



Information and Privacy  
Commissioner/Ontario

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

# ORDER MO-1421

Appeal MA\_000203\_1

Toronto Transit Commission



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## NATURE OF THE APPEAL:

The appellant submitted the following access request to the Toronto Transit Commission (the TTC) under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act):

1. How many lawsuits initiated by transit users were settled by the [TTC] from January 1, 1999 to December 31, 1999.
2. Please provide the pleadings from each of those lawsuits. (Without any names, addresses or identifying information.).
3. Please provide the terms of the settlement monetary or otherwise, from each of those law suits without any names addresses or identifying information.
4. How much money did the TTC spend on security consultants or private investigators, to investigate the claims initiated by transit users between January 1, 1999 and December 31, 1999.

During conversations between the TTC and the appellant, Part 1 of the request was clarified to refer to the total number of settlements reached in 1999, including settlements of cases begun in previous years; Part 2 was clarified to mean the allegations contained in the statement of claim; Part 4 was clarified to mean the amount of money spent on consultants and investigators in relation to claims settled in 1999.

The appellant subsequently revised Part 4 again to read:

How much money did the TTC spend on security consultants or private investigators between January 1 and December 31, 1999 to investigate claims by transit users?  
On how many claims were security consultants or private investigators used between January 1 and December 31, 1999?

The TTC responded by issuing an interim decision and a fee estimate in the amount of \$507.04, broken down as follows:

• search.....	5 hours.....	\$150.00
• photocopying.....	600 @ .20.....	120.00
• preparation.....	200 min.....	100.00
• other.....	retrieval and refiling of 30 boxes.....	88.32
	transportation for off-sitestorage.....	.48.72

The TTC also stated that it had not reviewed the records in detail and had not made a final decision with respect to access. It stated that it was likely that the personal privacy exemption in section 14 would apply to some of the information. The TTC requested a deposit of \$253.52 before proceeding further.

The appellant paid the deposit of \$253.52 and the TTC issued a final decision letter granting access in whole or in part to the responsive records. The TTC included a detailed invoice in the

amount of \$1,108.22 for processing the appeal. After deducting the amount of the deposit, the amount remaining to be paid totalled \$854.70. The TTC also included a detailed index of records indicating that it had applied section 14 of the *Act* to exempt some of the information from disclosure. The TTC indicated that once payment was received the records would be disclosed to the appellant in accordance with the index. The TTC's final invoice calculated the fee as follows:

• Legal Dept. - locating file numbers that were closed in 1999	1 hr	@ \$30	\$ 30.00
• Claims Dept. - locating files	1 hr	@ 30	30.00
• Legal Dept. - matching file number to dead file number	.50 hr	@ 30	15.00
• Legal Dept. - matching dead file number to storage box number and ordering retrieval	.50 hr	@ 30	15.00
• Legal Dept. - retrieving files from storage boxes	6.50 hr	@ 30	195.00
• Severing documents	11 hr	@ 30	330.00
• Legal Dept. - drafting index	4 hr	@ 30	120.00
• Box retrieval - 53 boxes			96.00
• Boxes pulled/reshelved			155.82
• Photocopying	607 pp.	@ 0.20	121.40
• Deposit			-253.52

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The appellant appealed the amount of the fee being charged by the TTC.

During mediation, the Mediator confirmed with the TTC and the appellant that the information severed pursuant to section 14 of the *Act* was, in fact, outside the scope of the request and, therefore, not at issue in this appeal.

The sole issue to be determined in this appeal is whether the fee charged by the TTC is in accordance with the provisions of the *Act* and Regulations.

I sent a Notice of Inquiry setting out the facts and issues in the appeal to the TTC, initially. The TTC submitted representations in response, and I sent the non-confidential portions of them along with a copy of the Notice to the appellant. The appellant did not respond to the Notice.

## **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 time**

The TTC indicates that the request relates to lawsuits that were settled by it during the 1999 calendar year and that all closed 1999 files had already been sent to storage at an off-site location. The TTC states, initially, that its fee estimate was based upon the retrieval of 30 boxes of files from its off-site storage. However, according to the TTC, because of the complex nature of the appellant's request, this number was only an estimate. Once the deposit was paid and the TTC proceeded to process the request, it determined that more than 50 boxes needed to be retrieved from storage.

The TTC describes its file closing and storage procedures and explains that the search for responsive records involved three steps. With respect to the first step, the TTC states:

The mechanism used by the TTC in closing legal files is that each file is provided with a closed file number and then sent to storage. The TTC only maintains in its offices a reserve summary sheet indicating the title of proceedings, the date of loss, the date that the action was commenced, and a brief synopsis of the terms of the settlement, the date of the settlement and the closed file number.

After receiving the appellant's request, the TTC Legal Department undertook a review of its reserve summary sheets in order to determine the closed storage file number of every file that met the requirements as set out in part 1 of the appellant's request ... Please note that the TTC's Legal Department only maintains reserve summary sheets for closed files if a Statement of Defence has been filed. If a Statement of Claim has been issued and the claim settles prior to the issuance of a Statement of Defence, the reserve summary sheet is maintained by the TTC Claims Department.

The reserve summary sheets for the Legal Department's closed files are contained in three separate binders. The TTC maintains separate records for small claims actions, actions commenced in the Ontario Court, General Division or Superior Court of Ontario, and for claims involving a person under a disability ... All three of these binders were reviewed in order to determine the closed file number of each file that was relevant to the appellant's request.

...

... the TTC Claims Department also conducted a manual search of its files that were closed in 1999 in order to determine the closed file numbers of those files.

The TTC indicates that it took staff in its Legal and Claims departments one hour each to conduct a manual search for the closed file numbers, at a cost of \$60 (\$7.50 for each 15 minutes).

Once the closed file numbers were determined the TTC indicates that it was then necessary to conduct a manual search through the file storage boxes in order to locate the relevant closed files. The TTC states that it maintains lists of all of its storage box files and which closed files are contained in each box. In order to retrieve the appropriate closed files, the TTC indicates that it needed to match each closed file number with a storage box number. According to the TTC, it

took staff one hour to match the closed file number to storage box number at a cost of \$60 (\$7.50 for each 15 minutes).

Finally, the TTC indicates that once it determined which storage boxes contained the closed files, they were retrieved from storage and a manual search was conducted through each box to locate, first the appropriate closed file and then to locate the specific records requested by the appellant. The TTC indicates that its search resulted in the location of 87 closed files, housed in 53 different storage boxes. The TTC notes that as most of the files concerned litigation matters, each file usually contained hundreds of pages, and that it was necessary to search through all of these pages in order to locate the relevant pleadings. The TTC states that it took staff 6.5 hours to conduct this final search at a rate of \$7.50 for each 15 minutes for a total of \$195.

In Order 31, former Commissioner Sidney B. Linden commented on the potential impact an institution's filing system may have on the calculation of fees for locating responsive records. He found:

In calculating these search costs, the institution took into account the time involved in locating files which are properly filed and/or accounted for and the number that are currently in use whether properly accounted for or not. While the institution's filing system may not be the most efficient, I accept the institution's submission that the *Act* does not mandate a requirement on the part of the institution to keep records in such a way as to be able to accommodate any of the myriad of ways in which a request for information might be framed.

These comments are applicable in the current appeal. The TTC was required to undertake a multi-step process to identify potentially responsive records and then search through a large number of files in order to locate the specific records that the appellant is seeking. Although the location of potentially responsive records was quickly identified, the records were not maintained in such a way as to facilitate a quick search for records responsive to the request. I find that, given the extent of the task, the time spent by TTC staff in identifying, locating and retrieving them was reasonable. Accordingly, the TTC is entitled to charge the appellant for the costs of searching through the records as they are currently filed.

## **Preparation**

### ***Severing***

The TTC notes that the pleadings for the 87 lawsuits consist of 607 pages in total. The removal of the names, addresses and other identifying information of individuals from these records required that severances be made to approximately 540 pages. The TTC indicates that staff spent 11 hours severing the personal information from the records. The TTC notes that previous orders of this office have held that two minutes for severing each page of a record is an appropriate standard (see, for example: Orders M-782, M-811, M-853 and M-897). The TTC points out that it only charged the appellant for the actual time spent, which was considerably less than two minutes per page (between one and one half minutes per page).

The TTC is correct in pointing out that many previous orders have found two minutes to be reasonable in the circumstances of those appeals. Although this amount of time has generally been recognized as the appropriate standard in most cases, the circumstances of each case must be considered in determining whether it is appropriate in any given situation. The amount of time required to sever a page of a record is generally based on a variety of considerations, such as the nature of the record, the amount of information on the page, and the nature and amount of information to be severed, for example whole paragraphs as opposed to many interspersed words.

The TTC does not specify how much of each page needed to be severed, although, given the nature of the documents (pleadings) and the information to be removed, it is unlikely that the severing would be extensive. That being said, as I noted above, it is apparent that the TTC spent less than two minutes per page on severing and that it charged the appellant for the actual time spent. I am satisfied that the time spent for severing the records was consistent with the standards established in previous orders of this office and that the fee charged by the TTC in this regard was calculated in accordance with the *Act*.

#### ***Creation of an index/record***

The TTC indicates that in order to prepare the records for disclosure, it created a 25 page document detailing the severed portions of each of the 87 records. In addition, the TTC states, it also prepared a detailed breakdown of the settlement of each of the 87 requested records in accordance with the appellant's request. In total, the time spent preparing the records for disclosure in this manner took four hours at a cost of \$120.

#### ***Creation of an index***

Previous orders of this office have found that the time spent in preparing an index is a necessary part of an institution's obligations in administering the *Act*, and associated costs are not recoverable (Orders P-741 and P-1536). I agree. Based on this reasoning, the costs associated with creating the "Index of Censors" are not recoverable. However, as I noted above, the TTC also prepared a detailed breakdown of the settlement of each of the lawsuits that were settled. The TTC incorporated this information into the index that it created. In effect, the TTC has created one document for two purposes, one of which was to provide responsive information to the appellant.

#### ***Creation of a record***

Previous orders of this office have accepted the principle that there is no obligation for institutions to create a record in response to a request, but that an institution is not precluded from doing so in certain circumstances (see, for example, Orders P-50, P-99, M-33, M-85 and M-858). In Order P-99, former Commissioner Sidney B. Linden made the following statement on this issue:

While it is generally correct that institutions are not obliged to "create" a record in response to a request, and a requester's right under the *Act* is to information contained in a record existing at the

time of his request, in my view the creation of a record in some circumstances is not only consistent with the spirit of the *Act*, it also enhances one of the major purposes of the *Act i.e.*, to provide a right of access to information under the control of institutions

I agree with this approach and find that it is applicable to the circumstances in the current appeal. The appellant requested the “terms of the settlement monetary or otherwise, from each of those lawsuits without any names, addresses or identifying information”. In other words, the appellant is only interested in the specific terms of each settlement. The TTC identified 87 files that contained information of the nature requested by the appellant in the first three parts of his request. The TTC has included on the index a breakdown of the costs associated with each settlement. This information is not contained in the records which the TTC identified as responsive to part two of the request. I have no doubt that were the documents which contain this information to be collected, severed and photocopied, the costs to the appellant would have been considerably greater. On this basis, I am satisfied that in providing the requested information to the appellant in this format, the TTC has not only complied with the spirit of the *Act* but did so in the most cost-effective way. Accordingly, the costs associated with creation of a record for the purpose of responding to part three of the appellant’s request should be recoverable.

*What fee should the TTC be permitted to charge for the creation of the combined index/record?*

I found above that the TTC could not charge for the preparation of an index, but that it was reasonable for it to create a record in order to efficiently respond to part three of the appellant’s request. The resultant document contains two unique categories of information. The first piece of information relating to each record pertains to the decision on access and is set up as follows (for example):

Document 4 (3 pages)

Pages 4.1, 4.2, 4.3

Partial

MFIPPA Section Applied: 14(1)

Personal Information

The second portion of information set out immediately below the references to the *Act* contains the details of the settlement. The TTC provided the appellant with a copy of the index as set out above. Apart from the reference to the document number, none of the above information is relevant to part three of the appellant’s request.

The TTC does not break down the amount of time it took to prepare the portion of the index relating to its decision and the amount of time it took to create the second portion containing information about the settlements. However, based on my review of the complete copy of the “Index of Censors” which the TTC attached to its representations, the actual amount of information in the second portion of the index is comparable in length and form. On this basis, I am prepared to allow the TTC to reclaim half of the time it took to prepare the index.



Accordingly, the TTC may charge the appellant for two hours of preparation time to create the portion of this record that is responsive to part three of his request.

## **Other Costs**

### ***Storage Box Retrieval***

The TTC indicates that all of its storage boxes are maintained off-site. It states that the fee charged for retrieval does not reflect costs incurred by TTC personnel, but is, rather, the direct cost to it charged by a storage company. The TTC submits that it should be permitted to recoup the costs of retrieval pursuant to section 45(1)(c) of the *Act* and Regulation 6.

In Order M-171, former Adjudicator Anita Fineberg commented on the ability of an institution to collect for the cost of retrieving records from an off-site location:

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 agree with this approach to the costs associated with off-site retrieval of records. The TTC attached to its submissions an invoice from a named storage company which details the costs for retrieving the boxes from storage and transporting them to and from the TTC's offices. The retrieval costs are broken down into the costs for both obtaining the boxes and then returning them afterwards.

I find that the invoiced cost of pulling the boxes from storage and then transporting them to the TTC's offices is recoverable.

It is clear that paragraph 6 of section 6 of the Regulation permits the recovery of **any costs** incurred by an institution in locating, retrieving, processing and copying a record if those costs are specified in an invoice received by the institution. In my view, this would include the cost incurred by the TTC in returning the boxes to storage. Accordingly, I find that the TTC is entitled to charge the appellant for the costs as detailed in the invoice received from the storage company. The TTC points out that it rounded down the actual costs charged to it by the storage company and has thus charged the appellant a lesser amount than actually billed. The appellant, therefore, is only required to pay the amount as indicated on the TTC's invoice.

### ***Photocopying***

The TTC indicates that it has charged the appellant \$0.20 per page for photocopying the responsive records. This amount is calculated in accordance with the provisions of the *Act* and Regulation and is recoverable.

### **Summary**

In summary, the TTC may charge the appellant the following:

- \$285 for 9½ hours of search time;
- \$330 for 11 hours to sever the records;
- \$251.82 for retrieving the records from off-site storage;
- \$121.40 for photocopying 607 pages; and
- \$60 for preparing the portion of the Index of Censors containing information responsive to part three of the appellant's request;

for a total of \$1,048.22. The appellant has already paid \$253.52, thus leaving a balance of \$794.70.

### **ORDER:**

1. I do not uphold the TTC's fee estimate of \$1,108.22.
2. I have revised the fee that the TTC may charge to the appellant for processing his access request to \$1,048.22.

Original signed by  
Laurel Cropley  
Adjudicator

April 20, 2001