



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1459-F**

**Appeal MA-010026-2**

**Regional Municipality of Peel**



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/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The Regional Municipality of Peel (the Region) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for access to all files for the following projects:

1. Etobicoke Creek Sanitary Trunk Sewer - Contract 2, Region of Peel Project 99-2960; and
2. Etobicoke Creek Sanitary Trunk Sewer crossing Burnhamthorpe Road (sewer was constructed approximately 25 years ago).

The Region responded by advising that records responsive to the second part of the request were not in its custody or control, but were held by the Ontario Clean Water Agency (OCWA). With respect to the first part of the request, the Region indicated that its search revealed approximately six files containing approximately 400-500 documents and that some of these records may be subject to certain exemptions or exclusions under the Act. The Region also provided the requester with a fee estimate of \$510 and requested payment of this amount in full prior to it undertaking a review of the records on a document-by-document basis.

The requester, now the appellant, appealed the Region's decision on the basis that:

1. The reply is not responsive to the request, as framed.
2. The search for records was inadequate.
3. As no litigation has been commenced with respect to this project, the Region is unjustified in claiming litigation privilege for the records.
4. The search fees are excessive.
5. The Region cannot require the payment of 100% of the search fee "up-front".

During the mediation of the appeal, the Region reconsidered its decision to require 100% of the fee before commencing the searches necessary to locate the records and agreed to require the payment of 50% of the fee, in accordance with section 7(1) of Regulation 823. The Region also agreed to transfer Part 2 of the request to the OCWA.

The issue to be determined in this appeal is the appropriateness of the fee estimate provided by the Region to the appellant. The Region's fee estimate was originally based on the time required for it to review each of the estimated 400-500 documents which it identified as responsive to the request and make the necessary severance to them. This review was originally estimated to take 2 minutes per page over the 500 pages of responsive records, for a total of 17 hours. The fee is based on a charge of \$30 per hour for a total of \$510.

I decided to seek the representations of the Region, initially. The Region objected to the sharing of certain portions of its representations with the appellant. As a result, on June 19, 2001 I issued an Interim Order indicating that only a small portion of the Region's representations would not be shared with the appellant. The remaining representations received from the Region

were provided to the appellant along with a copy of the Notice of Inquiry. The appellant also made submissions to me.

In its submissions, the Region indicates that following a more extensive review of a representative sample of the responsive records, it has identified some 750 documents and that approximately 50% of them will require some degree of severing. As a result, it has revised its fee estimate for the cost of preparing the records for disclosure to be \$750 plus a further \$150 for photocopying of the responsive records, despite the fact that it has estimated the responsive records to total some 1500 pages.

## **DISCUSSION:**

### **APPROPRIATENESS OF THE FEE ESTIMATE**

The charging of fees is authorized in section 45 of the *Act*, and more specific provisions regarding fees are found in section 6 of Regulation 823 made under the *Act*. Section 45 states:

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.

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:

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.

### **Preparation of the Records for Disclosure**

In support of its fee estimate, the Region submits that between 50 and 80 percent of the records responsive to the request will require the severing of information which is subject to the solicitor-client exemption in section 12 of the *Act*. This exercise entails a review by the Region's solicitor to determine whether the exemption ought to apply to each of the documents. In Order MO-1421, Adjudicator Laurel Cropley made the following observations with respect to the appropriate standard for determining the amount of time allowable under the *Act* for the severing of records. She found that:

Although this amount of time [two minutes per page] 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.

In the present appeal, the Region has described in some detail the nature of the severing required to prepare the records for disclosure. The appellant and the Region are involved in an on-going dispute and the responsive records bear directly on the issues which have given rise to the dispute. Each document will require careful examination in order to determine whether they fall within the ambit of the section 12 solicitor-client exemption. Based on the submissions received from the Region, I am satisfied that the estimate of two minutes per page to be spent severing the responsive records is consistent with the standards established in previous orders of the Commissioner's office and that the fee estimate by the Region in this regard was calculated in accordance with the provisions of the *Act*.

Accordingly, I will allow the Region to charge a fee of up to \$750 for the cost of preparing the records for disclosure. This amount is based on a charge of \$30 per hour for the review and severing of 750 pages of documents, one half of the estimated total number of responsive records. Should the appellant choose to pay the fee estimate provided to him by the Region and

the preparation of the records take less time than originally estimated, the Region shall refund to the appellant any excess amounts paid.

**Photocopying**

I find that the Region's estimated fee of \$150 for the photocopying of 1500 pages of documents to be only one-half of the amount which is required by the provisions of section 45(1) of the *Act* and section 6.1 of Regulation 823, wherein a fee of 20 cents per page is prescribed. As the wording of these sections is mandatory, I find that a fee of \$300 for photocopying charges is correct, as opposed to the \$150 provided in the Region's representations. Again, should the appellant pay the requested fee and the number of pages are less than 1500, the Region must reimburse the appellant for any excess amounts paid.

**FINAL ORDER:**

I uphold a fee of \$1050 for the processing of the appellant's access request.

Original Signed By: \_\_\_\_\_

Donald Hale  
Adjudicator

\_\_\_\_\_  
August 1, 2001