



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

# **ORDER MO-1250**

**Appeal MA-990138-1**

**Town of Amherstburg**



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:**

The Town of Amherstburg (the Town) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to information described as follows:

1. Copies of the annual police budgets for the years 1994, 1995, 1996, and 1998 that contain all relevant figures for the entire year from January to December, and any changes that may have been reflected in the following calendar year.
2. Access to view the minutes of the Amherstburg [Local Architectural Conservation Advisory Committee] meetings from the inception of the committee to the present date.
3. A copy of the application for the Millennium Grant funding to renovate the Town's library and any correspondence in reply to same.
4. A copy of the accounts presented at the March 8 council meeting regarding the contractual agreement with the former police chiefs, including all costs associated with same.
5. Access to view all reports, recommendations and documentation by the Town treasurer and town auditor pertaining to the buy-out for the former police chiefs and the criteria for the Municipal Restructuring Fund. This would include all documentation to Town council regarding same.
6. Access to view copies of the call for tenders for janitorial services for all municipal buildings from 1990 to the present date.

The Town responded to the request, indicating that fees would apply under section 57 of the Act. The Town stated that total fees would amount to \$58.50, based on a search time of 1 and 3/4 hours (after the first two hours) and copying charges estimated at \$6.00.

The Town also stated that a preliminary view of the records indicated that some exemptions might apply to the records, specifically including the (section 12) solicitor-client privilege exemption.

The Town further stated that based on Ontario Regulation 460, it was requesting a deposit from the requester of 50% of the fee estimate, or \$29.25.

The requester, now the appellant, appealed the Town's decision. The appellant stated the following with respect to the Town's decision:

- there are no details of fee estimate in invoice form
- I disagree with the amount of the fee

- my request was addressed to Town council, as the Mayor was designated as “head” for the purposes of the Act on December 14, 1998
- the decision letter does not state who is responsible for making the decision
- the decision letter does not state whether or not access will be given.

The Town subsequently issued a revised decision, which stated that the fee estimate was now \$118.50 based on a search time of 3 and 3/4 hours, and copying charges of \$6.00, and which requested a deposit of \$59.25. The Town’s earlier search time estimate had been based on section 45(1)(a) as it stood prior to the 1996 amendments to the Act, which at that time provided that an institution could charge only for search time in excess of two hours.

During the mediation stage of the appeal, the appellant indicated that she wanted to maintain her appeal with respect to the revised fee estimate. In addition, the appellant agreed that all issues apart from the fee estimate issue were resolved. The appellant also confirmed that she did not intend to seek a fee waiver under the Act.

I sent a Notice of Inquiry setting out the issues in the appeal to the appellant and the Town. I received representations from both parties.

## **DISCUSSION:**

### **FEE ESTIMATE**

The sole issue for me to decide in this appeal is whether or not the Town’s fee estimate under section 45 of the Act and section 6 of Ontario Regulation 823 be upheld.

Section 45 of the Act states, in part:

(1) 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.

(3) 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.

(5) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the amount of the fee or the head's decision not to waive the fee.

(6) The fees provided in this section shall be paid and distributed in the manner and at the times prescribed in the regulations.

Section 6 of Ontario Regulation 823 reads:

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 submits:

The request for access outlined six ... separate items. The first is for copies of police budgets for four ... different years. This information must be retrieved from archived files located off-site. It was estimated that one ... hour would be required, and photocopying charges of \$2.00 would apply.

Item 2 requested access to view the minutes of the meetings of the Local Architecture Conservation Advisory Committee from its inception to the present. The committee was created in the early 1970's, and the minutes are included in bound volumes with all other minutes from Council and other Town committees for each year. A member of staff will be required to carry each volume from the vault to a convenient location for viewing, and then return the volumes to the vault. The time estimated was one ... hour.

Item 3 requests a copy of the Millennium Grant application. Staff of the Building Department would be requested to retrieve this information and copy the same. The estimated time is 1/4 hour with copying charges of \$2.00.

Item 4 requests a copy of the accounts from a specific Council meeting. It was estimated that 1/4 hour would be required to retrieve the information, and \$2.00 in copying charges would apply.

Item 5 requested access to view various reports, etc., concerning a buy-out, and criteria for the Municipal Restructuring Fund. It was estimated that 1/4 hour would be required to retrieve the information and determine what documentation could be released at this time. No photocopying charges were applied.

Item 6 requested access to view files on janitorial services for municipal buildings from 1990 to date. This information, if available, must be located and retrieved from archived files located off-site. It was estimated that one ... hour would be required to search for the information, and no photocopying charges were applied.

The appellant submits:

The amount of fees imposed in this particular situation is not reasonable. While I do not object to the \$0.20 per page photocopy charge, I disagree that it would take a knowledgeable employee 3 and 3/4 hours to search for the records. The [mediator] advised me that the [Town] claimed the records were located in other locations. Since this appeal was not transferred to another institution, I assume all the records are available in the town hall, which consists of two floors. Therefore, it is not reasonable for the [Town] to charge for the time in between the actual locating of the records, even if they, or portions, are located elsewhere; as was the case in Orders M-171 and M-337.

My estimate is that it would take a competent employee less than 1 hour to locate the records. On June 4, 1999, I attended the town hall and requested a copy of item #3 of my request. Approximately 10 minutes later, I was advised that it could not be located, that one particular secretary was not in attendance at that time. I was further advised that once it was located, I would be contacted. One week later, on June 11, I faxed a letter to the clerk to advise him that I was still interested in obtaining the information. Shortly after that, I received a telephone call advising me that the information was available. When I picked it

up that same day, I asked when it was located. The secretary replied that it was found right after I left, I just wasn't contacted. I assume that the actual locating of the record was the responsibility of a more knowledgeable employee, one who has been employed at the town hall for many years, unlike others who were transferred in as a result of amalgamating with neighbouring townships. Am I to be charged for inexperience?

The police budgets that were provided to me in the past consists of 2 pages for each year. Therefore, item #1 (the budgets) would amount to 8 pages, all of which should be in chronological order in one file folder containing police budgets. Items #1 and #3 total 14 pages.

As for item #2, I am only requesting access to view the records; and since I wasn't given a detailed index, I have no way of knowing exactly how many pages will be produced, or how long it took for each item to be located. Otherwise, I would be able to decide upon which items I was willing to pay for, eg. I already have item #3.

Item #4 should be easily located with the public March 8 town council minutes, which should take an experienced employee no more than 5 minutes to find.

Item #5 should be able to be located within minutes under buy-out - chiefs of police. At the time of the decision, I didn't contest the possible application of section 12 as I thought I had to wait for the record to do so. I was not advised otherwise.

Finally, as for item #6, a former town councillor from 1991 to 1997 has advised me that possibly once during that 6-year period there might have been a tender for janitorial services. I have never noticed an advertisement for same, so I would imagine this particular part of the record would, like the others, take minutes to find. Given that the record contains an estimated 30 pages, I do not believe it would take 3 and  $3/4$  hours search time. It should be noted that the [Town] was unaware of the 2-hour free search time being lifted until appeal, after which a dollar amount was added. I didn't believe the 1 and  $3/4$  hours above the 2 anyway, let alone a total of 3 and  $3/4$ .

According to [section 50(2) of the Act], "this Act shall not be applied to preclude access to information that is not personal information and to which access by the public was available by statute, custom or practice immediately before this Act comes into force." I strongly believe that the [Town] deliberately created a bureaucratic obstacle to free and open access to democracy, especially given Order MO-1221. The Mayor made a decision he wasn't duly authorized to make. After that request, I submitted this request at issue to town council, hoping I would be afforded the same opportunity as other residents who are granted access to public documents at \$.20 [per] page. I have attempted to obtain public information in the past, only to be told that it must be in the form of an FOI request. Then, relying on the Act and regulations, the [Town] decides what the cost of access will be.

In my opinion, in this case, it is not only unreasonable, it is a barrier to open and accountable government business, which is the public's business.

### **Item 1**

The Town has not provided a breakdown of the one hour of search time to locate the four police budget records, but indicates that they must be retrieved from files located off-site. In my view, the Town has failed to support its search time estimate for this portion of the request. Records of the nature requested should be easily retrievable, and they consist of only 10 pages in total according to the Town. One might also reasonably expect that these records would be available electronically, and thus capable of being located in well under one hour. I note also that the Town cannot charge for time spent on travel to and from the off-site location of the records. In Order M-171, Adjudicator Anita Fineberg stated:

In my view, the time to drive to an off-site storage to retrieve records cannot properly be described as time to conduct a manual search, nor can it be characterized as time to prepare a record. Such costs, if they may be charged at all, could only fall under section 6(6) of the Regulation 823. This section restricts the costs that can be charged to those which are specified in an invoice received by the institution (section 6(6)) of the Regulation. In my view, at the very least, at the time of a fee estimate, an institution is obliged to provide evidence as to how this "projected" cost was arrived at. I have not been provided with any such evidence. The Board appears to have estimated the fee related to this item as \$15.00 based on 30 minutes of time. In my view, this part of the fee estimate is inappropriate and I disallow any charges for this time.

I find that the one hour search time for these records is unreasonable and, in my view, it should be reduced to 30 minutes.

### **Item 2**

The Town has provided a fee estimate of one hour based on an employee having to manually retrieve bound volumes from a vault and carry them to a convenient viewing location, and then return the volumes to the vault. While it is appropriate to charge fees for this time spent, I find that the one hour estimate is unreasonable, especially in light of the fact that the Town failed to provide me with any detail as to the number and size of these records. As a result, I find that the fee estimate for this item should be reduced to 30 minutes.

### **Item 3**

The appellant appears to indicate that she already has a copy of the record responsive to item 3 of her request, although it is not entirely clear to me from her representations. In any event, the appellant has not provided any submissions on why she believes this portion of the fee estimate is unreasonable. In the circumstances, I find that the 15 minute search time estimate is reasonable.

#### **Item 4**

The appellant believes that the 15 minute estimate is unreasonable, and suggests that 5 minutes would be more appropriate. In my view, 15 minutes is an excessive amount of time in the context of a request for single document from a very recent Town council meeting, and I find that this estimate should be reduced to 5 minutes.

#### **Item 5**

This request covers a relatively broad range of records, and I accept the Town's submission that 15 minutes is a reasonable estimate to retrieve records responsive to this item. The appellant's submissions do not advance her position in this regard.

#### **Item 6**

Although the estimate under this item is similar to the estimate under item 1, in that it involves searching for records off-site, I find the Town's estimate here is reasonable, since it will entail a search through a relatively large number of records dating back almost 10 years. The fact that, as the appellant states, the Town has only rarely if ever used janitorial services does not relieve the Town from its duty to conduct a thorough search covering the full time span to locate responsive records.

#### **Other matters**

The appellant submits that section 50(2), which is designed to preserve access which pre-existed the Act, applies here. In my view, the main purpose of this section is to ensure that access is not denied to records to which access was normally available by custom prior to the Act coming into force. The Town has not denied access to any records at this stage. By applying the mandatory fee provisions of the Act, the Town is not using the statute to preclude access within the meaning of section 50(2). The Town has no choice but to apply the fee provisions to requests made under the Act. The fact that I have reduced the fee estimate does not alter my view on this point.

I would, nevertheless, urge the Town to consider providing the public with routine access to records which are not exempt under the Act, without the necessity of any individual having to make a request under the Act and the Town having to apply the fee provisions, especially in relation to records such as police budgets and Town committee minutes.

#### **ORDER**

1. I set aside the Town's revised fee estimate of \$118.50
2. I order the Town to issue a further revised fee estimate to the appellant in the amount of \$77.50 for search and preparation time (155 minutes), and \$6.00 for copying charges for a total of \$83.50, under section 6 of Ontario Regulation 823, by **November 26, 1999**.



3. In order to verify compliance with the terms of this order, I reserve the right to require the Town to provide me with a copy of the revised fee estimate issued pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
David Goodis  
Senior Adjudicator

\_\_\_\_\_ November 15, 1999