similar type of request relating to the

same property made to its Fire Department. In doing so, I examined the Fire Department's filing structure and its search and retrieval processes.

The appellant explains how his estimated calculations for the requested records are based on his interpretation of Order MO-1169. In my view, however, he has somewhat misconstrued the analysis in that order and his suggested calculations are, therefore, not made in accordance with it. For example, the appellant states:

Your estimate of 7 hours for 4,100 records = .1024 min. per record to remove from files

...

280 records x .1024 = 28.67 minutes ... = \$15

In Order MO-1169, I found that the City was entitled to spend seven hours to search through the Property file to locate responsive records. I noted that the file contained approximately 4100 pages and that the City anticipated that it would locate approximately 420 pages of responsive records. In my view, the appellant's breakdown fails to consider the number of records which must be reviewed in order to arrive at the estimated 280 records in the current appeal. Moreover, in total, I allowed the City a total of 15.25 hours to search through three locations. The appellant's estimate does not appear to take this into account. As a consequence, I do not find his suggested approach to be helpful.

The appellant also provided a copy of a fee decision made by the City regarding his access request for the same type of information for a different property. In this decision, the City charged the appellant \$175 dollars to process the request. The appellant suggests that this is evidence which supports a revision of the City's fee estimate in the current appeal. I do not agree. In my view, the difference in the fee estimates between the two requests is evidence that the City has considered the particular circumstances of each request, including the size of the files and the number of records which it expects to locate and has calculated its estimate accordingly.

The City breaks down its fee calculation as follows:

### **Search costs**

The City indicates that it has estimated that it will take 2.3 hours to search for and retrieve responsive records for a ten-year period for the subject property. 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 files (both computer and hard copy).
3. E-mail records of Fire Department Personnel.

The City indicates that all Fire 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 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.

In Order MO-1169, I made the following comments on the approach to be taken in the search and retrieval of the records in these files:

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 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 indicates that it has applied this approach to the current request.

With respect to the search through e-mails, I stated in Order MO-1169:

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.

The City indicates that it has applied this approach in estimating the time required to perform this task.

Finally, the City states that the Property File regarding the subject property were previously housed in banker boxes, but are now stored in a filing cabinet drawer in the office of the Chief Fire Prevention Officer. The City indicates that the file relating to the subject property would have to be searched manually for responsive records. In commenting on the City's approach to searching and retrieving records from this location, I stated in Order MO-1169:

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.

In Order MO-1169, I described the types of records which the City stated would be contained in the Property Files, not all of which would be responsive to the request as follows:

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.

With respect to the length of time it would take an employee to identify responsive records for a file which contained approximately 4100 pages of records, I concluded in Order MO-1169:

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.

The City indicates that the Fire Department estimates that there are approximately 280 records responsive to this request. The City states that it has based its estimate for the search and retrieval of responsive records from this source on the approach taken in Order MO-1169.

In view of the above, I am satisfied that the estimate provided by the City for the search and retrieval of responsive records from the three locations referred to above is consistent with the approach outlined in Order MO-1169, and I find that it is reasonable. Therefore, I will allow the City to charge for 2.3 hours of search time.

### **Preparation costs**

The City's breakdown of the costs associated with this appeal indicates that it has charged the appellant as follows:

- |     |   |            |
|-----|---|------------|
| (a) | physically sorting and conducting initial severing of records for provision to the City's Freedom of Information Co-ordinator | 7.20 hours |
| (b) | time spent by Co-ordinator conducting final record severances   | 2.50 hours |

With respect to the charges associated with (a), I stated in Order MO-1169:

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.

I would be inclined to follow this approach in the current order. However, in its representations, the City indicates that it has only charged the appellant for the severing of the records. In this regard, it states that, in allotting 9.7 hours for record preparation, it has referred to several orders as a guide in preparing this portion of the estimate, including Order MO-1169 and Orders M-811 and M-858 both of which were referred to in Order MO-1169. These orders have all found that two minutes per page would be an



acceptable amount of time for the severing of information in a record. In this regard, I stated in Order MO-1169:

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.

In my view, this reasoning is equally applicable in the current appeal. I note that the City has indicated that in recalculating the fee for severing, the correct amount of time should be 9.33 hours rather than 9.7. I agree, and the amount for preparation time will be amended accordingly.

The City indicates that the appellant has initiated several legal proceedings against it respecting the subject property. Therefore, due to the current litigation matters, it expects that section 12 will be applied to deny access to some of the records. Based on two minutes per page for an estimated 280 pages, the City would be allowed to charge the appellant for 9.33 hours of preparation time for the severing of the records. Therefore, I find that the City’s estimate is reasonable in the circumstances. However, if, in the end, the actual cost of severing the records is less than this amount, the City will be required to reduce this amount accordingly. This would occur, for example, if some pages were not severed at all, or if some pages were denied in their entirety.

### **Photocopying**

As the City indicates in its estimate, it has based its calculation of the costs for photocopying the records on \$0.20 per page which is the amount as set out in section 6 of the Regulation. I am satisfied that the City has applied the appropriate charge. Assuming that there are 280 pages of records, the City would be permitted to charge \$56. However, should the number of pages be less than estimated, the City would be required to reduce the cost accordingly.

As I noted above, the appellant has indicated that he would like the opportunity to view the records prior to photocopying in order to determine which records he would like to have photocopied. Section 23 of the Act states:

- (1) Subject to subsection (2), a person who is given access to a record or a part of a record under this Act shall be given a copy of the record or part unless it would not be reasonably practicable to reproduce it by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part.
- (2) If a person requests the opportunity to examine a record or part and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part.
- (3) A person who examines a record or a part and wishes to have portions of it copied shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature.

The City indicates that it would not be reasonably practicable to allow the appellant to view the records before deciding which ones he wants because the records will require severing in any event before he is able to see them.

In Order M-372, former Assistant Commissioner Irwin Glasberg noted:

The appellant originally requested the opportunity to physically examine the records at issue in these appeals in order to identify those pages which were of interest to him. Portions of these records, however, contain personal information which the Board intends to withhold from disclosure. Previous orders issued by the Commissioner's office have held that, in situations such as these, it is not reasonably practicable under section 23(2) of the Act to allow the appellant to examine the original non-severed version of a document (Order 2). The only alternative which is available in these types of cases is for the appellant to pay the applicable photocopy costs for all of the records which he or she has requested.

I agree and find that it is not reasonably practicable for the City to allow the appellant to view the original non-severed version of the records and further, that the City may charge the appellant for photocopying the records. However, it is not clear to me exactly how many of the records will require severing. In my view, if the City locates records which do not require severing, the question remains whether the appellant should be given an opportunity to view them prior to photocopying if he wishes.

The City argues that it has limited resources and cannot afford to assign a person to review the records along side of the appellant. In essence, the City takes the position that it is not reasonably practicable to give the appellant the opportunity to examine the original records for operational reasons. While I accept

that operational reasons may be considered in determining whether it is reasonably practicable to allow this method of access, I am not persuaded that they are applicable in this case.

In this regard, I do not accept the City's position that a staff person would be required to stop everything to sit with the appellant as he views the records. Although the City does not specifically refer to any concerns about protecting the integrity or security of the records (see Order 6), I have considered this in my assessment of this argument. In my view, the City can sufficiently protect the integrity and security of the records by simply requiring that the appellant view them in the proximity of a staff person. Further, the actual number of records which will not contain severances is not likely to be very large (certainly less than 280 pages). In my view, allowing the appellant to review these records would not require a great deal of time. While there may be some disruption to the routine of the office, I do not accept that it would be so excessive as to render this method of access unreasonable or impractical.

Therefore, once the City determines that certain records do not require severing, they should contact the appellant to determine whether he wishes to review these records prior to them being photocopied.

### Summary

In summary, I find that the City is entitled to charge the appellant the following fees for processing this request (which may be required to be adjusted in accordance with the above discussion):

<b>Search time</b>	2.3 hours @ \$30 per hour	..	\$ 69.00
<b>Preparation</b>	9.33 hours @ \$30 per hour	..	\$279.90
<b>Photocopying</b>	280 pages @ \$0.20 per page	..	<u>\$ 56.00</u>
	<b>TOTAL</b>	..	<b>\$404.90</b> =====

### ORDER:

1. I do not uphold the City's fee estimate of \$416.
2. I allow the City to charge the appellant \$404.90 on the following conditions:
  - (a) should the City determine that some records do not require severing, either because access to them is denied in full or because they will be released in full, the City it required to amend its calculation for preparation time accordingly;

- (b) should the City determine that some records do not require severing, the appellant is to be contacted to attend at the appropriate location to view them, and the photocopying charges should be amended accordingly if he does not wish to have copies made.

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

Laurel Cropley  
Adjudicator

\_\_\_\_\_ April 22, 1999